



COMMISSION NATIONALE  
CONSULTATIVE  
DES DROITS DE L'HOMME

RÉPUBLIQUE FRANÇAISE

OPINION

A - 2021 - 6

# OPINION

## « CLIMATE EMERGENCY AND HUMAN RIGHTS »

27 MAY 2021



**Opinion « Climate emergency and Human Rights »**

*adopted at the plenary session of 27 May 2021*

*(adopted unanimously, with two abstentions)*

**SUMMARY**

The climate emergency is now a global threat facing the planet, affecting all human rights and endangering the existence of humanity. In this opinion, the National Consultative Commission on Human Rights (CNCDH) calls on France to play a leading role in international and European forums to ensure that a human rights-based approach to climate action is adopted, in particular by enshrining the right to a healthy environment. The CNCDH then makes recommendations on the necessary measures to be taken at national level by the public authorities to strengthen the existing legal framework for combating climate change. Finally, the CNCDH proposes various concrete avenues to strengthen education, training, information, public participation and access to justice in the field of climate change as well as the protection of human rights defenders.

## TABLE OF CONTENTS

---

1 – Climate change: a global threat to human rights requiring international and regional cooperation	p.6
2 -The legal framework for combatting climate change in France	p.12
3 - The means of mobilisation for combatting climate change in France	p.17
List des recommendations	p.26
List des people heard	p.31

1. Climate change is “*an existential threat to the planet and our very lives*”. With these words, the UN Secretary General, António Guterres, issued a wake-up call to all States on 8 September 2020, before the 75<sup>th</sup> session of the UN General Assembly, asking them to act together in the face of the climate emergency.

2. Since the industrial era, human societies, through their massive use of fossil fuels, have caused global warming and largely damaged biodiversity and natural environments. These effects, “*a matter of concern for all humanity*”<sup>1</sup>, are devastating for both nature and people, and it is the poorest and most vulnerable populations that suffer the most serious consequences. According to the Intergovernmental Panel on Climate Change (IPCC) Special Report, “*the impacts of global warming on natural and human systems have already been observed [...] Many land and ocean ecosystems and some of the services they provide have already changed due to global warming*”<sup>2</sup>.

3. Recent temperatures have been record-breaking: of the 18 hottest years in the last 136 years, 17 have occurred since 2001. In its Human Cost of Disasters report published in October 2020, the United Nations Office for Disaster Risk Reduction (UNDRR) considered that climate change has doubled the number of natural disasters over the past twenty years. These events confirm the results of the models developed since the end of the 1980s by scientists, particularly within the framework of the IPCC. These models predict a sharp rise in average temperatures and extreme events which will make a large part of currently populated areas uninhabitable. For the next two decades, the amount of CO<sub>2</sub> already in the atmosphere will largely determine this development, and the main response to this situation is adaptation measures<sup>3</sup>. Mitigation measures, i.e. the reduction of CO<sub>2</sub> emissions, are critical for the period beyond 2040 and will determine whether the values currently forecast for 2100 will be reached, values that are already incompatible with maintaining a large proportion of living beings, including humanity. Furthermore, the non-linear nature of some of the phenomena involved and their interactions within a complex system, as illustrated for example by ocean acidification, create feedback loops that will further accelerate the pace of change. The current challenge is therefore to avoid crossing an irreversible tipping point with dramatic consequences.

<sup>1</sup> United Nations Framework Convention on Climate Change (UNFCCC) and *Paris Agreement*.

<sup>2</sup> IPCC, *Global Warming of 1.5 °C, IPCC Special Report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development and efforts to eradicate poverty*, 2019, p. 5. Regarding the IPCC, see § 8. below.

<sup>3</sup> According to a Senate information report, adaptation “*aims to limit the negative impacts of climate change on society and nature and make the most of the few opportunities it may offer. Unlike mitigation policies, which seek to prevent climate disturbance by taking global and long-term action on the level of greenhouse gas (GHG) emissions, adaptation policies take note of the current reality of this disturbance and its inevitable worsening in the medium term. It is sometimes said that some aim to ‘avoid the unmanageable’ while others are involved in ‘managing the unavoidable’*”, Senate, *Information report on behalf of the Senate delegation for forward planning on France’s adaptation to climate change by 2050*, No. 511, 16 May 2019.

**Recommendation No. 1:** The CNCDH recommends that the French public authorities resolutely combat the current climatic and environmental changes, recognising that they jeopardise the very existence of humanity and other living species, and consequently affect all human rights at the same time as they reinforce social inequalities in all countries worldwide.

4. 2020, the second hottest year on record, was to be a priority and defining year on the international stage for combatting climate change. However, the health crisis related to Covid-19 has considerably slowed down or even interrupted this fight, both nationally and internationally. International meetings related to the climate and biodiversity have been suspended, as has the COP 26 in Glasgow, which was scheduled for November 2020 and has been postponed for one year. Yet, this crisis should be an unprecedented opportunity to put these policies in place. For this reason, António Guterres places climate action at the heart of the response to the health crisis in his report UN Comprehensive Response to COVID-19<sup>4</sup>.

5. Paradoxically, the measures adopted by governments, especially the richest ones, have neglected the imperatives of combatting climate disturbances. This observation is all the more alarming given the role of climate change in the spread of infectious diseases<sup>5</sup> and the proven link between these and both environmental degradation and biodiversity loss<sup>6</sup>. In its 2020 report, the United Nations Environment Programme (UNEP) shows that governments spent more on fossil fuels than on renewable energy in the face of Covid-19<sup>7</sup>. The same is true of the measures taken in France which, as the High Council on Climate (HCC) notes<sup>8</sup>, “*were mainly directed, in the interests of employment, towards the high-emission automotive and aviation sectors, without any firm conditions concerning their evolution towards a trajectory compatible with national objectives*”<sup>9</sup>. The government, which on 3 September 2020 adopted a 100 billion plan to revive the economy, has given a central place to ecology. Nevertheless, the environmental measures remain insufficient and pose, as the HCC still highlights,

4 See United Nations Comprehensive Response to COVID-19 - Saving Lives, Protecting Societies, Recovering Better (updated report), September 2020, pp. 65-66: “*Addressing climate change and COVID-19 simultaneously and at enough scale requires a response stronger than any seen before to safeguard lives and livelihoods. A recovery from the corona virus crisis is an opportunity to build more sustainable and inclusive economies and societies - a more resilient and prosperous world [...]*”.

5 According to the World Health Organisation (WHO), changes in the transmission patterns of infectious diseases are likely to be a major consequence of climate change, see WHO, *Climate change and infectious diseases in Climate change and human health - risks and responses*, 2003.

6 In this sense, see Marie Monique Robin, with the collaboration of Serge Morand, *La fabrique des pandémies* [The factory of pandemics], La Découverte, 2021.

7 See UNEP, The Production Gap, The discrepancy between countries' planned fossil fuel production and global production levels consistent with limiting warming to 1.5 °C or 2 °C, 2020: “*To date, governments have committed far more COVID-19 funds to fossil fuels than to clean energy. Policymakers must reverse this trend to meet climate goals*”.

8 See § 28 below.

9 HCC, *Redresser le cap, relancer la transition* [Getting back on track, relaunching the transition], September 2020.

*“a risk of locking France into high-emitting activities”<sup>10</sup>.*

**Recommendation No. 2 :** The CNCDH reminds the public authorities that the Covid-19-related health crisis must in no way hinder the fight against the climate crisis. It recommends that the public authorities take hold of this pandemic to build an environmentally friendly economy whose growth will no longer depend solely on the production of fossil fuels.

6. Climate change poses a global threat to all human rights, which calls for international and regional cooperation (I). In addition, the public authorities in France must take the necessary measures to strengthen the legal framework (II) and the means of mobilisation (III) for combatting climate change.

## 1 – CLIMATE CHANGE: A GLOBAL THREAT TO HUMAN RIGHTS REQUIRING INTERNATIONAL AND REGIONAL COOPERATION

---

7. Climate change is one of the greatest challenges facing the planet in the 21st century. Its effect is felt by all countries but disproportionately and unevenly. Most of the greenhouse gas (GHG) emissions have been produced by developed countries which, due to irresponsible development policies, bear a heavy responsibility for the degradation of the planet. They should therefore *“take the lead in combatting climate change and the adverse effects thereof”<sup>11</sup>*. For their part, the most vulnerable populations and southern countries, which emit few GHGs, are the hardest hit and do not have the necessary means to fight the phenomenon effectively.

8. For thirty years, several international bodies have issued alarming reports on the seriousness of the situation, regularly calling on governments to drastically reduce their GHG emissions in order to keep the increase in the global average temperature below 2 °C compared to the pre-industrial era, and to continue their efforts to achieve carbon neutrality by 2050 and limit this increase to 1.5 °C. Established in 1988 by the World Meteorological Organization (WMO) and UNEP, the IPCC is an intergovernmental body made up of scientists and experts on the climate, economy and political science, whose mandate is to assess and update the input of new scientific information on climate change. It issues regular evaluation and special reports on the seriousness of the situation, and regularly calls on governments to make drastic and rapid changes at all levels to combat climate change. The CNCDH welcomes the increase of 1.5 million

---

<sup>10</sup> HCC, *France Relance : quelle contribution à la transition bas-carbone [France Recovery plan: what contribution to the low-carbon transition]*, December 2020.

<sup>11</sup> Article 3-1 of the UNFCCC.

euros in the IPCC's funding by France until the publication of the sixth report in 2022 and recommends that the government continues on this path.

9. In recent years, the impact of the climate crisis on human rights has started to be taken into account, as the CNCDH noted in its opinion of 16 April 2015 on development, the environment and human rights, in which it stressed that climate change is “*now one of the greatest threats to human rights for current generations and even more so for future generations, who will suffer irreversible loss and damage*”<sup>12</sup>.

10. This observation has also been made on several occasions by international human rights protection mechanisms. The United Nations Human Rights Council and the Office of the High Commissioner for Human Rights have thus highlighted the direct negative effects of climate change on the enjoyment and exercise of rights set out in the *Universal Declaration of Human Rights*, including the right to life, the right to adequate food, the right to the best state of health possible, the right to adequate housing, the right to work, as well as the enjoyment of other fundamental rights such as the right of access to drinking water and sanitation, the right to self-determination and the right to development<sup>13</sup>. However, these negative effects can also be indirect, such as overloading health systems and increasing the vulnerability of people in precarious situations such as migrants<sup>14</sup>. International recognition of the impact of climate change on the effectiveness of human rights materialised with the adoption of the *Paris Agreement*, which should form the basis of climate policy approaches to mitigation and adaptation: “*The Parties should respect, promote and take into account their respective obligations regarding human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and persons in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity*”.

11. Since 2008, the United Nations Human Rights Council, one of the first intergovernmental bodies to have integrated this approach, has regularly adopted a resolution on “climate change and human rights” at its regular sessions<sup>15</sup>. Similarly, the

<sup>12</sup> Opinion adopted on 16 April 2015 on development, the environment and human rights, JORF No. 0119 of 24 May 2015.

<sup>13</sup> E.g. see Resolution 44/7 adopted on 16 July 2020, Human rights and climate change, A/HRC/RES/44/7, § 18 of the preamble.

<sup>14</sup> In this respect, see the Report of the Office of the High Commissioner for Human Rights on the relationship between climate change and human rights, A/HRC/10/61, 15 January 2009, § 92.

<sup>15</sup> See the following Council resolutions: Resolution 7/23 adopted on 28 March 2008, Human rights and climate change, A/HRC/RES/7/4; Resolution 10/4 adopted on 25 March 2009, Human rights and climate change, A/HRC/RES/10/4; Resolution 18/22 adopted on 30 September 2011, Human rights and climate change, A/HRC/RES/18/22; Resolution 26/27 adopted on 27 June 2014, Human rights and climate change, A/HRC/RES/26/27; Resolution 29/15 adopted on 2 July 2015, Human rights and climate change, A/HRC/RES/29/15; Resolution 32/33 adopted on 1 July 2016, Human rights and climate change, A/HRC/RES/32/33; Resolution 35/20 adopted on 22 June 2017, Human rights and climate change, A/HRC/RES/35/20; Resolution 38/4 adopted on 5 July 2018, Human rights and climate change, A/HRC/RES/38/4; Resolution 41/22 adopted on 12 July 2019, Human rights and climate change, A/HRC/RES/41/21; Resolution 44/7 adopted on 16 July 2020, *op. cit.*

special procedures as well as the Office of the High Commissioner for Human Rights document the negative impact of climate change on extreme poverty<sup>16</sup> as well as the right to food<sup>17</sup>, the right to adequate housing<sup>18</sup>, the rights of indigenous peoples<sup>19</sup> and the rights of migrants<sup>20</sup>.

12. Elected a member of the Human Rights Council by the United Nations General Assembly on 13 October 2020, France has included the climate issue in its priorities for action<sup>21</sup> and its voluntary commitments for 2021-2023. The 46<sup>th</sup> ordinary session of the Human Rights Council marked the return of France as a member of the body after a five-year absence. Although France announced in its voluntary commitments to “*continue its mobilisation to protect all human rights in the face of climate change and the need to protect the environment*”<sup>22</sup>, the Minister for Europe and Foreign Affairs, Jean-Yves Le Drian, speaking at the high-level segment<sup>23</sup> on France’s six concrete priorities for action, made no mention of the issue. The CNCDH deplores the absence of any reference in this regard, given the urgency and seriousness of the human rights situation.

**Recommendation No. 3:** The CNCDH recommends that France, as a Member State of the Human Rights Council, contributes, in consultation with all civil society and actors concerned, to strengthening the protection of human rights in the context of climate action.

**Recommendation No. 4:** The CNCDH recommends that France actively cooperates in the climate field with the special procedures mandate holders, and more specifically with the UN Special Rapporteur on human rights and the environment, and effectively supports its work.

**Recommendation No. 5:** The CNCDH recommends that within the Council, France promotes dialogue with civil society, in particular with those most exposed to climate change, such as the growing number of people living in extreme poverty, indigenous peoples and island peoples.

16 *Climate change and poverty, Report of the Special Rapporteur on extreme poverty and human rights*, A/HRC/41/39, 17 July 2019.

17 See *Interim report of the Special Rapporteur on the right to food*, A/70/287, 5 August 2015.

18 See *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, A/64/255, 6 August 2009.

19 See *Report of the Special Rapporteur on the rights of indigenous peoples*, 1 November 2017, A/HRC/36/46.

20 See *Report of the Special Rapporteur on the human rights of migrants*, A/67/299, 13 August 2021.

21 See France as a candidate for the Human Rights Council 2021-2023, 2020: “COP 21, held in Paris in December 2015, demonstrated France’s determined commitment to combatting climate change and addressing its impact on human rights”.

22 France’s voluntary commitments to the Human Rights Council for the period 2021-2023, 2020, p.3

23 The high-level segment of the Human Rights Council is the meeting of high-level dignitaries, considered to be representatives of the government or the State: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session7/HLS/ModalitiesHLS.pdf>.



13. However, while the Human Rights Council has been active in the fight against climate change, it has not, to date, recognised the right to a healthy environment as a human right<sup>24</sup>. The same is true at the European level, despite the Parliamentary Assembly's calls to the Council of Europe Member States to lay down the right to a healthy environment in a treaty. In this respect, in 2009, it recommended that the Committee of Ministers “draw up an additional protocol to the European Convention on Human Rights recognising the right to a healthy and viable environment”<sup>25</sup>.

14. The recognition of the right to a healthy environment in a binding legal instrument would consolidate the achievements of the European Court of Human Rights (ECHR) in environmental matters and provide a solid legal basis for applicants in climate cases, both at national and regional level<sup>26</sup>. This right could be cited by citizens against their governments and could therefore encourage the implementation of ambitious climate policies by States<sup>27</sup>. Finally, the establishment of such a right would have the merit of underlining the urgency of the need to address the climate crisis, while highlighting the interdependence and indivisibility of human rights in the environmental field<sup>28</sup>.

**Recommendation No. 6:** The CNCDH recommends that France takes the necessary initiatives within the Council of Europe to have the right to a healthy environment laid down in a binding legal instrument, such as an additional protocol to the European Convention on Human Rights. Furthermore, it recommends that the necessary consultations be conducted with a view to adopting a resolution recognising the right to a healthy environment at the next session of the Human Rights Council.

15. The global dimension of climate change requires a coordinated response by all governments to reduce GHG emissions and adapt to their negative effects. The 2015 Paris Agreement, which recognises the importance of such an approach, commits States Parties to “strengthen their cooperation on enhancing action on adaptation” (Article 7-7).

24 Reference should be made to Human Rights Council resolution 45/30 which refers to “Realising children’s rights through a healthy environment”, see Council Resolution 45/30 adopted on 7 October 2020, A/HRC/RES/45/30, *Children’s rights: realising children’s rights through a healthy environment*.

25 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, § 10.

26 For example, at the European or American level.

27 E.g. see, in this regard, the statement of High Commissioner Michelle Bachelet at the 44th session of the Human Rights Council, Annual Day on the Rights of the Child: Realizing the rights of the child through a healthy environment, Statement by Michelle Bachelet, UN High Commissioner for Human Rights, 1 July 2020: “It is time for global recognition of the human right to a healthy environment – recognition that can lead to stronger policies, at all levels, to protect our planet and our children”, available on the OHCHR extranet.

28 See in this regard the appeal to the Human Rights Council by more than 800 organisations to recognise the right to a healthy environment, Global appeal for the United Nations Human Rights Council to urgently recognise the right to a safe, clean, healthy and sustainable environment, 10 September 2020: <https://www.ciel.org/wp-content/uploads/2020/09/Global-Call-for-the-UN-to-Recognize-the-Right-to-a-Healthy-Environment-French.pdf>.

16. The CNCDH believes that France's international cooperation on the climate should be based on the objectives and principles of the 1992 UNFCCC and the Paris Agreement, and should be concretely based on the principle of common but differentiated responsibility. This approach enables the needs of the most vulnerable to be taken into account so that they have appropriate access to financial support, the sharing of know-how and best practices, as well as technology transfers. In this respect, France must, in the context of international meetings, particularly the Conferences of the Parties (COP), meet its commitments and support initiatives aimed at States directly and severely affected by climate change, in particular island States, coastal States, African States and South-East Asian States, so that they can deal with the harmful consequences of this phenomenon on human rights.

**Recommendation No. 7:** The CNCDH recommends that France adopts and defends a human rights-based approach to climate action in multilateral forums. It should also require the inclusion of reference to human rights in the negotiation of international environmental instruments as well as in the recommendations adopted at the Conference of the Parties (COP) according to the Sustainable Development Goals (SDGs).

**Recommendation No. 8:** The CNCDH recommends that France continues and intensifies its actions to combat climate change in multilateral forums and particularly in cooperation with States with high GHG emissions, in order to strengthen the measures taken for the benefit of the countries and regions directly affected. For the sake of consistency, it is also important that France meets its commitments made at COP21, which would strengthen its legitimacy to firmly intervene within international bodies.

17. European cooperation within the European Union (EU) is an ideal framework for combatting climate change. On 12 December 2019, the leaders of the Member States thus agreed on a target for carbon neutrality by 2050, under the *Paris Agreement*, of which the EU is a signatory. Presented in March 2020 and amended in September 2020, the proposed European climate law, a key element of the *Green Deal for Europe*<sup>29</sup>, aims to lay down this carbon neutrality target in EU legislation, and require a net reduction in GHG emissions of at least 55% by 2030 compared to 1990 levels. This law is currently being negotiated, but the 2030 target has already been approved by leaders of EU Member States at the European Council on 10 and 11 December 2020<sup>30</sup>.

18. However, the draft Common Agricultural Policy (CAP) 2023-2027, currently being negotiated<sup>31</sup>, does not seem to live up to these climate ambitions. Firstly, it

29 The *European Green Deal*, COM (2019) 640 final of 11 December 2019.

30 European Council meeting (10 and 11 December 2020), EUCO 22/20, CO EUR 17/CONCL 8, p. 5.

31 In June 2018, the European Commission presented a proposal to reform the CAP in order to adapt it to new agricultural challenges. In October 2020, the European Parliament and the Council of the EU adopted their respective positions on this proposal, on the basis of which negotiations are continuing with a view to adopting a text in 2021, which should apply from 2023.

does not include an ambitious target for sustainable agriculture<sup>32</sup>. Moreover, the new decentralised arrangements for implementing the CAP, through national strategic plans, give States considerable room for manoeuvre without rigorous environmental specifications<sup>33</sup>. In France, the “ImpACTons” public debate, organised by the French National Commission for Public Debate (CNDP)<sup>34</sup> prior to the drafting of the National Strategic Plan<sup>35</sup>, showed that environmental problems (including the urgency of combatting climate change) were high on the list of citizens’ concerns.

**Recommendation No. 9:** The CNCDH recommends that France implements all necessary actions to achieve the EU Member States’ climate and energy targets, as stated on 11 December 2020, i.e. the reduction of greenhouse gas emissions by at least 55% by 2030 for the European Union as a whole.

**Recommendation No. 10:** The CNCDH recommends that the French government takes strong action within the EU framework to remedy the lack of consideration of climate change within the CAP for 2023-2027. It also recommends that France adopts an ambitious national strategic plan for the implementation of the CAP in terms of sustainable agriculture.

**Recommendation No. 11:** The CNCDH recommends that the public authorities take into consideration the fight against climate change and systematically integrate it within the framework of their trade policy at both EU level and that of bilateral free-trade agreements.

19. Finally, climate change also has a disproportionate impact on countries affected by armed conflict, as this dual threat drives people from their homes, disrupts food production, cripples supply chains, encourages the spread of disease and weakens health systems<sup>36</sup>. Greater respect for international humanitarian law would help limit the damage caused by war to the natural environment and would also help societies recover from conflict. In these situations, the CNCDH notes that in 1976, the international community adopted the *Convention on the prohibition of military or any*

32 The 50% reduction in the use of pesticides and 25% organic farming targets, which are contained in the “farm to fork” and “biodiversity” strategies published by the European Commission in May 2020, are not included in this reform project. The amendment proposing a 30% reduction in GHG emissions from agriculture by 2027 was rejected in Parliament.

33 Similarly, “eco-regimes”, a subsidy scheme designed to promote environmentally friendly practices, are not subject to harmonised standards at European level either. In France, for example, there is talk of including the “High Environmental Value” (HEV) label, which has been widely criticised for its lack of requirements.

34 Regarding the CNDP, see § 33 below.

35 Article L. 121-8-IV of the French Environmental Code.

36 ICRC 2020 report “When Rain Turns to Dust”, the report is based on research conducted in southern Iraq, northern Mali and the Central African Republic: <https://shop.icrc.org/when-rain-turns-to-dust-pdf-en-3>. Of the 20 countries most vulnerable to climate change, most are in conflict situations.

*other hostile use of environmental modification techniques* (“ENMOD Convention”)<sup>37</sup>. The techniques referred to in the convention are all those that modify “*through the deliberate manipulation of natural processes, the dynamics, composition or structure of the earth*”, which may have harmful effects on the climate. Parties to the Convention undertake not to engage in environmental modification techniques that may have “*widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party*”. However, France has not ratified this Convention.

**Recommendation No. 12:** The CNCDH recommends that France ratifies the *ENMOD Convention*.

**Recommendation No. 13:** The CNCDH recommends that France ensures that actors acting on its behalf as part of military operations and humanitarian missions do so in a way that protects the environment and the populations directly affected by the climate crisis.

## 2 - THE LEGAL FRAMEWORK FOR COMBATTING CLIMATE CHANGE IN FRANCE

20. By promoting and ratifying the Paris Agreement in 2015, France committed to help keep the global temperature increase below 2 °C compared with pre-industrial levels. In this respect, it has set itself the goal of achieving carbon neutrality by 2050 and limiting the average temperature increase in the country to 1.5 °C. SDG 13 requires governments to “*take urgent action to combat climate change and its impacts*”. This requirement has been codified in the Energy and Climate Law of 8 November 2019, which recognises that France is facing an “*ecological and climate emergency*”. However, the normative framework does not create sufficiently binding obligations to take action in order to address the climate emergency and protect human rights.

**Recommendation No. 14:** The CNCDH recommends that the public authorities make the climate emergency a major national cause and, in the long term, make available the means of action to meet this commitment.

21. France, directly affected by the consequences of climate change, would even be one of the most threatened European States in this respect. 62% of the population are directly exposed to the increase in extreme weather events (heatwaves, droughts, fires, floods, hurricanes, etc.<sup>38</sup>. Intense and prolonged heat as well as extreme heatwaves

<sup>37</sup> *Convention on the prohibition of military or any other hostile use of environmental modification techniques*, 10 December 1976.

<sup>38</sup> Administrative Court of Paris, 3 February 2021, application Nos. 1904967, 1904968, 1904972, 1904976/4-1, p. 28.

“far more severe than the historical exception of 2003” are expected to increase<sup>39</sup>. The seriousness of the situation is such that some overseas territories risk being partially submerged or even disappearing altogether in the years to come, like certain islands in French Polynesia<sup>40</sup>.

22. Climate change in France, insofar as it severely affects the overseas territories, has disastrous consequences for indigenous peoples, who contribute the least to global warming<sup>41</sup>. Their survival is directly threatened as their way of life depends on ecosystems and natural resources. Under the Paris Agreement, Governments “*should respect, promote and take into account their respective obligations regarding [...] the rights of indigenous peoples*”.

**Recommendation No. 15:** The CNCDH recommends that the public authorities recognise the rights of indigenous peoples and adopt ambitious adaptation and mitigation policies in order to protect the environment of the inhabitants of overseas territories (Kanaks in New Caledonia, American Indians in French Guiana and Ma’ohis in Polynesia), whose way of life is directly threatened, and has already deteriorated, by climate change.

**Recommendation No. 16:** The CNCDH also recommends that France ratifies the *ILO Indigenous and Tribal Peoples Convention* (No. 169).

23. In 2005, the *Charter of the Environment* was integrated into the preamble of the French Constitution and thus acquired constitutional value<sup>42</sup>. This text is of paramount importance as it recognises, in Article 1, “*the right to live in a balanced environment which shows due respect for health*”. The public authorities are therefore required to ensure the protection of the environment, which is in itself an objective with constitutional value<sup>43</sup>. It follows that the legislator has a “*duty to take part in the protection and improvement of the environment*”<sup>44</sup> and also to take all necessary measures to deal with the effects of climate change. However, the constitutional

<sup>39</sup> Senate, Information report on behalf of the Senate delegation for forward planning on France’s adaptation to climate change by 2050, *op. cit.*, p. 34.

<sup>40</sup> See *Notre Affaire à Tous, Un climat d’inégalités : les impacts inégaux du dérèglement climatique en France* [A climate of inequalities: the uneven impact of climate change in France], 2020 Report, p. 46.

<sup>41</sup> Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/36/46, 1 November 2017, § 6.

<sup>42</sup> Constitutional Law No. 2005-205 of 1 March 2005 on the Charter of the Environment.

<sup>43</sup> Decision no. 2019-823 QPC of 31 January 2020, Union des industries de la protection des plantes [Prohibition on the production, storage and transport of certain plant protection products], §5.

<sup>44</sup> See Constitutional Council decision no. 2020-809 DC of 10 December 2020, Loi relative aux conditions de mise sur le marché de certains produits phytopharmaceutiques en cas de danger sanitaire pour les betteraves sucrières [Law on the conditions for placing certain plant protection products on the market in case of a health hazard for sugar beet], § 13: “*[the legislator] must take into account, in particular, the duty to take part in the protection and improvement of the environment mentioned in Article 2 of the Charter of the Environment. In addition, it may not remove the legal guarantees from the right to live in a balanced environment which shows due respect for health, laid down in Article 1 of the Charter of the Environment*”.

judge remains very cautious when relying on the Charter and often carries out a restrictive reading. There is still some imprecision, firstly, concerning its enforceability and, secondly, concerning the interpretation and meaning of some of the recognised constitutional rights<sup>45</sup>. Furthermore, its provisions are not widely used in the courts to protect the environment<sup>46</sup>.

**Recommendation No. 17:** The CNCDH recommends that the public authorities disseminate the Charter of the Environment as widely as possible, as it remains a legal instrument that is little known to the general public and little used by its interpreters, regardless of the jurisdiction.

24. There is still no explicit reference to combatting climate change in the French Constitution<sup>47</sup>, unlike other States that have included it in their constitutional norms. Several draft laws to integrate this and the protection of biodiversity into the French Constitution were presented in 2018<sup>48</sup> and 2020<sup>49</sup> but so far without success. The Citizens' Convention on Climate (CCC)<sup>50</sup>, which delivered its report in July 2020, proposed revising the Constitution *"in order to better ensure in the fundamental text of the French Republic the fight against climate change and respect for the environment, which have become vital issues for the living system"*<sup>51</sup>. The President of the Republic announced on 14 December 2020 that he would submit to a referendum in 2021 the revision of Article 1 of the Constitution, adding that *"the Republic guarantees the protection of biodiversity, the environment and the fight against climate change"*<sup>52</sup>. This initiative, which should in no way overshadow the CCC's proposals, would give greater force to the climate emergency within the French legal system and would serve as a basis for guiding the legislator's work in favour of this fight. However, the CNCDH regrets that this draft law has little chance of succeeding, at least in the short term.

25. The carbon dioxide reduction target was incorporated into French law with the adoption of the Energy and Climate Law of 8 November 2019<sup>53</sup> which amends certain

45 See Christel Cournil, "Du prochain 'verdissement' de la Constitution française à sa mise en perspective au regard de l'émergence des procès climatiques" in Christel Cournil (dir.), *La Constitution face aux changements climatiques*, Revue Énergie, Environnement, infrastructures, December 2018, pp. 17-26, p. 15 or *Les cahiers du Conseil constitutionnel*, Dix ans de QPC en matière d'environnement : quelle (r)évolution?, October 2020.

46 Ibid., p. 8.

47 Article 34 of the Constitution states that *"the law determines the fundamental principles [...] of environmental protection"*.

48 Draft constitutional law no. 911 for a more representative, accountable and effective democracy, Article 2, May 2018.

49 Proposed constitutional law no. 3284 to include the protection of the environment, the preservation of biodiversity and the fight against climate change in Article 1 of the Constitution, July 2020.

50 See § 27 below.

51 See Report of the Citizens' Convention on Climate following its formal adoption on Sunday 21 June 2020, 29 January 2021, pp. 411-421: <https://propositions.conventioncitoyennepourleclimat.fr/pdf/ccr-rapport-final.pdf>.

52 Draft constitutional law no. 449, adopted by the National Assembly, supplementing Article 1 of the Constitution and relating to the protection of the environment, presented on Tuesday 16 March 2021

53 Energy and Climate Law no. 2019-1147 of 8 November 2019.

articles of the Energy Code. Its Article L. 100-4 thus establishes “*the priorities for action of the national energy policy to respond to the ecological and climate emergency*” with a series of specific targets including the reduction of GHG emissions by 40% between 1990 and 2030. Since 2015, several legislative and regulatory texts have been adopted to combat climate change, including the aforementioned Energy and Climate Law, which makes significant progress, and the revision of the National Low Carbon Strategy (SNBC). Several announcements and sectoral measures within the framework of the national climate policy deserve attention, such as the 2017 law ending hydrocarbon production by 2040<sup>54</sup>, the closure of coal-fired power stations (by 2022)<sup>55</sup> or the end of public support for exports related to fossil fuel projects including natural gas (by 2035) and oil (by 2025)<sup>56</sup>.

26. However, the environmental protection regime and fight against climate change remain fragmented in French law. In addition, several gaps remain and the specific and sectoral announcements are mostly of a long-term nature. In general, the various measures adopted and the results achieved are so far insufficient in relation to the stated targets in terms of GHG reduction. As the HCC notes in its 2020 annual report, “*the reduction in greenhouse gas emissions continues to be too slow and insufficient to meet current and future carbon budgets*”<sup>57</sup>. More recently, in its judgement of 3 February 2021 given in the context of the “Affair of the Century” climate action, the Paris Administrative Court, which recognised the State’s liability, notes that the latter, “*having disregarded the first carbon budget [for the period 2015-2018] ... did not thus carry out the actions that it had itself recognised as being likely to reduce GHG emissions*”<sup>58</sup>.

**Recommendation No. 18:** The CNCDH recommends that the public authorities enshrine in law a comprehensive framework for action to mitigate and adapt to the effects of climate change on ecosystems and consequently on the conditions of life on earth. In addition, climate-related draft laws must systematically be accompanied by a before-and-after impact assessment that takes into account the effects of the climate crisis on human rights and provides information on the GHG emissions generated by the planned reforms.

**Recommendation No. 19:** The CNCDH recommends that the public authorities systematically integrate human rights into the design and implementation of all public climate policies in order to reconcile the fight against climate change with the

<sup>54</sup> Law no. 2017-1839 of 30 December 2017 *ending the exploration and exploitation of hydrocarbons and containing various provisions relating to energy and the environment*.

<sup>55</sup> See Ministry for Ecological Transition, *La fermeture des centrales à charbon aura lieu d’ici 2022* [The closure of coal-fired power stations will take place by 2022], 16 January 2020: <https://www.ecologie.gouv.fr/fermeture-des-centrales-charbon-aura-lieu-dici-2022>.

<sup>56</sup> Amendment no. 1186, Draft finance law FOR 2021, (no. 3642): <https://www.assemblee-nationale.fr/dyn/15/amendements/3642/AN/1186.pdf>.

<sup>57</sup> HCC, *Redresser le cap, relancer la transition* [Getting back on track, relaunching the transition], *op. cit.*, p. 6.

<sup>58</sup> Paris Administrative Court, 3 February 2021, *op. cit.*, p. 34.

protection of fundamental rights. Moreover, these policies must also take into account the socially unequal impact of climate change on human rights as a matter of priority. Finally, these policies must, in consultation with the populations concerned, address the challenges of the ecological transition.

27. The CCC, which was set up in October 2019 and whose work lasted nine months, had a mandate “to develop a set of proposals to achieve a reduction in greenhouse gas emissions of at least 40% by 2030 [...] in the spirit of social justice”<sup>59</sup>. The final report, submitted to the government on 21 June 2020, contains 146 proposals divided into several themes<sup>60</sup>. Legislative proposals were thus to be transmitted “unfiltered” to Parliament, according to the President of the Republic. A draft law “on the fight against climate change and building resilience to its effects” (called “Climate and resilience”), which is supposed to incorporate these proposals, was presented to the Council of Ministers on 10 February 2020 and adopted by the National Assembly in the first reading on 4 May 2021. It is due to be considered by the Senate in June 2021. In an opinion issued in February 2021, the HCC considered that this draft law “does not provide enough strategic vision for the decarbonisation of the various emitting sectors in France”<sup>61</sup>. The CNCDDH deplores the “lack of ambition”, in the words of the HCC, of the “Climate and Resilience” draft law, which does not sufficiently take into account the CCC’s proposals, despite the announcements made. The CNCDDH strongly regrets the absence in this text of more forceful measures to reduce GHG emissions, as well as of a human rights-based approach to the climate crisis, including economic and social rights, and which integrates the issue of social justice.

28. In addition to the legislative and regulatory provisions put in place in the climate field, the President of the Republic set up the HCC in 2018. An independent and multidisciplinary body<sup>62</sup> attached to the Prime Minister, its remit is, firstly, to issue an annual report evaluating the government’s climate policy in relation to national, regional and international targets and, secondly, to adopt an opinion every five years on National Low Carbon Strategy projects, carbon budgets and the GHG reduction trajectory. Through its opinions, recommendations and reports, the HCC plays a major role in monitoring GHG reduction measures and policies. As for the Environmental Authority<sup>63</sup>, it is responsible for making an independent assessment of projects and providing quality information to citizens, among other things, prior to “public enquiries”.

<sup>59</sup> See <https://www.conventioncitoyennepourleclimat.fr/>.

<sup>60</sup> Report of the Citizens’ Convention on Climate following its formal adoption on Sunday 21 June 2020, 29 January 2021 (corrected version).

<sup>61</sup> HCC, *Opinion on the Climate and Resilience draft law*, February 2021, p. 9.

<sup>62</sup> It is made up of twelve members, experts in the field of science, economics, agronomy, sociology and the ecological transition.

<sup>63</sup> See Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, amended by Directive 2014/52/EU of 16 April 2014.



The CNCDH considers that its independence and resources should be strengthened<sup>64</sup>.

**Recommendation No. 20:** The CNCDH recommends that the public authorities provide the HCC with the necessary human, financial and technical resources to enable it to carry out its mandate effectively. Finally, its work must be linked with that of the Environmental Authority, whose status must be clarified and whose independence must be strengthened.

### 3 – THE MEANS OF MOBILISATION FOR COMBATting CLIMATE CHANGE IN FRANCE

29. In order to be effective, the fight against climate change must be accompanied by concrete environmental measures that meet the obligations of States. According to the UN Special Rapporteur on the right to a healthy environment, States must comply with certain procedural obligations in relation to climate change: the right to information, the right to participation as well as the right of access to an effective remedy<sup>65</sup>. As for the Paris Agreement, it requires States Parties to take measures “*to improve education, training, public awareness, public participation and the population’s access to information in the field of climate change*”<sup>66</sup>.

30. In French law, several provisions deal with information and participation issues in environmental and climate matters. Article 7 of the *Charter of the Environment* states that “*everyone has the right, under the conditions and within the limits defined by law, to have access to information relating to the environment held by the public authorities and to participate in the preparation of public decisions having an impact on the environment*”. Articles L.120-1 to L.127-10 of the French Environmental Code govern the provision of information to citizens and their participation in “*the preparation of public decisions having an impact on the environment*”.

31. Regarding information, according to the 1992 *Rio Declaration on Environment and Development*, each individual at the national level “*shall have appropriate access to information concerning the environment that is held by public authorities*”. Authorities must therefore “*facilitate and encourage public awareness and participation by making information widely available*”<sup>67</sup>. The *Aarhus Convention* concluded between European partners in 1998, which came into force in 2001, governing “*access to information,*

<sup>64</sup> See the European Commission’s letter of formal notice of 7 March 2019 (MEMO\_19\_1472), the Council of State’s decision of 13 March 2019, (No. 414930) and the Commission’s new letter of formal notice of 18 February 2021 (INF/21/441).

<sup>65</sup> *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/31/52, 1 February 2016, §§ 50-64.

<sup>66</sup> Paris Agreement, Article 12.

<sup>67</sup> *Rio Declaration on Environment and Development*, principle 10.

*public participation in decision-making and access to justice*” in environmental matters, requires public authorities, except in limited cases, to “*in response to a request for environmental information, make such information available to the public, within the framework of national legislation*”<sup>68</sup>. The CNCDH considers that public information on climate change must be based on the most recent and rigorous scientific work, expressed in a way that is understandable for everybody and accessible to all.

32. In order to reach all citizens, this information must be developed by working with a variety of audiences and mobilised by all actors involved in informing the public, including institutional actors (schools, colleges, universities, local authorities) as well as the civil society (associations and trade unions). Finally, information must be widely disseminated, in particular by the various media, and must take into account the cognitive, psychological and sociological obstacles which, by making it difficult for citizens to fully assimilate scientific data, generate avoidance or even denial. The same applies to information on energy renovation subsidies, of which little is known to the general public, like the energy voucher scheme or the “FAIRE” public service.

**Recommendation No. 21:** The CNCDH recommends that the public authorities provide all citizens at all levels of governance with insightful and accessible information on the climate and environmental crisis, its causes and its concrete short, medium and long-term implications, as well as on the actions undertaken.

33. In order to engage a majority of informed people in the fight against global warming, it is necessary to allow them to participate in the decision-making process. While the *Rio Declaration*<sup>69</sup> and the UNFCCC<sup>70</sup> encourage public participation, it is above all the *Aarhus Convention*, of which some provisions have been incorporated into the French Environmental Code, which makes participation a genuine individual and procedural right by detailing the ways in which it can be exercised at all stages of decision-making. This public participation in developing measures to combat climate change contributes, as the Environmental Code specifies, to the “*democratic legitimacy*” of the public decision<sup>71</sup> and must be “*complementary to other democratic processes*”<sup>72</sup>. The CNCDH considers that, in view of the scale of the changes under way and their consequences, in order not to leave anyone out or increase inequalities, the public authorities must take all necessary measures to ensure the participation of everyone - citizens, workers, vulnerable people, including foreigners present in countries, as well as trade unions and associations, in the design and implementation of climate policies, including major projects that may have an impact on the climate, drawing on

68 *Aarhus Convention*, Article 4-4.

69 The *Rio Declaration* states that “*each individual shall have [...] the opportunity to participate in decision-making processes*” on environmental issues, principle 10.

70 The UNFCCC states that States shall “*promote and facilitate at the national [...] levels [...] public participation in addressing climate change and its effects and developing adequate responses*”, Article 6-a-iii.

71 French Environmental Code, Article L. 120-1, I-1.

72 HCC, Redresser le cap, relancer la transition [Getting back on track, relaunching the transition], *op. cit.*, p. 127.

the work of the Economic, Social and Environmental Council (ESEC) and the Regional Economic, Social and Environmental Councils (RESEC), in approaches designed in close partnership with the National Commission for Public Debate (CNDP). Indeed, given the role played by this independent administrative authority with regards to participation in public debate, it is important that the conditions under which it is referred to are facilitated and that its powers be reinforced<sup>73</sup>.

**Recommendation No. 22:** The CNCDH recommends that the public authorities organise public and transparent consultations so that, for each project likely to affect the climate, the arguments presented by each party are rigorously set out and are the subject of a clear and reasoned response from the decision-maker.

**Recommendation No. 23:** When projects affect the overseas territories, the CNCDH also recommends that the participation in decision-making of the indigenous populations (Kanaks in New Caledonia, American Indians in French Guiana and Ma'ohis in Polynesia) is effective.

34. Similarly, environmental education and training must, as stated in Article 8 of the Charter of the Environment, “*contribute to the exercise of the rights and duties defined by this Charter*”. Climate education must start in childhood, continue in school and throughout adulthood. Not only primary schools, but also secondary schools, colleges and universities must convey and promote a “*citizen’s climate culture*”<sup>74</sup>. The UNESCO Declaration of Ethical Principles in relation to Climate Change states that governments should ensure “*that all people, irrespective of gender, age, origin, and persons with disabilities, migrants, indigenous people, children, and youth, especially those in vulnerable situations, have access to life-long learning opportunities that help them to acquire and update the knowledge, skills, values, and attitudes needed to respond to climate change*”<sup>75</sup>. In addition, training must focus on access to the new jobs of the ecological transition.

**Recommendation No. 24:** The CNCDH recommends that the Ministry of National Education and Youth and the Ministry of Higher Education, Research and Innovation give greater prominence to climate change and biodiversity education in their respective curricula. It also recommends focusing on access to the new jobs in the

<sup>73</sup> In this respect, it is regrettable that the draft decree containing various provisions for the application of the Law of 7 December 2020 on the acceleration and simplification of public action and simplification in environmental matters provides in particular for an increase in the financial threshold for compulsory referrals to the CNDP and for the obligation of project owners to make public a project that is likely to lead to public debate, see Opinion of the National Commission for Public Debate (CNDP) on the draft decree containing various provisions for the application of the Law of 7 December 2020 on the acceleration and simplification of public action and simplification in environmental matters, 3 March 2021: [https://www.debatpublic.fr/sites/cndp.portail/files/documents/avis\\_2021\\_decretasap.pdf](https://www.debatpublic.fr/sites/cndp.portail/files/documents/avis_2021_decretasap.pdf).

<sup>74</sup> Senate, Information report on behalf of the Senate delegation for forward planning on France’s adaptation to climate change by 2050, op. cit., p. 10

<sup>75</sup> UNESCO, *Declaration of Ethical Principles in relation to Climate Change*, 13 November 2017, Article 11-2.

ecological transition.

35. Moreover, the right to an effective remedy is a human right ensured by international and European texts. It follows from Article 16 of the *Declaration of the Rights of Man and of the Citizen*, which constitutes “the cornerstone of these rights and freedoms”<sup>76</sup>. This right, which finds its *raison d’être* in a legitimate response to human rights violations related to climate change<sup>77</sup> has been exercised repeatedly in environmental litigation<sup>78</sup>. Thus, the number of climate proceedings brought against governments and companies is growing daily all over the world and is increasingly based on arguments directly related to human rights.

36. In France<sup>79</sup>, unlike other States such as the United States<sup>80</sup>, Colombia<sup>81</sup> or Pakistan<sup>82</sup>, climate-related legal action only started in 2019 following the famous Urgenda case which led to a ruling against the Dutch government for climate inaction<sup>83</sup>. At present, a real dynamic is emerging within French civil society which is multiplying climate actions in which the protection of human rights is at the heart of the applicants’ arguments. This is clearly illustrated by the collective application filed on 22 December 2020 before the Administrative Court of Lyon by 43 parents and associations for the State to act in the face of the risks caused by climate change on food security and health<sup>84</sup>. In addition, to ensure the effectiveness of the right to an effective remedy, it is important that the training of judges and lawyers on environmental and climate

76 Régis Fraisse, “L’article 16 de la Déclaration, clef de voûte des droits et libertés”, *Les nouveaux cahiers du droit constitutionnel* [“Article 16 of the Declaration, cornerstone of rights and freedoms”, *The new terms of constitutional law*], no. 44, Lextenso éditions, 2014, pp.9-21.

77 In this regard, see Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/31/52, *op. cit.*, § 62.

78 In this regard, see Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/31/52, *op. cit.*, § 62.

79 The first climate lawsuit in France originated from the application filed before the Council of State by the municipality and former mayor of Grande-Synthe, Damien Carême, against the French State for failing to comply with its commitments under the Paris Agreement (Council of State, 19 November 2020, Commune de Grande Synthe, application no. 427301). It was followed by applications filed, firstly, by four associations against the State for climate inaction (known as the “Affair of the Century”) and, secondly, by fourteen local authorities and associations against Total, see Paris Administrative Court, 3 February 2021, *op. cit.* and France Nature Environnement, Total attaqué pour inaction climatique : une première en France [Action brought against Total for climate inaction: a first in France], 28 January 2020: <https://www.fne.asso.fr/communiqués/total-attaque-C3%A9-pour-inaction-climatique-une-premi%C3%A8re-en-france>.

80 There are a considerable number of climate lawsuits in the US dating back to 2005, see for example Massachusetts v. EPA, 549 U.S. 497 (2007).

81 See Future Generations v. Ministry of the Environment and Others, 2018.

82 See Leghari v. Federation of Pakistan, case No:W.P.No. 25501/2015, 4 April 2015.

83 Urgenda Foundation v. State of the Netherlands, Supreme Court, 19/00135, 20 December 2019 (application filed in 2015).

84 See France 3 Auvergne-Rhône-Alpes, Sécurité environnementale : 43 parents drômois reprochent au Préfet de ne pas suffisamment agir pour leur territoire, [Environmental safety: 43 parents in the Drôme reproach the Prefect for not doing enough for their area], 15 April 2021: <https://france3-regions.francetvinfo.fr/auvergne-rhone-alpes/rhone/lyon/securite-environnementale-43-parents-dromois-reprochent-au-prefet-de-ne-pas-suffisamment-agir-pour-leur-territoire-2044219.html>.

issues is strengthened. Finally, group action, currently reserved for consumer, health, discrimination and personal data protection law and the compensation of certain environmental damages, should be made more flexible and extended to encompass all environmental law as well as issues related to the climate emergency<sup>85</sup>.

**Recommendation No. 25:** The CNCDH recommends that the public authorities strengthen the training of judges and lawyers as they are increasingly called upon to implement rules relating to environmental and climate issues.

**Recommendation No. 26:** The CNCDH recommends that the public authorities make the conditions related to group actions more flexible and extend their scope to environmental and climate issues in order to enable associations or citizens to take legal action more effectively.

37. The State is the main actor which sets GHG targets. Other non-state actors are also concerned by the climate emergency and are actively involved through their activities, such as local authorities and human rights defenders. The same should apply to businesses, which are responsible for a significant proportion of GHG emissions.

38. Local and regional authorities, which are directly confronted with the consequences of climate change on their inhabitants, are best placed to provide concrete responses. The local level can indeed allow for bolder decisions and experiments in public policy<sup>86</sup>. These various authorities share skills relating, among other things, to economic development, regional planning, transport, agriculture, education, housing, and the management of certain infrastructures and waste, i.e. areas that can be important levers for action in the face of the climate emergency. Cities have repeatedly demonstrated their commitment to this issue, through the creation of networks<sup>87</sup> and the adoption of declarations<sup>88</sup>. In order to take effective action, local authorities need financial resources, recognition of their action and role at national level, as well as coherence between the various levels of decision-making with a transfer of skills to the most relevant levels of action in order to be able to put in place policies to combat climate change (energy renovation of buildings, establishment of cool-down areas,

<sup>85</sup> See Article 1, Decree No. 2017-888 of 6 May 2017 on group action and action for recognition of rights provided for in Titles V and VI of Law no. 2016-1547 of 18 November 2016 on the modernisation of justice in the 21st century.

<sup>86</sup> According to the 2014 Delebarre & Dantec report, half of global GHG emissions depend on decisions taken at city level, Les collectivités territoriales dans la perspective de Paris Climat 2015: de l'acteur local au facilitateur global [Local and regional authorities in view of the 2015 Paris Climate Conference: from local actor to global facilitator], Report submitted by Ronan Dantec, Senator of Loire-Atlantique, and Michel Delebarre, former Minister of State, Senator of Nord, 2013: <https://www.assemblee-nationale.fr/14/evenements/mardi-avenir/2014-06/MAE-rapport-2013.pdf>

<sup>87</sup> Such as United Cities and Local Governments ([www.uclg.org](http://www.uclg.org)), the Cities Climate Leadership Group ([www.c40.org](http://www.c40.org)) and the International Council for Local Environmental Initiatives ([www.iclei.org](http://www.iclei.org)).

<sup>88</sup> See for example the Declaration adopted by around one hundred mayors and subnational leaders from around the world at the Nantes World Summit on 27 and 28 September 2013: [http://www.ronandantec.fr/images/PDFs/International/WorldMayorsSummit2013\\_Nantes\\_FR\\_Declaration.pdf](http://www.ronandantec.fr/images/PDFs/International/WorldMayorsSummit2013_Nantes_FR_Declaration.pdf).

increase in vegetation, reduction in land take, review of public transport policies, etc.). Finally, they should support citizens' initiatives to combat climate change (recycling, shared gardens, etc.).

**Recommendation No. 27:** The CNCDH recommends that the public authorities provide local and regional authorities with the necessary means to effectively combat the climate emergency. In addition, it is up to local authorities to adopt ambitious and effective policies to adapt to climate change.

39. Human rights defenders are actively involved in the fight against climate change around the world. As such, public authorities must provide a safe and enabling environment for environmental defenders to operate freely and without restriction. However, environmental defenders, like other rights defenders, sometimes find their activities hampered in France. In its first report, the Observatoire des libertés associatives noted several material, judicial, administrative, police-related or physical obstacles to activists and associations in France, including those working in the environmental and ecological fields<sup>89</sup>.

**Recommendation No. 28:** The CNCDH recommends that the public authorities incorporate the definition of the defender of rights into French law by transposing the 1998 *Declaration on Human Rights Defenders*, in order to increase the protection of environmental defenders.

**Recommendation No. 29:** The CNCDH recommends that the public authorities take the necessary measures to protect human rights defenders, particularly those working in the field of environment and climate change.

40. In order to limit its impact on climate change<sup>90</sup>, the activity of companies in France<sup>91</sup> is governed by several national, European and international standards, including the “*Duty of Vigilance Law*” adopted in 2017<sup>92</sup>, which applies to parent

<sup>89</sup> First report of the Observatoire des libertés associatives, *Une citoyenneté réprimée: 100 cas de restriction des libertés associatives, 12 pistes pour les protéger*, 6 October 2020: <https://www.lacoalition.fr/Une-citoyennete-reprimee-un-etat-des-lieux-des-entraves-aux-actions>.

<sup>90</sup> See in particular OECD Guidelines for Multinational Enterprises, 1976; United Nations Global Compact, 2000; Directive 2014/95/EU of 22 October 2014; Regulation (EU) 2019/2088 of 27 November 2019; Regulation (EU) 2020/852 of 18 June 2020. At the national level, see Article 3 of the Charter of the Environment, Article L. 533-22-1 of the French Monetary Code and Article L. 225-102-1 of the French Commercial Code.

<sup>91</sup> Regarding the activities of banks, see in particular Oxfam France, Friends of the Earth, *Quoi qu'il en coûte - Les banques françaises au secours de l'industrie fossile*, May 2021.

<sup>92</sup> Law No. 2017-399 of 27 March 2017 *on the duty of vigilance of parent companies and principal contractors*. According to Article L. 225-102-4 of the French Commercial Code, “Any company that employs, at the end of two consecutive financial years, at least five thousand employees itself and in its direct or indirect subsidiaries, whose registered office is located in France, or at least ten thousand employees itself and in its direct or indirect subsidiaries, whose registered office is located in France or abroad”.

companies and principal contractors<sup>93</sup>. This law requires these companies to “identify risks” and “prevent serious harm” to human rights and the environment caused by their activities<sup>94</sup>. Although this law makes France a pioneer in the field of corporate social and environmental responsibility, it only imposes a best endeavours obligation, its scope remains limited<sup>95</sup>, and monitoring its effective application may be hampered by the lack of information available on relations between certain parent companies and their subsidiaries established abroad<sup>96</sup>. Above all, several civil society organisations, such as the Conseil général de l’économie, have reported non-compliance with this law<sup>97</sup> or its partial implementation. Notre Affaire à Tous<sup>98</sup> highlights in particular the lack of recognition of the climate risk and the inadequacy of commitments in the monitoring plans drawn up by the main GHG-emitting companies, most of which are incompatible with a trajectory of limiting global warming to 1.5 °C. The associations behind the “Duty of Vigilance Radar” criticise the lack of resources mobilised by the State to guarantee effective and transparent implementation of this law<sup>99</sup>. The *Duty of Vigilance Law* nevertheless allows civil society to react to these shortcomings, as shown by the legal action brought against Total by a group of associations and local authorities in January 2020, based partly on this law, with a view to ordering it to drastically reduce its GHG emissions.

**Recommendation No. 30:** The CNCDH recommends that the public authorities strengthen the monitoring of the implementation of the Duty of Vigilance Law with regard to climate change.

**Recommendation No. 31:** The CNCDH recommends that the public authorities include climate protection in the criteria for granting subsidies or public aid to companies.

<sup>93</sup> See Article L. 225-102-4 of the French Commercial Code.

<sup>94</sup> *Ibid.*

<sup>95</sup> According to the Report “Le radar du devoir de vigilance : identifier les entreprises soumises à la loi - Édition 2020” (CCFD-Terre solidaire, Sherpa), only public limited companies, European companies, limited partnerships with shares or simplified joint stock companies are covered by the law.

<sup>96</sup> See CCFD-Terre solidaire and Sherpa, *Le radar du devoir de vigilance : identifier les entreprises soumises à la loi* - Édition 2020, p. 7.

<sup>97</sup> See the Report of the General Council for the Economy, Industry, Energy and Technology Evaluation de la mise en œuvre de la loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre [Evaluation of the implementation of Law No. 2017-399 of 27 March 2017 on the duty of vigilance of parent companies and principal contractors], January 2020, pp. 28-30, and its Press Release No. 2038 of 21 February 2020.

<sup>98</sup> Notre Affaire à Tous, *Benchmark de la vigilance climatique des multinationales*, *op. cit.* p. 17 and p. 19. According to the association, only 5 of the 27 companies listed are committed to a trajectory of limiting global warming to 1.5 °C and none of them publish sufficiently detailed information to enable monitoring by a third party.

<sup>99</sup> They recommend in particular the publication of the list of companies falling within the scope of the law, and the provision of these companies’ vigilance plans on the public database, Report “Le radar du devoir de vigilance” [*Duty of vigilance radar*], *op. cit.*, p. 9.

## LIST OF RECOMMENDATIONS

**Recommendation No. 1:** The CNCDH recommends that the French public authorities resolutely combat the current climatic and environmental changes, recognising that they jeopardise the very existence of humanity and other living species, and consequently affect all human rights at the same time as they reinforce social inequalities in all countries worldwide.

**Recommendation No. 2:** The CNCDH reminds the public authorities that the Covid-19-related health crisis must in no way hinder the fight against the climate crisis. On the contrary, this pandemic must be an opportunity to build an environmentally friendly economy whose growth will no longer depend solely on the production of fossil fuels.

### Human Rights Council

**Recommendation No. 3:** The CNCDH recommends that France, as a Member State of the Human Rights Council, contributes, in consultation with all civil society and actors concerned, to strengthening the protection of human rights in the context of climate action.

**Recommendation No. 4:** The CNCDH recommends that France actively cooperates in the climate field with the Special procedures mandate holders, and more specifically with the UN Special Rapporteur on human rights and the environment, and effectively supports its work.

**Recommendation No. 5:** The CNCDH recommends that within the Council, France promotes dialogue with civil society, in particular with those most exposed to climate change, such as the growing number of people living in extreme poverty, indigenous peoples and island peoples.

### Right to a healthy environment

**Recommendation No. 6:** The CNCDH recommends that France takes the necessary initiatives within the Council of Europe to have the right to a healthy environment laid down in a binding legal instrument, such as an additional protocol to the European Convention on Human Rights. Furthermore, it recommends that the necessary consultations be conducted with a view to adopting a resolution recognising the right to a healthy environment at the next session of the Human Rights Council.

### International cooperation



**Recommendation No. 7:** The CNCDH recommends that France adopts and defends a human rights-based approach to climate action in multilateral forums. It should also require the inclusion of reference to human rights in the negotiation of international environmental instruments as well as in the recommendations adopted at the Conference of the Parties according to the Sustainable Development Goals.

**Recommendation No. 8:** The CNCDH recommends that France continues and intensifies its actions to combat climate change in multilateral forums and particularly in cooperation with States with high greenhouse gas emissions, in order to strengthen the measures taken for the benefit of the countries and regions directly affected. For the sake of consistency, it is also important that France meets its commitments made at COP 21, which would strengthen its legitimacy to firmly intervene within international bodies.

## European Union

**Recommendation No. 9:** The CNCDH recommends that France implements all necessary actions to achieve the EU Member States' climate and energy targets, as stated on 11 December 2020, i.e. the reduction of greenhouse gas emissions by at least 55% by 2030 for the European Union as a whole.

**Recommendation No. 10:** The CNCDH recommends that the French government takes strong action within the EU framework to remedy the lack of consideration of climate change within the CAP for 2023-2027. It also recommends that France adopts an ambitious national strategic plan for the implementation of the CAP in terms of sustainable agriculture.

**Recommendation No. 11:** The CNCDH recommends that the public authorities take into consideration the fight against climate change and systematically integrate it within the framework of their trade policy at both EU level and that of bilateral free-trade agreements.

## International humanitarian law

**Recommendation No. 12:** The CNCDH recommends that France ratifies the Convention on the prohibition of military or any other hostile use of environmental modification techniques.

**Recommendation No. 13:** The CNCDH recommends that France ensures that actors acting on its behalf as part of military operations and humanitarian missions do so in a way that protects the environment and the populations directly affected by the climate crisis.

## Major national cause

**Recommendation No. 14:** The CNCDH recommends that the public authorities make the climate emergency a major national cause and, in the long term, make available the means of action to meet this commitment.

## Indigenous peoples

**Recommendation No. 15:** The CNCDH recommends that the public authorities recognise the rights of indigenous peoples and adopt ambitious adaptation and mitigation policies in order to protect the environment of the inhabitants of overseas territories (Kanakas in New Caledonia, American Indians in French Guiana and Ma'ohis in Polynesia), whose way of life is directly threatened, and has already deteriorated, by climate change.

**Recommendation No. 16:** The CNCDH also recommends that France ratifies the ILO Indigenous and Tribal Peoples Convention (No. 169).

## Charter of the Environment

**Recommendation No. 17:** The CNCDH recommends that the public authorities disseminate the Charter of the Environment as widely as possible, as it remains a legal instrument that is little known to the general public and little used by its interpreters, regardless of the jurisdiction.

## Laws and regulations

**Recommendation No. 18:** The CNCDH recommends that the public authorities enshrine in law a comprehensive framework for action to mitigate and adapt to the effects of climate change on ecosystems and consequently on the conditions of life on earth. In addition, climate-related draft laws must systematically be accompanied by a before-and-after impact assessment that takes into account the effects of the climate crisis on human rights and provides information on the GHG emissions generated by the planned reforms.

**Recommendation No. 19:** The CNCDH recommends that the public authorities systematically integrate human rights into the design and implementation of all public climate policies in order to reconcile the fight against climate change with the protection of fundamental rights. Moreover, these policies must also take into account the socially unequal impact of climate change on human rights as a matter of priority. Finally, these policies must, in consultation with the populations concerned, address the challenges of the ecological transition.

## High Council on Climate

**Recommendation No. 20:** The CNCDH recommends that the public authorities provide the HCC with the necessary human, financial and technical resources to enable it to carry out its mandate effectively. Finally, its work must be linked with that of the Environmental Authority, whose status must be clarified and whose independence must be strengthened.

## Right to information

**Recommendation No. 21:** The CNCDH recommends that the public authorities provide all citizens at all levels of governance with insightful and accessible information on the climate and environmental crisis, its causes and its concrete short, medium and long-term implications, as well as on the actions undertaken.

## Right to participation

**Recommendation No. 22:** The CNCDH recommends that the public authorities organise public and transparent consultations so that, for each project likely to affect the climate, the arguments presented by each party are rigorously set out and are the subject of a clear and reasoned response from the decision-maker.

**Recommendation No. 23:** When projects affect the overseas territories, the CNCDH also recommends that the participation in decision-making of the indigenous populations (Kanaks in New Caledonia, American Indians in French Guiana and Ma'ohis in Polynesia) is strengthened.

## Right to education and training

**Recommendation No. 24:** The CNCDH recommends that the Ministry of National Education and Youth and the Ministry of Higher Education, Research and Innovation give greater prominence to climate change and biodiversity education in their respective curricula. It also recommends focusing on access to the new jobs in the ecological transition.

## Right to an effective remedy

**Recommendation No. 25:** The CNCDH recommends that the public authorities strengthen the training of judges and lawyers as they are increasingly called upon to implement rules relating to environmental and climate issues.

**Recommendation No. 26:** The CNCDH recommends that the public authorities make the conditions related to group actions more flexible and extend their scope to environmental and climate issues in order to enable associations or citizens to take legal action more effectively.

#### Role of non-state actors: local and regional authorities

**Recommendation No. 27:** The CNCDH recommends that the public authorities provide local and regional authorities with the necessary means to effectively combat the climate emergency. In addition, it is up to local authorities to adopt ambitious and effective policies to adapt to climate change.

#### Role of non-state actors: rights defenders

**Recommendation No. 28:** The CNCDH recommends that the public authorities incorporate the definition of the defender of rights into French law by transposing the 1998 Declaration on Human Rights Defenders, in order to increase the protection of environmental defenders.

**Recommendation No. 29:** The CNCDH recommends that the public authorities take the necessary measures to protect human rights defenders, particularly those working in the field of environment and climate change.

#### Role of non-state actors: companies

**Recommendation No. 30:** The CNCDH recommends that the public authorities strengthen the monitoring of the implementation of the Duty of Vigilance Law with regard to climate change.

**Recommendation No. 31:** The CNCDH also recommends that the public authorities include climate protection in the criteria for granting subsidies or public aid to companies.

## LIST OF PEOPLE HEARD

**Mr Florent Augagneur**, philosopher of science and Vice-President of the National Commission for Public Debate (CNDP)

**Ms Clémentine Baldon**, lawyer and representative of the Nicolas Hulot Foundation in the “Affair of the Century”

**Mr David Boyd**, UN Special Rapporteur on human rights and the environment

**Ms Laura Canali**, researcher specialising in climate litigation and trial law

**Ms Christelle Cambier**, member of ATD Quart monde

**Mr Clément Capdebosc**, lawyer and representative of Greenpeace France in the “Affair of the Century”

**Ms Christel Cournil**, Professor of Law, specialist in environmental law and member of the association Notre affaire à tous

**Ms Isabelle Dorese**, member of ATD Quart monde

**Mr Olivier Fontan**, Executive Director of the High Council on Climate

**Ms Chloé Gerbier**, member of Extinction Rebellion

**Ms Marie Joubert**, member of Extinction Rebellion

**Ms Sylvie Jover**, member of the Citizens’ Convention on Climate

**Mr Jean-François Julliard**, Executive Director of Greenpeace France

**Ms Agny Kpata**, member of the Citizens’ Convention on Climate

**Mr Guy Kulitza**, member of the Citizens’ Convention on Climate

**Ms Catherine Le Bris**, researcher at the CNRS (Panthéon-Sorbonne University), specialist in international human rights and climate law

**Ms Corinne Lepage**, lawyer in the Grande-Synthe case and former Minister for the Environment

**Mr Laurent Michel**, Director of the Directorate-General for Energy and Climate (DGEC), Ministry for the Ecological and Inclusive Transition

**Mr David Nacass**, member of Extinction Rebellion

**Mr Éric Piolle**, Mayor of Grenoble

**Ms Patricia Samoun**, member of the Citizens’ Convention on Climate

**Ms Zaïa Thomas**, member of the Citizens’ Convention on Climate

**Ms Marta Torre-Schaub**, Professor of Law and specialist in environmental law







COMMISSION NATIONALE  
CONSULTATIVE  
DES DROITS DE L'HOMME

RÉPUBLIQUE FRANÇAISE

Created in 1947 at the instigation of René Cassin, **the National Consultative Commission on Human Rights (CNC DH) is the French national institution responsible for promoting and protecting human rights with level 'A' accreditation from the United Nations.**

The CNC DH performs a three-pronged role that involves the following:

- enlightening the public decision-making process with regards to human rights;
- monitoring the effectiveness in France of rights protected by international human rights conventions;
- overseeing France's implementation of recommendations made by international committees.

The CNC DH is independent and operates based on the principle of the pluralism of ideas. This being the case, as the only institution that maintains continuous dialogue between civil society and French experts in the field of human rights, the Committee comprises 64 qualified individuals and representatives of non-governmental organisations with their roots in civil society.

The CNC DH has been an independent National Rapporteur on the fight against all forms of racism since 1990, on the fight against the trafficking and exploitation of human beings since 2014, on "Business and Human rights" since 2017, on the fight against homophobia since 2018 and on the right of persons with disabilities since 2020.

20 Avenue Ségur - TSA 40 720 - 75334 PARIS Cedex 07

Tel : 01.42.75.77.09

Mail : [cncdh@cncdh.fr](mailto:cncdh@cncdh.fr)

[www.cncdh.fr](http://www.cncdh.fr)



@CNC DH

@cncdh.france