

FRENCH CLIMATE POLICIES AND ITS OBLIGATIONS UNDER THE ICESCR

NGO PARALLEL REPORT

FRANCE 5TH REPORT TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS

March 2020

NOTRE AFFAIRE A TOUS



CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW



EXECUTIVE SUMMARY

As the Committee on Economic, Social and Cultural Rights (CESCR) has repeatedly acknowledged, State parties to the Convention have obligations to reduce their greenhouse gas emissions in order to protect the climate and avoid climate-induced adverse impacts on human rights, as well extraterritorial obligations to respect and protect economic, social and cultural rights where a sufficient link between the non-enjoyment of a protected right and the state in question exists. This link clearly exists for certain extraterritorial situations with severe climate impacts, for example emissions from international sea and air transport to and from the state and greenhouse gases emitted abroad by private companies under the state's jurisdiction. In the view of the submitting organizations, the existing legal framework in France, in particular the Draft Energy and Climate Act and the Duty of Vigilance Act, are not sufficient to implement these obligations.

We thus urge the Committee on Economic, Social and Cultural Rights to ask France to:

- **provide information on measures implemented to reduce emissions of greenhouse gases as well as on the 2030 and 2050 greenhouse gas reduction goals of the French Energy code and how these measures and goals are compatible with France's obligation under the Covenant to reduce emissions at the highest possible level of ambition ;**
- **provide information on how France complies, in the context of climate change and of the need to reduce global emissions of Greenhouse gases, with its extraterritorial obligations under the Covenant, particularly in relation to:**
 - **emissions related to the production and transport of imported goods and services consumed in France ;**
 - **emissions related to maritime transport and aviation ;**
 - **the regulation of French transnational corporations' and financial institutions' direct & indirect emissions and their climate-induced impacts on economic, social and cultural rights.**

0. Submitting Organizations

NOTRE AFFAIRE A TOUS is a French NGO created in 2015 using litigation and advocacy tools to improve environmental and climate protection laws. NOTRE AFFAIRE A TOUS is *inter alia* at the origin of two groundbreaking climate legal actions against the French State (in the so-called *L'affaire du siècle*) and against the oil company Total.

The **CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW (CIEL)** uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. CIEL seeks a world where the law reflects the interconnection between humans and the environment, respects the limits of the planet, protects the dignity and equality of each person, and encourages all of earth's inhabitants to live in balance with each other.

1. France's climate mitigation objectives

The adverse impacts of climate change constitute one of the most significant global threats for the enjoyment of economic, social and cultural rights. Climate change "threatens the full enjoyment of a wide range of rights,

including the rights to life, health, water, food, housing, development and self-determination”.¹ Annually, at least 150,000 premature deaths globally have been linked to climate change.² Estimations attribute some 250,000 annual climate-related deaths by 2030 to heat stress, malaria, diarrhoea and malnutrition alone.³ Moreover, adverse impacts of climate change will lead to an increase of respiratory disease, cardiovascular disease, heatstroke, water-, and vector-borne diseases, and mental illness.⁴

The magnitude of these impacts will keep increasing as temperatures continue to rise. With the adoption of the Paris Agreement, Parties committed themselves to limit the increase of temperatures well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C.⁵ In addition, States have legal obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to take action to protect people’s human rights from actual and foreseeable adverse effects of climate change and to mobilize the maximum available resources to do so.⁶

In October 2018, the Intergovernmental Panel on Climate Change (IPCC) released its Special Report on Global Warming of 1.5°C (SR1.5). It underlines that emissions will need to be reduced even more rapidly to maintain the temperature increase below 1.5°C.⁷ According to the findings of this report, any warming above 1.5°C will result in severe additional climate impacts and acute risks for communities and ecosystems. Moreover, it will result in an increase in the frequency and intensity of extreme weather events. Thus, it is imperative from a human rights perspective that States limit warming to 1.5°C, as underlined by the Committee on Economic, Social and Cultural Rights (CESCR).⁸ Developed countries bear a heightened responsibility to reduce emissions since they have contributed the most to global warming. Hence, they must take the lead in implementing ambitious climate action.

While the French government has adopted and implemented a number of policies and strategies to reduce emissions of greenhouse gases (GHG), these measures have failed to lead to an adequate reduction of emissions. **According to data published by the government itself, emissions of GHG have for instance increased between 2014 and 2017 and have stagnated over a longer period. Consequently, France has missed its own target of an annual carbon budget between 2015-2018 by 3.5%.⁹ France is not on track to meeting its 2020 GHG targets nor its European renewable energy expansion obligations¹⁰.**

1 United Nations Special Rapporteur on Human Rights and the Environment, Report on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/31/52 (2016), para 23

2 DARA and the Climate Vulnerable Forum, *Climate Vulnerability Monitor 2nd Edition: A Guide to the Cold Calculus of a Hot Planet* (2012)

3 WHO, *Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s* (2014)

4 IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (2014)

5 Paris Agreement on Climate Change (2015) , Article 2.1.a.

6 Statement of the Committee on Economic, Social and Cultural Rights (CESCR), Climate change and the International Covenant on Economic, Social and Cultural Rights, UN Doc E/C.12/2018/1 (2018)

7 Intergovernmental Panel on Climate Change, (IPCC) *Special Report: Global warming of 1.5°C* (2018)

8 CESCR Statement (No. 6) on Climate Change, E/C.12/2018/1 (2018)

9 Haut Conseil pour le Climat, “Agir en cohérence avec les ambitions” (2019), at 28.

10 See the press release of the legal action in English summarizing the allegations regarding the inobservance of the short term climate goals (2019), http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190314_NA_press-release.pdf (accessed on 05 March 2020)

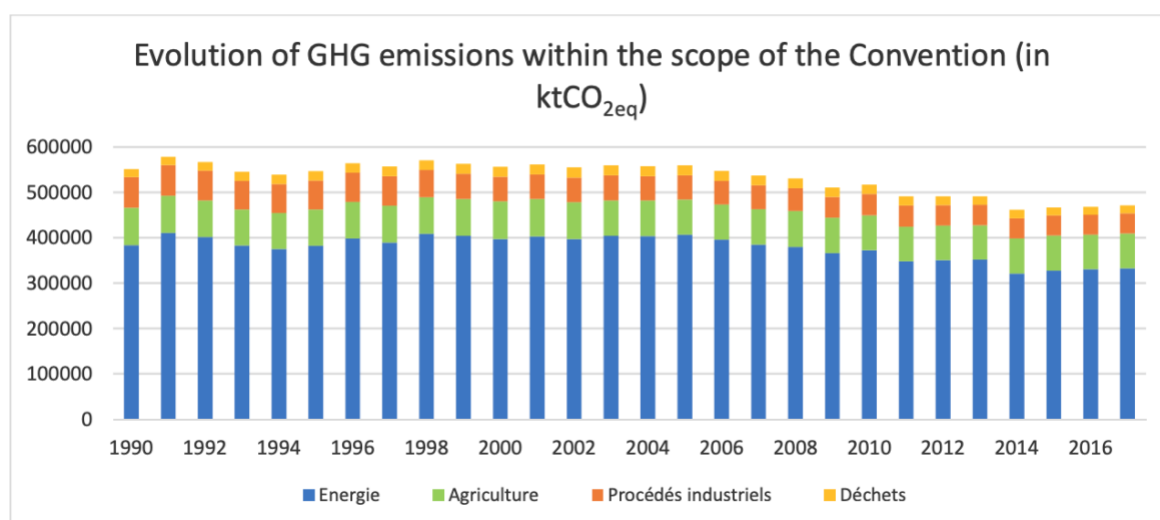


Figure 1: French emissions within the scope of the UN Framework Convention on Climate Change from 1990 to 2017 excluding the Land Use and Forestry sector in ktCO₂eq, source: Biennial Report of France to the UNFCCC (2020)

Additionally, the steps foreseen by the French Government to reach its 2050 carbon neutrality objective are not consistent with a 1.5°C pathway. The article L. 100-4 of the French Energy Code revised by the recent Energy and Climate Act (LOI n° 2019-1147) only requires France to reduce its emissions by 40% between 1990 and 2030 and to cut GHG emissions by 6 or more compared to the 1990 level by the middle of the century. The current French climate policy falls short of reaching the IPCC recommended reduction of GHG emissions of 91%-104% by 2050 in comparison to 2010 levels to limit global warming to 1.5°C with no or low overshoot.¹¹

The Act allows the government to rely on so-called negative emissions to realise this goal. Negative emissions refer to either natural carbon sinks, such as forests, or to technological solutions such as carbon capture and storage. However, global warming threatens natural carbon sinks for instance by increasing the gravity and frequency of forest fires¹², as recently witnessed in Australia. As noted by the Dutch Supreme Court in its *Urgenda* ruling (December 2019), postponing action through more ambitious long-term targets while failing to meet and to adopt adequate short and mid-term target breaches the obligations of the State as it results in greater risks for the climate.¹³

The climate policy also fails to take into account the principle of “common but differentiated responsibilities” as enshrined in the Paris Agreement¹⁴. The emission reduction recommendations made by the IPCC concern global GHG emissions. Given the historic responsibility and technological and financial capacity of France, it has to set more ambitious goals to contribute its ‘fair share’ to global emission reduction and protect the human rights of climate-vulnerable groups.

We thus urge the CESCR to ask France **to provide information on measures implemented to reduce emissions of greenhouse gases as well as on the 2030 and 2050 greenhouse gas reduction goals of the French Energy**

¹¹*supra* note 7, p. 19 (table and indications regarding scenarios P1, P2, P3, P4)

¹² IPCC, *Special Report: Global Warming of 1.5 °C*, Summary for Policymakers, p. 34 (2018)

¹³Dutch Supreme Court, *Urgenda Case*, ECLI:NL:HR:2019:2006, Hoge Raad, 19/00135, (12/20/2019), English translation released in 2020, § 7.2.5

¹⁴ Article 4

code and how these measures and goals are compatible with France's obligation under the Covenant to reduce emissions at the highest possible level of ambition.

2. Extraterritorial obligations

[Five UN human rights treaty bodies](#) including the CESCR have recently reiterated that states have extraterritorial obligations to respect, protect, and fulfil all human rights of all people, including by preventing foreseeable harm induced by climate change. This includes an obligation to regulate private actors under the State's jurisdiction and exercise their influence over actors that they are not in a position to regulate. States also have an obligation to create an international enabling environment conducive to the fulfilment of economic, social and cultural rights.¹⁵ There are several gaps in French policy concerning these extraterritorial obligations in relation to climate change. In the context of climate change, French policy is failing to fulfill several aspects of these extraterritorial obligations.

Firstly, according to the 2019 [report on carbon neutrality of the High Council for the Climate](#) (HCC), a new French public counselling body of climate experts¹⁶, indirect imported net emissions of France represented 60% of territorial emissions in 2015 (271 MtCO₂e of imported emissions, 445 MtCO₂e of territorial emissions¹⁷). These emissions have doubled since 1995.¹⁸ While Article 8 of the recent Energy and Climate Act ([LOI n° 2019-1147](#)) has introduced accounting for these indirect imported emissions, France has not adopted a binding strategy to reduce them. This policy is therefore falling short of lowering the volume of indirect emissions and thus in breach of France's extraterritorial human rights obligations. according to the submitting organizations.

Secondly, France currently fails to account for the GHG emissions from international maritime transport and aviation that is linked to France in its binding GHG reduction targets, despite their increasing carbon footprint. Maritime transport emissions from ships sailing from and to France amounted to 9.76 MtCO₂ in 2019, meaning more than the emissions of cars in the ten major cities of the country and the region of Grand Est.¹⁹ In 2018, the aviation sector emitted 23.2 MtCO₂²⁰ adding onto the territorial emissions of 445 MtCO₂. Worse, these emissions have increased by 40% between 1990 and 2017 and projected to continue their increase in the future without additional measures. Together, maritime and air transport linked to France significantly contribute to GHG emissions and should therefore be accounted for in the national climate strategy with binding reduction targets in order to comply with France's extraterritorial human rights obligations.

Thirdly, France does not impose - at least explicitly - a duty of devising an economic model compatible with the Paris Agreement on companies established in its territory, in particular on French parent companies of large multinational groups, even though such corporate groups have a cumulative carbon footprint greatly exceeding that of the French State :

15 CESCR, *General Comment No 24; Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*

16 The "*Haut Conseil pour le climat*" was created in 2018 to inform the public and to counsel the government for the objective of achieving net-zero emissions in 2050 and thus respect the international climate framework. It issues an assessment report every year and can develop a special report on demand by the government. See <https://www.hautconseilclimat.fr/>

17 HCC, *Rapport Annuel Neutralité Carbone* (2019) p. 30

18 *Ibid.*, p. 34

19 Transport & Environment, *EU Shipping's Climate Record* (2019) p. 20, https://www.transportenvironment.org/sites/te/files/publications/Study-EU_shippings_climate_record_20191209_final.pdf

20 Ministère de la Transition Écologique et Solidaire, *Les émissions gazeuses liées au trafic aérien en France en 2018* (2018) p. 6, https://www.ecologique-solidaire.gouv.fr/sites/default/files/Emissions_gazeusesVF.pdf

- the amount of the cumulative direct & indirect GHG emissions of the oil firm Total resulting from the use of its products (so-called scope 3 emissions²¹) is equivalent to the French territorial emissions²².
- the GHG emissions related to the financial activities of four banks are four times higher than the French territorial emissions (scope 3 emissions)²³.
- 25 companies have a cumulative carbon footprint exceeding French territorial emissions by a factor of eight (scope 1 - 3 emissions)²⁴.

These figures show the necessity to regulate emissions of the private sector, especially indirect emissions related to transnational corporations.

Adopted recently, the French Duty of Vigilance Act n°2017-399 now provides an obligation on parent companies to identify and prevent risks to human rights and the environment that could occur as a result of their business activities, including in relation to the company itself, their suppliers or subcontractors, companies they control and more. Total S.A. currently contests that this law applies in the context of climate-induced harms resulting from the combustion of fossil fuels produced by a French company (scope 3 emissions)²⁵. Such an interpretation would seriously impair the ability of the law to prevent climate-related threats on economic, social and cultural rights, thereby failing to uphold the extraterritorial obligations of the State under the Covenant.

French financial institutions such as BNP Paribas, Natixis and Crédit Agricole are responsible for large amounts of GHG emissions²⁶ *inter alia* by driving deforestation in the Congo Basin and the Brazilian Amazon by investing in large agribusinesses such as beef, soy and palm oil traders. Between 2013- 2019 their investment amounted to over 2 billion euros, making the French financial sector the second largest EU contributor to the funds of those companies.²⁷ This is especially concerning since deforestation is a major driver of greenhouse gas emissions²⁸, thus driving climate induced human rights violations. It also directly escalates human rights violations in the respective regions.. Examples in Brazil, Cameroon, and Indonesia have shown that deforestation ignites violence against indigenous peoples, local rural communities and their territory. The direct and indirect human rights violations abroad driven by French financial institutions are not in accordance with the extraterritorial obligations under the Covenant. The committee has indeed repeatedly stressed the

21 The topology Scope 1, 2 and 3 of GHG emissions is a standardized way of accounting emissions, in particular in the private sector. Scope 1 emissions refer to the emissions directly generated by the respective actor, for instance the on site combustion of fossil fuels or gas leakage. Scope 3 emissions refer to all indirect emissions of the activities of the organisation, such as the transport and use of products, or emissions by employees. Scope 3 emissions are often very high, especially for the energy and banking sector. See the different categories of scope 3 emissions here <https://ghgprotocol.org/scope-3-technical-calculation-guidance> (accessed on 5 March 2020)

22 The emissions of only one oil corporate group Total account for approximately 1% of the global emissions and are equivalent to the French domestic emissions. NAAT, *De la vigilance climatique de les multinationales* (2019) p. 25, <https://notreaffaireatous.org/wp-content/uploads/2020/03/Rapport-General-Multinationales-NAAT-2020.02.01-1.pdf> accessed 04.03.2020)

23 Friends of the Earth & Oxfam, *La colossale empreinte carbone des banques françaises : une affaire d'Etat* (2019), <https://www.oxfamfrance.org/rapports/empreinte-carbone-des-banques-francaises/> accessed 04.03.2020)

24 *supra* note 26

25 See case summary and related English documents here, <http://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-total/> (accessed 04.03.2020)

26 BNP Paribas with 782 million tons of CO₂, Crédit Agricole with 585 million tons, and Société Générale with 505 million tons, *supra* note 22, pp. 36-51

27 Global Witness Report, *The role of French Banks in Global Forest Destruction* (2020) <https://www.globalwitness.org/en/campaigns/forests/role-french-banks-global-forest-destruction/> (accessed 6 March 2020)

28 CESCR Statement (No. 6) on Climate Change, E/C.12/2018/1 (2018)

obligation for the States to regulate financial actors adequately in order to protect economic, social and cultural rights from greater climate-induced impacts.²⁹

We thus urge the CESCR to ask France to **provide information on how it fulfils its extraterritorial obligations relating to climate change, including accounting for emissions from imported goods and services, international air and maritime transport linked to France, and direct & indirect emissions linked to French transnational corporations and financial institutions.**

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²⁹ Committee on the Elimination of Discrimination Against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child, Committee on the Rights of Persons with Disabilities, “Joint Statement on “Human Rights and Climate Change” (16 September 2019), para. 12. See also CESCR, “Concluding Observations concerning Switzerland”, E/C.12/CHE/CO/4, para. 19.