



CDDH-ENV(2023)03

30/08/2023

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**DRAFTING GROUP ON HUMAN RIGHTS AND ENVIRONMENT
(CDDH-ENV)**

**OUTLINE FOR THE CDDH REPORT
ON THE NEED FOR AND FEASIBILITY OF A FURTHER INSTRUMENT
OR INSTRUMENTS ON HUMAN RIGHTS AND THE ENVIRONMENT**

I. Introduction

- CDDH terms of reference:¹
 - [Following completion of the draft Committee of Ministers' recommendation, to] consider the need for further work in this field, bearing in mind the obligations of the member States under the European Convention on Human Rights and the steady development of the case-law by the European Court of Human Rights and national courts that foster the interconnection between the protection of the environment and human rights
 - In the context of its ongoing work on human rights and the environment, to consider the need for and feasibility of a further instrument or instruments, bearing in mind Parliamentary Assembly Recommendation 2211(2021)
- A brief historical summary of the work of the Council of Europe concerning the environment
- Note that the report will *inter alia* address:
 - The need for and feasibility of binding and/or additional non-binding instruments
 - The possible content of any such instrument(s) in particular the need for and feasibility of codifying the right to a clean, healthy and sustainable environment
- [Working methods]

II. The need for a further instrument or instruments

- Setting the scene: environmental degradation and the triple planetary crisis of climate change, nature and biodiversity loss, and pollution as urgent human rights issues and a common concern of humanity
 - The expectations of civil society
- The work of relevant UN organs and special procedures
- Overview of existing Council of Europe and other international instruments relevant to the environment and human rights:
 - Material scope (issues that are covered by existing instruments, whether binding or non-binding and including environmental instruments that contain human rights obligations):
 - Monitoring mechanisms (possibility of individual/ collective complaints)
 - Legal status (whether different issues are covered by binding or non-binding instruments) including:

¹ See doc. CDDH-ENV(2022)01

- Source of the instrument and legal effects for Council of Europe member States
 - Extent to which Council of Europe member States are under international legal obligations with respect to different issues
- Scope for and potential impact of further development/ evolution of existing Council of Europe instruments, including through the Court's caselaw
- The right to a clean, healthy and sustainable environment:
 - UN special rapporteurs' "framework principles"
 - UN HRC and UNGA resolutions – extent of support amongst COE member States
 - PACE resolution/ recommendation and CM Recommendation
 - Material scope of the right to a clean, healthy and sustainable environment
 - COE member States' domestic legal obligations to protect the right to a clean, healthy and sustainable environment
- Rationales for a further instrument:
 - Addressing gaps in member States' international legal obligations
 - Strengthening the discourse on human rights and the environment
 - Clarifying the responsibilities of private actors for the environmental impact of their activities
 - Harmonising national protection of the right to a clean, healthy and sustainable environment
- *Preliminary conclusion on the need for a further Council of Europe instrument or instruments*
 - *Whether there is a need to address gaps or shortcomings in international legal protection through a further instrument(s) (potential added value)*

III. The feasibility of a further instrument or instruments

- Possible types of instruments, including their possible material content:
 - o Further non-binding instrument or instruments (CM recommendation, guidelines)
 - o Specific convention on the environment and human rights
 - o ECHR protocol (right to a clean, healthy and sustainable environment)
 - o ESC protocol (right to a clean, healthy and sustainable environment)
- Advantages and disadvantages of each possible type of instrument, including possible measures to address potential disadvantages
- Combining different types of instruments into a package
 - o Cf. Protocol No. 14 + CM recommendations 2000-2004; CAI approach
- *Preliminary conclusion on the feasibility of a further instrument(s)*

IV. Whether the Council of Europe should adopt a further instrument or instruments

- Potential added value v. feasibility
- Possible conclusions for further action