



COMMISSION NATIONALE
CONSULTATIVE
DES DROITS DE L'HOMME

RÉPUBLIQUE FRANÇAISE

DÉCLARATION

Declaration for the recognition of a right to a healthy environment under a binding instrument of the Council of Europe (D – 2023 – 3).

Adopted unanimously at the Plenary Meeting of 28 September 2023

1. The United Nations Human Rights Council¹, followed by the General Assembly², adopted two historic resolutions on 8 October 2021 and 28 July 2022 respectively, in which they explicitly recognise the existence of a right to a clean, healthy and sustainable environment³. At the same time, there are several regional agreements⁴ and national legal systems that provide for the right to a healthy environment. More than half of the countries worldwide, including 32 members of the Council of Europe, have thus recognised it in their domestic law⁵.

2. It is noteworthy that the European legal framework does not enshrine such a right, which is not included in the European Convention on Human Rights (hereinafter referred to as the Convention) and the European Social Charter. Overall, the Council of Europe's environmental protection mechanisms remain patchy and non-binding⁶. The case law of the European Court of Human Rights does not recognise the right to a healthy environment, except indirectly through

the recognition of violations of the right to life and the right to respect for private and family life and the home⁷.

3. However, in 1999, the Parliamentary Assembly of the Council of Europe had already recommended remedying this gap by adopting an additional protocol aimed at protecting the environment⁸. These calls⁹ have been repeated several times, in particular in 2003¹⁰, 2009¹¹ and more recently in 2021¹², but have remained unheeded. In the same vein, the National Consultative Commission on Human Rights (CNC DH), in its opinion on the climate emergency of 2021¹³, recommended that France “take the necessary initiatives within the Council

1. Resolution 48/13 adopted by the Human Rights Council on 8 October 2021, A/HRC/RES/48/13, *Right to a clean, healthy, and sustainable environment*.

2. Resolution adopted by the United Nations General Assembly on 28 July 2022, *Right to a clean, healthy and sustainable environment*, A/RES/76/300.

3. *Ibid.*, § 1.

4. Examples include the African Charter on Human and Peoples' Rights of 28 June 1981, the San Salvador Protocol of 17 November 1988 and the Escazú Agreement of 24 March 2018.

5. Council of Europe Resolution 2396 (2021), *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe*, 29 September 2021. A noteworthy example is France, which enshrined this right in 2005 with the introduction of the Charter of the Environment in the constitutionality block.

6. In that sense, Elisabeth LAMBERT, “Comment rendre crédible et effective la protection des droits humains écologiques par le Conseil de l'Europe”, *Revue trimestrielle des droits de l'homme* [Quarterly review of human rights] No. 123, July 2020, pp. 609-628, p. 609.

7. See in this sense, CNC DH, *Rapport Entreprises et droits de l'Homme*, La Documentation française, p. 88, note 578, to be published in November 2023.

8. Parliamentary Assembly of the Council of Europe, Recommendation 1431 (1999), *Future action to be taken by the Council of Europe in the field of environment protection*, 4 November 1999.

9. Also worthy of mention is the European Conference on the Protection of Nature held in 1970, which proposed the drafting of a “protocol to the European Convention on Human Rights guaranteeing every person the right to enjoy a healthy and non-degraded environment”, see Catherine LE BRIS, “Ancrer le droit à un environnement sain au niveau supranational : pour une action renforcée du Conseil de l'Europe sur les changements climatiques”, *Revue trimestrielle des droits de l'homme* [Quarterly review of human rights], No. 126, April 2021, pp. 217-240, p. 220.

10. Parliamentary Assembly of the Council of Europe, Recommendation 1614 (2003), *Environment and human rights*, 27 June 2003.

11. Parliamentary Assembly of the Council of Europe, Recommendation 1885 (2009), *Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment*, 30 September 2009.

12. Parliamentary Assembly of the Council of Europe, Recommendation 2396 (2021), *Anchoring the right to a healthy environment: the need for enhanced action by the Council of Europe*, 29 September 2021.

13. CNC DH, *Opinion “Climate emergency and human rights”*, Plenary Meeting of 25 November 2021, JORF No. 0130 of June 6, 2021.

of Europe with a view to having the right to a healthy environment enshrined in a binding legal instrument, such as an Additional Protocol to the European Convention on Human Rights¹⁴. The CNCDH points out that this instrument would be an extension of France's commitments¹⁵.

4. In 2021, the Human Rights Steering Committee established a Working Group on Environment and Human Rights (CDDH-ENV) tasked with: working on updating and promoting the *Handbook on Human Rights and the Environment*; developing a draft non-binding legal instrument on human rights and the environment; examining the need to continue work in this area. The working group carried out its first two tasks: the aforementioned manual was updated¹⁶ and the draft non-binding instrument took the form of a recommendation adopted in September 2022¹⁷. In the context of its regular meetings, various stakeholders have, on several occasions, stressed the inadequacy between existing solutions within the Council of Europe and environmental problems, and the need to adopt a binding instrument recognising the right to a healthy environment¹⁸. On the whole, negotiations within the CDDH-ENV are slow, reflecting a lack of political will that prevents a consensus. To date, the Working Group is drafting a report on the “*necessity and feasibility of a further instrument or instruments on human rights and the environment*”.

5. At its 8th meeting (27 to 29 September 2023), the working group will examine a draft revised report¹⁹. The adoption of a binding instrument

would have concrete effects. First of all, it would be a strong signal given by the Council of Europe, by granting its bodies supervisory powers that are more adapted to environmental issues, in line with the work currently being carried out with a view to drafting a Global Convention on the Protection of the Environment through Criminal Law²⁰. Among the possible options, the adoption of an additional protocol would allow the European Court to sanction damage inflicted upon nature more effectively, and would provide a clear legal basis for national judges and applicants at a time when environmental and climate litigation is expanding at European and national levels. The adoption of this text would also have effects at the national level by encouraging policy makers and States to take responsibility and adopt ambitious environmental protection measures. Finally, the adoption of such an instrument would strengthen the interdependence of human rights and strengthen the rights-based approach to environmental protection.

Recommendation No. 1: Given the role of the Council of Europe in the field of human rights and the seriousness of the environmental and climate crisis, the CNCDH recommends the adoption of a binding instrument explicitly recognising the right to a healthy environment in the form of an additional protocol to the European Convention on Human Rights.

Recommendation No. 2: The CNCDH recommends that France, which has included recognition of the right to a healthy environment at international level as one of its priorities, continue its mobilisation within the CDDH-ENV working group for the early commencement of negotiations with a view to adopting such a binding instrument.

14. This recommendation was included by the CNCDH in the *Climate, Environment and Human Rights declaration* (Plenary Assembly of 25 November 2021, JORF No. 0283 of 5 December 2021) and *Rapport Entreprises et droits de l'Homme, op. cit.*, recommendation 63.

15. For example, we can mention the support given to the aforementioned resolutions of the Human Rights Council and the General Assembly recognizing the right to a healthy environment or the Declaration of the Rights of Humanity, drawn up as part of the preparation of COP21 and transmitted to the United Nations in April 2016, which mentions that “*Humanity, like all living species, has the right to live in a healthy and ecologically sustainable environment*”.

16. <https://rm.coe.int/manuel-environnement-3e-edition/1680a561b4>.

17. Recommendation CM/REC(2022)20 of the Committee of Ministers to the Member States on human rights and environmental protection, adopted by the Committee of Ministers on 27 September 2022, at the 1444th meeting of the Ministers' Deputies.

18. See the fifth meeting of September 2022 See <https://www.coe.int/fr/web/human-rights-intergovernmental-cooperation/environment-and-human-rights#%22113149991%22:6>} or the High-level Conference held on 3 May 2023, in the margins of the 7th meeting <https://rm.coe.int/the-right-to-a-clean-healthy-and-sustainable-environment-le-droit-a-un/1680aba11e>.

19. <https://rm.coe.int/steering-committee-for-human-right->

[comite-directeur-pour-les-droits-de/1680ac3555](https://rm.coe.int/comite-directeur-pour-les-droits-de/1680ac3555).

20. Council of Europe, Council of Europe to draft a new global Convention to Protect the Environment through Criminal Law, 24. November 2022: <https://www.coe.int/fr/web/cdpc/-/council-of-europe-to-draft-a-new-global-convention-to-protect-the-environment-through-criminal-law>.