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To the attn. of:

Ministers of Foreign Affairs of Council of Europe Member States

Permanent Representatives to the Council of Europe

26 March 2024

Dear Minister of Foreign Affairs,

Dear Permanent Representative to the Council of Europe,

FURTHERING THE RECOGNITION OF THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT AT THE 133rd SESSION OF THE COMMITTEE OF MINISTERS

I am writing to you on behalf of Amnesty International to urge you to take action to further the recognition and protection of the right to a clean, healthy and sustainable environment within the Council of Europe (CoE).

As you will be aware, there have been efforts at the CoE level since the 1970s to achieve stronger legal protection of the environment as well as to ensure greater accountability for environmental harms and human rights violations suffered as a result of environmental disasters and degradation. Yet, the CoE legal framework is manifestly insufficient to address the magnitude of the challenges posed by the triple planetary crisis of pollution, biodiversity loss and anthropogenic climate change, and new binding instruments are urgently needed to fulfil and reaffirm the CoE's human rights' mandate in all member states. In particular, Amnesty International calls on your support for an Additional Protocol to the European Convention on Human Rights on the Right to a Healthy Environment, and for the prompt establishment of the Reykjavik Committee on Environment and Human Rights composed of independent experts. At the CoE's Fourth Summit, member states pledged to consider the establishment of the Reykjavik Committee on environment and human rights: the 133rd Session of the Committee of Ministers, on 16-17 May 2024 in Strasbourg, in the framework of the Liechtenstein Presidency offers the much-expected opportunity for member states to deliver on this commitment and set it up without further delay.

As you will recall, following on from United Nations Human Rights Council Resolution A/HRC/RES/48/13, adopted in 2021, the UN General Assembly recognized the right to a clean, healthy and sustainable environment in Resolution A/RES/76/300 in 2022. This resolution explicitly linked the enjoyment of this right to all other rights and noted that the exercise of human rights, including procedural rights such as the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment. Significantly, every member state of the CoE voted in favour of the UN General Assembly's resolution.

This human right is also recognized in the main human rights treaties in other regions, most notably in the African Charter on Human and Peoples Rights, and in the 1988 Additional Protocol to the American Convention on Human Rights. Yet, to date, there is no legal recognition of the right to a clean, healthy and sustainable environment by the CoE.

With the advent of the triple planetary crisis that humanity is facing, which collectively threatens human rights, the CoE Heads of State and Governments recognized the urgency of additional efforts to protect the environment in the 2023 Reykjavik Declaration adopted at the CoE's Fourth Summit. All 46 member states committed to "strengthening [their] work at the Council of Europe on the human rights aspects of the environment based on the political recognition

of the right to a clean, healthy, and sustainable environment as a human right.” Prior to this, the CoE’s Steering Committee for Human Rights’ (CDDH) Drafting Group on Human Rights and Environment (CDDH-ENV) was invited by the Committee of Ministers to produce a report on the need for and feasibility of a further instrument or instruments on human rights and the environment, which is expected to be adopted by the CDDH in June this year. Disappointingly, the draft CDDH-ENV report, in line with instruction from the CDDH not to exclude any option and to remain neutral in its conclusions on the options,¹ does not provide expert advice on which options and instruments the Committee of Ministers should pursue, merely providing a list of rationales and an assessment of the extent to which each option or instrument would meet each rationale.

Amnesty International has, along other civil society organisations, followed this process closely, and regrets the lack of direction and ambition seen so far. In our view, the most effective option would be a combination of instruments, specifically an Additional Protocol to the ECHR and the operationalization of the Reykjavik Committee with independent experts. We urge all CoE member states to support such a combination of CoE instruments to meet both the urgency for policy measures required to address the triple planetary crisis in member states, and the need for binding legal standards to protect the right to a clean, healthy and sustainable environment and to provide accountability and remedy for environmental harms that are vital for the protection of present and future generations.

1. Adoption of an Additional Protocol to the European Convention on Human Rights

Amnesty International, in coalition with other civil society organizations, is calling for the adoption of an Additional Protocol to the European Convention on Human Rights, as the most effective instrument to ensure a binding legal obligation to protect the right to a clean, healthy and sustainable environment by CoE member states.

In light of the growing regional and global recognition of the right, an additional Protocol would reinforce existing obligations to respect, protect, and fulfil the human right to a clean, healthy, and sustainable environment and would bring the European human rights framework in line with that of other regions. The Protocol would also inspire further and more progressive legislative and policy standards at national level. It would encourage those CoE member states that have not yet legally recognized the right at the national level to affirm its recognition, promoting an equitable and shared responsibility among member states in protecting a healthy environment.

The triple planetary crisis and the increasing impact of environmental degradation on human rights have led to an increase in related cases at the European Court of Human Rights, a trend that is expected to continue. While the Court has already affirmed states’ obligations to protect existing human rights - such as the right to life (article 2) and to private and family life (article 8) - against environmental hazards, thereby creating a growing body of environmental human rights case law,² an additional Protocol would consolidate the Court’s jurisprudence and make it more coherent, contributing to greater legal certainty.

The explicit protection of the right to a clean, healthy, and sustainable environment under the European Convention of Human Rights would clarify member states’ obligations to undertake protection measures and policies. The protection of this right is especially crucial for those who face the greatest risk of environmental harm, such as children, young people, women, Indigenous peoples, national minorities, racialized individuals, individuals living in poverty, persons living with disabilities, older persons, refugees and migrants, displaced people, and other disproportionately impacted groups.

Recognizing this overarching right would complement and reinforce the existing legal framework, affirming the fundamental importance of a clean, healthy, and sustainable environment to all aspects of human dignity, equality, and freedom. In line with the subsidiary nature of the Convention’s protection system, it would enable the Court to maintain its current line of environmental jurisprudence while providing an additional legal basis in cases involving states that ratify the additional Protocol.

Under a legally binding Protocol, the protection of the right to a clean, healthy, and sustainable environment would send a powerful message, both at national and international level, demonstrating and reaffirming member states’ commitment to addressing the triple planetary crisis. It would also send an unequivocal message of solidarity to

¹ Report of the ninth meeting of the Steering Committee for Human Rights’ (CDDH) Drafting Group on Human Rights and Environment (CDDH-ENV), 17-19 January 2024, para. 2, <https://rm.coe.int/steering-committee-for-human-rights-comite-directeur-pour-les-droits-h/1680ae3b2f>

² See for example, *Manual On Human Rights And The Environment* (3rd edition), Council of Europe, February 2022.

environmental and human rights defenders who face threats and reprisals in connection with their work, and all too often, risk their lives.

2. Establishment of the Reykjavik Committee with the inclusion of independent experts

Whilst an additional Protocol to the European Convention on Human Rights is necessary and urgent, the timeline for member states to agree to a Protocol, agree on its scope and text and subsequent ratification will not be immediate. Therefore, Amnesty International is also calling for the urgent establishment of a body of independent experts on the right to a clean, healthy and sustainable environment, in the shape of the Reykjavik Committee called for in the Reykjavik Declaration in May 2023.³ The Reykjavik Committee could begin the process of integrating “the political recognition of the right to a clean, healthy and sustainable environment as a human right” that was made in Reykjavik into policy recommendations for member states.

The Reykjavik Committee on environment and human rights is part of the “Reykjavik Process”, in which CoE member states committed to “reflecting on the nature, content and implications of the right to a clean, healthy and sustainable environment. Worryingly, almost one year after the Fourth Summit, little is known of any plans to establish it, despite the CDDH-ENV’s year-long consultation and work.

Amnesty International considers that it would be most effective for the Reykjavik Committee to be set up as an “ECRI-style” commission, which, like the European Commission against Racism and Intolerance (ECRI), would include independent experts in its composition, generate policy recommendations, and monitor member states’ compliance.

The magnitude of the challenge that lies ahead requires immediate and unwavering commitment from the CoE and its member states to deliver urgent and ambitious solutions. In addition to a Protocol to the ECHR, the Reykjavik Committee, composed of independent and impartial experts, should be mandated to issue general policy recommendations on the environment and human rights to member states and to perform cyclical reviews of their implementation by all member states alike. We would encourage member states to look at cyclical reviews in other human rights mechanisms to identify best practices which could be included in the terms of reference for reviews by the Committee.

In the light of the urgency of the triple planetary crisis, we believe that such a mechanism, in addition to a Protocol to the Convention, would demonstrate the CoE’s deep commitment to human rights. One year after the Fourth Summit, member states can prove their serious commitment to the right to a healthy environment by using the Strasbourg Session of the Committee of Ministers at the end of the Liechtenstein Presidency on 16-17 May to establish the Reykjavik Committee on environment and human rights. By taking these steps, the CoE, through its member states, can lead the way in addressing the greatest challenge facing humanity.

I look forward to hearing from you and remain at your disposal should you wish to discuss this matter further.

Yours sincerely,



Eve Geddie
Director
Amnesty International – European Institutions Office

³ Reykjavik Declaration: United around our values, adopted at the Reykjavik Summit of Heads of State and Government of the Council of Europe, 16-17 May 2023, <https://edoc.coe.int/en/the-council-of-europe-in-brief/11619-united-around-our-values-reykjavik-declaration.html>