

CDDH-ENV(2021)R2
18/10/2022

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

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

REPORT

Second meeting, by Hybrid
3 – 5 November 2021

Items 1 and 2: **Opening of the meeting and adoption of the agenda**

1. The Drafting Group on Human Rights and Environment (CDDH-ENV) held its second meeting from 3 to 5 November 2021. Due to the COVID-pandemic, it was held as a hybrid meeting. The list of participants is contained in Appendix I.
2. Mr Daniele CANGEMI, Head of Department for Human Rights, Justice and Legal Co-operation Standard-setting Activities, welcomed the participants and underlined the importance of the task entrusted to the Group by the Steering Committee for Human Rights (CDDH) and to the high expectations regarding the outcome of this work at the level of the Committee of Ministers. He finally informed the CDDH-ENV about the appointment of Mr David MILNER as the new Secretary of the CDDH and Head of the Human Rights Intergovernmental Co-operation Division.
3. The Chair, Ms Kristīne LĪCIS (Latvia), opened the meeting by wishing everyone welcome. She noted that the meeting could not be more timely in the light of the September session of the Parliamentary Assembly of the Council of Europe (PACE), which had focused on the right to a healthy environment, and during which a number of recommendation had been adopted regarding further work on standard setting in the field at the intergovernmental level. She also referred to the landmark adoption of Resolution 48/13 by the United Nations Human Rights Council on 8 October 2021 recognising the human right to a clean, healthy and sustainable environment.
4. The draft agenda was subsequently adopted, as it appears in Appendix II.

Item 3: **Elaboration of a non-binding instrument (e.g., recommendation, guidelines) on human rights and the environment**

5. The Group first held a general discussion on the non-binding instrument (e.g. guidelines, recommendation), which at present was structured as a recommendation containing a preamble, an operative part and an appendix. The Group expressed a preference for the non-binding instrument taking the form of a recommendation.
6. Regarding the time frame, the Group noted that in addition to the drafting work which would be carried out at the present meeting the Group would have a third meeting at the beginning of 2022 to finalise the draft instrument. The new instrument was expected to be ready for examination by the CDDH with a view to its adoption at its June meeting in 2022. It was however agreed that the draft instrument should already be ready by May, to give delegations sufficient time for consultation at the national level.
7. The Group agreed that the main purpose of this instrument was to establish the interdependence between the protection of human rights and the environment and that human rights contribute to the protection of the environment.
8. The Group then proceeded with a first reading of the revised preliminary draft text, examining it paragraph by paragraph. The Group made a number of changes to the structure of the draft, in particular to the appendix, for instance by condensing parts of the text.
9. The preamble was revised by including reference to the relevant recent resolutions adopted at the UN level as well as by indicating clearly the main challenges caused by environmental destruction i.e. pollution, loss of biodiversity and climate change.

10. The Group agreed that although the text had been prepared on the basis of the updated Manual, it was not necessary to include all the principles contained in the Manual.

11. Regarding the inclusion of principles which derived from existing standards in various relevant treaties, it was agreed to follow the normal Council of Europe practice, and to draft them in a way that they could be applicable in all member States, irrespective of whether they were Parties to the given instruments. As the treaties taken into account include not only the European Convention on Human Rights (ECHR) and the European Social Charter (ESC), but also environmental treaties (such as the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), the Convention on Biological Diversity), the Appendix to the draft Recommendation should not be read as a restatement of obligations under the ECHR and the ESC.

12. The Group also began a second reading of the draft instrument, focusing on the amendments proposed during the first reading. The Drafting Group noted that it would need to come back to a number of paragraphs in the revised text of the draft instrument at its next meeting. The CDDH members would also have the possibility to submit comments to the revised draft text once it had been examined by the CDDH at its forthcoming meeting (23 – 26 November 2021).

13. The Group discussed about the need for an explanatory memorandum to provide further guidance to member states. It considered that an explanatory memorandum would not be necessary as the updated Manual already provided useful guidance on the background for the provisions, at least regarding the principles which derived from the case law of the European Court of Human Rights and the conclusions and decisions of the European Committee of Social Rights. However, the Group also considered that it would be useful to have a compilation of the relevant sources used for the drafting of this instrument.

14. Finally, the Group agreed that the outcome of the work accomplished during the present meeting would be appended to the meeting report (see Addendum). The Group asked the Secretariat, in cooperation with the Chair, to transmit the revised version of the draft text to the CDDH for examination at its forthcoming meeting. It was agreed to keep the references to the sources in endnotes until the draft text had been finalised.

Item 4: **Consideration of the need for further work on human rights and the environment**

15. The Chair first recalled the exchange of views which had taken place during the first meeting regarding various options for further work and referred to the relevant recent and ongoing work taking place at the international and European level. The Secretariat then presented the proposals for further work made by the PACE in its recommendation 2211(2021) “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe”.

16. The CDDH-ENV then took note of the decision of the Committee of Ministers to transmit the PACE recommendations to the CDDH for comments, inviting the CDDH to consider in the context of its ongoing work the need for and feasibility of a further instrument or instruments, bearing in mind Recommendation 2211(2021).

17. The Group also took note of a declaration of the European Network of National Human Rights Institutions (ENNHRI), which was presented during the meeting, and it agreed to attach it to the meeting report (see Appendix III).

18. Although the Group was currently in the process of preparing a non-binding instrument on human rights and the environment, it nevertheless expressed its openness to the idea of further work which would bring added value. It was however felt necessary to build any such work on a detailed analysis of the legal situation to see whether there were any gaps in respect of the law or policies or in the enforcement of the norms relating to human rights and the environment what are the best means to address the potential gaps and what could be the impact of such changes. Some delegations also felt that it would be useful at one of the next meetings to invite one or two experts on the matter to make presentations which would help clarify these questions.

19. The representative of the Advisory Council for Youth participating in the meeting stated that the greatest protection should be afforded to the environment which was under destruction and stressed that climate crisis and environmental degradation were of great concern to young people, many of which did not feel listened to in their concerns. She thus supported the proposal of further work in the form of a binding instrument and underlined the need of new legally binding standards in order to successfully bring environmental cases to the European Court of Human Rights.

Item 5: Analysis of the impact of the present activity in terms of gender equality

20. The Group proceeded with an analysis of the impact on its work in terms of gender equality by using the thematic form which had been suggested by the CDDH. With regard to the ongoing elaboration of a non-binding instrument, the Group had taken into account the gender equality dimension in its work, both in the preamble and the appendix to the draft instrument, with specific provisions on gender equality and the need for gender mainstreaming. An analysis in this respect would be continued at its next meetings with a view to an assessment at the moment of finalising the draft instrument by the Drafting Group.

21. With regard to its future work, it considered that it was premature at this stage to proceed with an analysis of the possible gender equality impact.

Item 6: Any other issues

22. The Group was informed that the third CDDH-ENV meeting was provisionally scheduled for the end of January 2022 and that the dates would be confirmed by the CDDH at its forthcoming meeting.

23. For the next meeting, the Secretariat will submit a revised version of the draft instrument that will include any changes which may be made by the CDDH at its forthcoming meeting.

24. The Group was informed of the initiative under the UN Committee on the Rights of the Child to prepare a General comment on children's rights and the environment with a special focus on climate change and mentioned the possibility to consult in this respect with a deadline for comments by 23 December 2021.

Item 7: **Approval of the meeting report**

25. The Group amended and subsequently approved the text of the meeting report prepared by the Secretariat and the Chair.

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Appendix I**List of participants****MEMBERS / MEMBRES**

AUSTRIA / AUTRICHE	Ms Brigitte OHMS Deputy Government Agent, Division for European and International Law, Human Rights Protection (dpt. V/7), Federal Chancellery – Constitutional Service
AZERBAIJAN / AZERBAÏDJAN	Mr Elnur ALIYEV Lead consultant of the Human Rights Division, Department for Work with Law Enforcement Bodies, Administration of President of the Republic of Azerbaijan
BELGIUM / BELGIQUE	Ms Leen CHANET Legal and policy officer International Policy, Government of Flanders, Department of Environment & Spatial Development
CROATIA / CROATIE	Mrs Matea BAŠIĆ Assistant Representative, Office of the Representative of the Republic of Croatia before the ECHR
FINLAND / FINLANDE	Mr Tuomas KAIVOLA Legal Officer, Unit for Human Rights Courts and Conventions Legal Service, Ministry for Foreign Affairs
FRANCE	Mme Charlotte BLONDEL Rédactrice au sein de la sous-direction des droits de l'Homme de la Direction des affaires juridiques du Ministère de l'Europe et des Affaires étrangères M. Benoît CHAMOUARD Sous-directeur des droits de l'Homme, Direction des affaires juridiques Ministère de l'Europe et des Affaires étrangères
GEORGIA / GÉORGIE	Ms Nino LATSABIDZE Deputy Head of the International Relations and European Integration Department, Ministry of Environmental Protection and Agriculture
GERMANY / ALLEMAGNE	Ms Nicola WENZEL Government Agent before the ECtHR, Head of the Human Rights Unit, Federal Ministry of Justice and Consumer Protection Mr Malek RADEIDEH Legal Advisor, Human Rights Unit, Federal Ministry of Justice and Consumer Protection
LATVIA / LETTONIE (Chair)	Ms Kristine LĪCIS Government Agent before the ECtHR, Representative of the Government before International Human Rights Organisations, Ministry of Foreign Affairs
NORWAY / NORVÈGE	Ms Maria EDVARDSEN Senior Adviser, Ministry of Justice and Public Security Ms Beate B. EKEBERG Ministry of Climate and Environment, Policy Director, Department for Marine Management and Pollution Control Mr Morten RUUD Ministry of Justice and Public Security
POLAND / POLOGNE	Mrs Agnieszka KOZIŃSKA-MAKOWSKA Head of Division for Civil and Administrative Proceedings, Legal and Treaty Department, Ministry of Foreign Affairs

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE	Mr Vladislav ERMAKOV Adjoint au Représentant permanent de la Fédération de Russie auprès du Conseil de l'Europe Ms Olga BATANOVA
SPAIN / ESPAGNE	Mr Luis VACAS CHALFOUN Co-Agent of Spain before the ECtHR Mr Nicolás HEIDE Co-Agent before the ECtHR
SWITZERLAND / SUISSE	Mme Maya BEELER-SIGRON Juriste, Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Domaine de direction Droit public, Unité Protection internationale des droits de l'homme Mme Sophie HEEGAARD-SCHROETER Avocate, Département fédéral des affaires étrangères, Direction du droit international public, Section droits de l'homme internationaux
TURKEY / TURQUIE	Mr Murat KARACA Juge rapporteur, Ministère de la Justice Mme Ayşen EMÜLER Experte juridique, Représentation Permanente de Turquie auprès du Conseil de l'Europe, Strasbourg Mr Ahmet METİN GÖKLER Legal counselor, Représentation Permanente de Turquie auprès du Conseil de l'Europe, Strasbourg Mr Hilal KOCALI Deputy to the Permanent Representative (Legal Matters), Représentation Permanente de Turquie auprès du Conseil de l'Europe, Strasbourg
UNITED KINGDOM / ROYAUME-UNI	Ms Sarah MACRORY Ms Susan DICKSON Ms Kate HAMILTON Ms Nicole MOHAMMED Mr Daniel BERGER Mr Robert FITZPATRICK Ms Georgina HARMSWORTH

PARTICIPANTS / PARTICIPANTS

COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE / CONSEIL DES BARREAUX EUROPÉENS (CCBE)	Mr Stefan VON RAUMER Chair of the CCBE Human Rights Committee Mr Nathan ROOSBEEK Nathan
ADVISORY COUNCIL ON YOUTH / CONSEIL CONSULTATIF SUR LA JEUNESSE (CCJ) Youth Department, Directorate of Democratic Participation Council of Europe - Conseil de l'Europe	Ms Zuzana PAVELKOVA

OBSERVERS / OBSERVATEURS

MEXICO / MEXIQUE	M^{me} Lorena ALVARADO QUEZADA Adjointe à l'Observateur Permanent du Mexique auprès du Conseil de l'Europe
HOLY SEE / SAINT-SIÈGE	M^{me} Christine JEANGEY Officiel du Dicastère pour le Service du développement intégral humain du Vatican
CONFERENCE OF OINGs OF THE COUNCIL OF EUROPE / CONFÉRENCE DES OING DU CONSEIL DE L'EUROPE	Ms Amy JACOBSEN International Legal Counsel, GREENPEACE International
EUROPEAN COMMITTEE ON LEGAL CO-OPERATION / COMITÉ EUROPÉEN DE COOPÉRATION JURIDIQUE (CDCJ)	M. Rodrigo RODRIGUEZ Professeur en droit, Avocat, Domaine de direction Droit privé Département fédéral de justice et police (DFJP), Office fédéral de la Justice
PARLIAMENTARY ASSEMBLY / ASSEMBLÉE PARLEMENTAIRE	M. Guillaume PARENT Committee on social affairs, health and sustainable development / Commission des questions sociales, de la santé et du développement durable
EUROPEAN TRADE UNION CONFEDERATION (ETUC) / CONFÉDÉRATION EUROPÉENNE DES SYNDICATS (CES)	Mr Stefan CLAUWAERT Senior Legal and Human Rights Advisor, ETUC Representative in the European Social Charter Governmental Committee
EUROPEAN NETWORK OF NATIONAL HR INSTITUTIONS/ RÉSEAU EUROPÉEN DES INSTITUTIONS NATIONALES DES DH (ENNHR)	Ms Jenny SANDVIG Mr Peter DAWSON Ms Hannah Cecilie BRÆNDEN Ms Maja HASANBASIC Ms Petya MITOVA Mr Michel TABBAL Ms Camille MIGUET

SECRETARIAT / SECRETARIAT

Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme	Mr Daniele CANGEMI Head of Department / <i>Chef de Service</i> , Department for Human Rights, Justice and Legal Co-operation Standard-settings activities / <i>Service des activités normatives en matière de droits de l'homme, justice et coopération juridique</i> Ms Merete BJERREGAARD Administrator / Administrateur, Secretary of the Drafting Group on Human Rights and Environment / <i>Secrétaire du Groupe de rédaction sur les droits de l'homme et l'environnement</i> (CDDH-ENV)
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	<p>M^{me} Corinne GAVRILOVIC Assistant / Assistante</p> <p>Ms Kemo WEIBEL Proofreader</p>
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INTERPRETERS / INTERPRÈTES

Mme Bettina LUDEWIG

M. Grégoire DEVICTOR (3-4/11)

M. Nicolas GUITTONNEAU (5/11)

Appendix II

Draft Order of Business	
<u>Wednesday</u>	
10:00 a.m.	Opening, adoption of the agenda
10:30 a.m.	Revised instrument, general discussion (e.g. purpose, form, scope, structure, drafting timeframe)
11:00 a.m.	Revised instrument, first reading
12:30 p.m.	Break
2:00 p.m.	Cont. Revised instrument - first reading
4:30 p.m.	End of first day
<u>Thursday</u>	
10:00 a.m.	Consideration of the need for further work – presentation of options by the Secretariat. Exchange of views
11:00 a.m.	Revised instrument, second reading
12:30 p.m.	Break
2:00 p.m.	Cont. Revised instrument, second reading
3:30 p.m.	Analysis - gender equality impact
4:30 p.m.	End of second day
<u>Friday</u>	
10:00 a.m.	Cont. Revised instrument, second reading
12:30 p.m.	Break
2:00 p.m.	Discussion on the preparation of the third meeting (provisional dates: end Jan. 2022)
3:30 p.m.	Any other issues
3:45 p.m.	Approval meeting report
4:30 p.m.	End of third day

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

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

Draft Agenda of the second meeting (hybrid)

Wednesday, 3 November (10:00 a.m.) – Friday, 5 November 2021 (4:30 p.m.)

Strasbourg, Palais de l'Europe, Room 17

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- 1. Opening of the meeting and adoption of the agenda**
- 2. Address by Mr Daniele CANGEMI, Head of Department for Human Rights, Justice and Legal Co-operation Standard-setting Activities**
- 3. Elaboration of a non-binding instrument (e.g., recommendation, guidelines) on human rights and the environment**
- 4. Consideration of the need for further work on human rights and the environment**
- 5. Analysis of the impact of the present activity in terms of gender equality**
- 6. Any other issues**
- 7. Approval of the meeting report**

Working documents:

Revised text for the elaboration of a draft non-binding instrument (e.g., recommendation, guidelines) on human rights and the environment

[CDDH-ENV\(2021\)03rev2](#)

Contributions received from member states and participants in the CDDH meetings:

Compilation in view of the 94th CDDH meeting in June 2021

[CDDH-ENV\(2021\)08](#)

Compilation in view of the 2nd CDDH-ENV meeting in November 2021

[CDDH-ENV\(2021\)10](#)

Consideration on the need for further work on human rights and the environment – Elements by prepared by the Secretariat

[CDDH-ENV\(2021\)09](#)

Reference documents:

Reference texts for the work of the CDDH-ENV:

terms of reference for the 2020-2021 biennium, extracts of the report of the 94th CDDH meeting (Strasbourg, 15 – 18 June 2021) and thematic form on gender equality

[CDDH-ENV\(2021\)01rev](#)

Legal survey on existing principles and standards to be used as a background document by the Drafting Group on Human Rights and Environment (CDDH-ENV), prepared by Juliëtte RIERINK (LL.M.), Human Rights Research Consultant

[CDDH-ENV\(2021\)04Rev1](#)

Workshop “Environment, Human Rights and Business:

A framework for addressing environmental protection challenges”, 27 April 2021
Notes prepared the Secretariat of the workshop

[CDDH-ENV\(2021\)11](#)

[PACE Recommendation 2211 \(2021\)](#) “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe”

Human Rights Council Resolution on the human right to a clean, healthy and sustainable environment ([A/HRC/RES/48/13](#))

Appendix III

ENNHRI contribution at the second meeting of the Steering Committee for Human Rights Drafting Group on Human Rights and Environment (CDDH-ENV)

The European Network of National Human Rights Institutions (ENNHRI) represents more than 40 independent NHRIs established by constitution or law to protect and promote human rights in accordance with the [United Nations Paris Principles](#) and the [Council of Europe Committee of Ministers Recommendation 2021/1](#). ENNHRI is increasingly prioritizing environmental and climate related human rights work – we have established a Climate Core Group, published a position paper on Climate Change and Human Rights in the European Context and submitted a third-party intervention to the European Court of Human Rights (ECtHR) in the landmark climate case of *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, underlining States' responsibility to combat climate change effectively in order to protect the right to life.

A safe, clean, healthy and sustainable environment is essential to the realisation of the right to life, and of all other human rights. While 32 Council of Europe Member States already recognise the right to a healthy environment in their national legal systems, an explicit and comprehensive provision protecting this right is currently lacking in the Council of Europe system. **ENNHRI therefore supports the Drafting Group's work regarding consideration of the need for a new binding instrument recognising the right to a healthy environment.**

We note the great work already being done by CDDH-ENV on the elaboration of a non-binding instrument on human rights and the environment. Similarly, the UN Human Rights Council recently passed a resolution recognizing a safe, clean, healthy and sustainable environment as a human right. While such work sends a strong message and furthers understanding of human rights and the environment, only a legally binding instrument would obligate States to address the human rights impacts of climate change, loss of biodiversity and environmental degradation. It is time to take a step further and ensure that the 830 million people protected by the European Convention on Human Rights (ECHR) are afforded a **legally binding right to a healthy environment**, thus bringing the European human rights system in line with the African, Arab and Inter-American systems.

While ENNHRI notes that the Drafting Group's discussions regarding the form of a potential binding instrument are currently at an early stage, we wish to highlight the arguments in favour of an **Additional Protocol** to the ECHR. Such a Protocol would provide the most effective legal protection of the right to a healthy environment because it would be enforceable by the European Court of Human Rights, which can issue legally binding judgements in individual complaints. As an Additional Protocol must be signed and ratified by a State, this solution would also enable those States who wish to move ahead to do so, while allowing others to join later.

In [Recommendation 2211\(2021\)](#), the Parliamentary Assembly of the Council of Europe (PACE) has already put forward a suggestion for such a protocol. This recommendation could serve as a basis for further work of the Drafting Group, without binding it to any concrete solutions.

ENNHRI also notes that there are several climate cases currently before the European Court of Human Rights, and that the Court has previously been mindful of, and drawn conclusions from, the environmental work carried out by PACE and the Committee of Ministers, see for

example *Ivan Atanasov v. Bulgaria*. It is thus important for the Drafting Group to **clarify in its preparatory work that any work on instruments** on the right to a healthy environment, whether binding or not, **shall be without prejudice with the level of environmental protection afforded under already existing human rights**. The work of this group should not undermine these existing human rights obligations in an environmental and climate context, as interpreted dynamically by the European Court of Human Rights.

About ENNHRI

ENNHRI is the European Network of National Human Rights Institutions. We bring together over 40 National Human Rights Institutions (NHRIs) to enhance the promotion and protection of human rights in Europe. Our network provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for NHRIs at the European level.