

# Statement of claim against Total

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#TerritoiresQuiSeDéfendent

## 1/ PRESS RELEASE - January 28, 2020

### **First climate change litigation against a company in France : 14 local authorities and 5 NGOs take Total to court**

**Paris, January 28, 2020 - Fourteen local authorities,<sup>1</sup> together with the NGOs *Notre Affaire à Tous*, *Sherpa*, *France Nature Environnement*, *Eco Maires* and *ZEA*, are taking the oil giant Total to court, requesting that Total be ordered to take the necessary measures to drastically reduce its greenhouse gases emissions. This is the first litigation in France that aims to raise the climate ambitions of a multinational oil company.**

On October 23, 2018, local authorities and NGOs challenged Total for failing to include any reference to climate change in its first vigilance plan, despite its legal obligation to take measures to prevent human rights and environmental violations resulting from its activities under the Law on the Duty of Vigilance of March 27, 2017.

Neither the publication of a second vigilance plan in May 2019 nor discussions with Total's management (including a meeting with its Chairman and CEO, Patrick Pouyanné) have resulted in any substantial change. Total's climate ambitions are clearly out of step with the 1.5°C trajectory, the only one that is truly consistent with the objectives of the Paris agreement.

After having formally served formal notice on Total on June 19, the local authorities and NGOs are now forced to take legal action. They are relying on the Law on the Duty of Vigilance, as well as on the obligation of environmental vigilance arising from the Environmental Charter.

According to Sandra Cossart, director of Sherpa, an organisation which has worked hard for the adoption of the Law on the Duty of Vigilance, "this law specifically obliges companies to prevent the risks of human rights and environmental violations caused by their activities, and to do so in an appropriate manner. Total is legally required to identify the risks resulting from its contribution to global warming and to take the necessary measures to reduce its emissions."

Faced with the State's inaction on climate change, the local authorities and NGOs are asking the Nanterre court to order Total, which is at the origin of around 1% of the world's

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<sup>1</sup> Arcueil, Bayonne, Bègles, Bize-Minervois, Centre Val de Loire, Champneuville, Correns, Est-Ensemble Grand Paris, Grenoble, La Possession, Mouans-Sartoux, Nanterre, Sevran et Vitry-le-François.

greenhouse gas emissions, to recognize the risks generated by its activities and to align itself on a trajectory compatible with limiting global warming to 1.5°C.

According to Paul Mougeolle, of the association Notre Affaire à Tous, "A study that we are about to publish shows that Total is among the worst performers in the CAC 40 in terms of climate impact mitigation. All the more reason to request the judge to order the French oil multinational to make its energy transition."

According to Florence Denier Pasquier, Vice President of France Nature Environnement, "the action taken against Total is consistent with all of the legal actions already taken by FNE, both locally and nationally, against projects that undermine the climate. This litigation is a good opportunity to assess the concrete scope of the law on the duty of vigilance. Ultimately, of course, our request is that Total put an end to these climatic activities. There is a need to move from rhetoric to action: that is the message that must be sent to this company."

Eric Piolle, Mayor of Grenoble, adds: "In Grenoble, the consequences of climate change are already visible: by 2050, Grenoble residents will experience 3 months of heat waves a year, and snow will continue to disappear in winter. Glaciers are melting, mountains are crumbling. Because cities are on the front line, it is also through them that change must happen. On a daily basis, we are taking steps to anticipate, limit and adapt to climate change. Together, we also have a responsibility to push the biggest emitters of greenhouse gases to lead by example. We need the mobilization of everyone to take up this challenge!"

Last December, the Verdun sub-prefecture [opposed](#) the decision of Champneuville municipality to join the action against Total, illustrating the State's complicity in climate inertia and the need to resort to justice. According to Daniel Lefort, mayor of Champneuville: "Contrary to what is mentioned in the prefecture's challenge, our deliberation is neither a militant nor a political deliberation, but a citizen's deliberation. The action of our municipality (along with other local authorities and organisations) is to compensate for the failings of the State, which allows the biggest GHG emitters to fail in their duty of vigilance."

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## 2/ CHRONOLOGY OF THE CASE

**March 15, 2018** : Total publishes a [first vigilance plan](#) (pp. 96 - 104 of Total 2017 annual report).

**October 22, 2018** : 4 NGOs and 13 local authorities [challenge Total](#) for failing to include any reference to climate change in its first vigilance plan.

**January 14, 2019** : Total's General Counsel [responds to the challenge](#), accepting to integrate climate change into its second vigilance plan and suggesting a meeting.

**March 20, 2019** : Total publishes a [second vigilance](#) plan (pp. 93 - 110 of Total 2018 annual report), partially incorporating elements of its climate *reporting*.

**May 28, 2019** : The NGOs Notre Affaire à Tous, 350.org and Les Amis de la Terre publish a report entitled « [Total : la stratégie du chaos climatique](#) », with the support of the NGOs Sherpa, Les Ecomaires, Attac and l'Observatoire des Multinationales.

**June 18, 2019** : Meeting between stakeholders and Total's CEO.

**June 19, 2019** : [Formal notice](#) addressed to Total by 13 local authorities and 4 NGOs.

**September 17, 2019** : Total rejects the formal notice, as Total's General Counsel declares that "*litigation is not the appropriate way to provide solutions in the fight against climate change*".

**January 28, 2020** : Total is summoned to appear before the Nanterre District Court. The Centre region and France Nature Environnement have now joined the coalition of claimants.

### 3/ THE REASONS FOR OUR ACTION

#### **Total's major contribution to climate change**

Each year, Total is responsible for approximately 1% of global emissions (458 million tonnes CO<sub>2</sub>eq). According to the [Carbon Majors Report](#), Total is one of the 20 companies contributing the most to global warming worldwide.

#### **The legal basis of the action**

**Law on the Duty of Vigilance** - This law, which came into force on March 27, 2017, requires some large French multinational companies to take measures to identify and prevent the risks of human rights and environmental violations caused by their activities and those of their subsidiaries, both in France and abroad. These measures must be published in a vigilance plan and effectively implemented. If the company does not comply to that obligation, any interested party is authorized to take the matter to court after having sent a formal notice to the company, and to ask the judge to order the company to comply with its obligations (Article 225-102-4 of the French Commercial Code).

**Prevention of environmental damage** - At the same time, the French Law "on the Recovery of Biodiversity, Nature and Landscape" of 2016 enables the judge to order all reasonable measures to prevent or to stop environmental damage (Articles 1248 and 1252 of the Civil Code).

**The Environmental Charter** - These obligations echo the more general obligation of environmental vigilance that derives from the Environmental Charter and which has been recognized by the Constitutional Council in the decision "Michel Z" of 2011.

#### **The inadequacy of the measures taken by Total**

In October 2018, the IPCC warned decision-makers on the major risks that would be entailed by a global warming above 1.5°C in comparison with pre-industrial levels. The report presented different reduction pathways of greenhouse gas (GHG) emissions with a limit of 1.5°C warming. To achieve this, global GHG emissions will have to be halved by 2030 compared to 2010 for the world to attain "carbon neutrality" by 2050. The energy sector will have to make an unprecedented transition, since that in comparison with 2010 :

- the world oil production has to decline by 37% in 2030 and by 87% in 2050 ;

- the world gas production has to decline by 25% in 2030 and by 74% in 2050<sup>2</sup> ;
- the world production of renewable energy has to increase by 430% in 2030 and by 833% in 2050.

These observations require companies in the oil & gas sector to disengage from fossil fuels and to radically redirect their investments. **Mark Carney, Governor of the UK Central Bank, [confirmed this at the Davos' World Economic Forum](#). According to him, "Companies that eliminate their GHG emissions will be handsomely rewarded. But those that will fail to adapt will cease to exist".**

Total's climate strategy and its vigilance plan ignore this scientific (IPCC), legal (Paris Agreement, duty of vigilance) and financial consensus. Indeed, the measures presented do not, in any way, reduce GHG emissions. Worse still, Total claimed to have an "ambition consistent with the 2°C scenario", whereas its consolidated financial statements state that the Group is in fact based on a 2.7°C to 3.3°C warming scenario. This enables Total to justify its continued investment in oil and gas. This contradiction cannot be accepted and reveals that Total's future investments are absolutely incompatible with the objectives of the Paris Agreement.

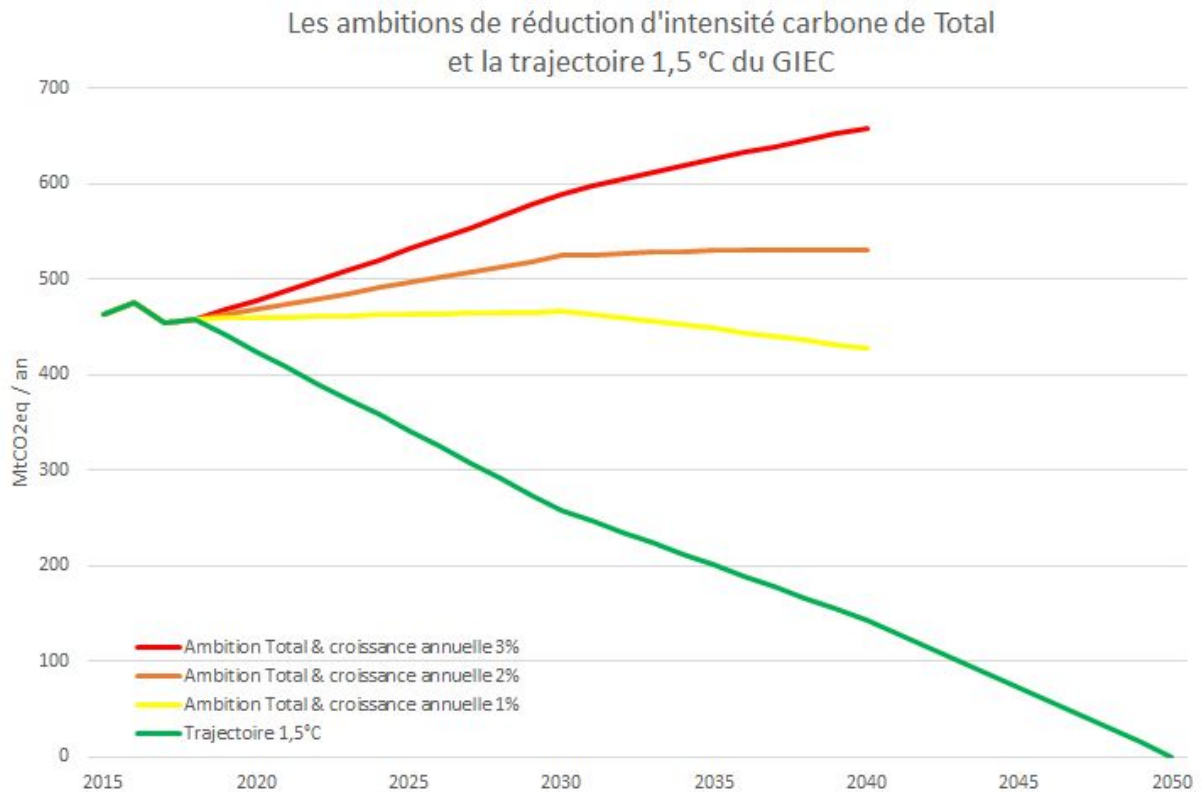
The analysis of the climate-related measures in the vigilance plan leads to the same observation :

- Total does not identify the risks related to human rights and environmental violations caused by its contribution to climate change, considering climate change as a "*global risk to the planet resulting of diverse human actions.*"
- The desire to develop its natural gas activities is incompatible with the Paris Agreement, as the gas and oil fields currently in operation are already more than enough to exhaust the global carbon budget under a +1.5°C scenario.
- The development of agrofuels announced by Total requires massive palm oil imports, contributing to tropical deforestation and, in any case, to pressure on lands.
- Instead of reducing its emissions, Total prefers to indicate that it is investing in emissions offsetting and carbon storage, even though these measures are entirely speculative so far. Indeed, the technologies known as CO2 capture and storage are in no way established and their deployment is largely uncertain.
- Total's ambition to reduce the carbon intensity of its products sold (oil and gas) is notoriously insufficient compared to the reductions required to meet the objectives of the Paris Agreement. If the company were to grow by more than 3% per year on

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<sup>2</sup> According to the IPCC's P1 scenario, which limits warming to 1.5°C without using the uncertain and risky CCUS technologies.

average, as is currently the case, its total emissions would still increase greatly (see graph below).



## 4/ OUR REQUESTS

**We request the Nanterre Tribunal to:**

**On risk identification:**

“ORDER TOTAL S.A. to publish, within six months from the date of the judgement, a new vigilance plan that includes in its "identification of risks" chapter:

- The risks related to a global warming beyond 1.5°C above pre-industrial levels, by referring to the most recent relevant work of the IPCC and to the objectives of the Paris Agreement, and by specifying the risks of serious violations of human rights

and fundamental freedoms, the health and safety of individuals, and the environment, in particular :

- The risks of serious harm to terrestrial ecosystems,
  - The risks of serious harm to marine ecosystems,
  - Increased heat peaks,
  - Increased risks of drought,
  - Increased risks of heavy rainfall events and floods,
  - Risks of submersion due to sea level rise,
  - Risks of serious human rights violations
- Its contribution, through its activities, to global GHG emissions and to the risks induced by climate change;
  - The incompatibility of exploring new hydrocarbon deposits with a GHG emissions reduction pathway limiting global warming to 1.5°C;
  - Its contribution to the depletion of the global carbon budget available to limit global warming to 1.5°C and to the aggravation of the risks induced by the pursuit of hydrocarbon (oil and gas) projects;
  - The risks associated with the use of CO2 capture and storage technologies within its GHG emission reduction pathway;
  - The risks of depleting the global carbon budget compatible with the limitation of global warming to 1.5 °C compared to pre-industrial levels;
  - A complete and exhaustive mapping of the risks resulting from its activities, including GHG emissions for each business sector and each project, and integrating their primary energy mix;
  - An analysis and prioritization of each of these risks according to their severity, that highlights the importance of climate-related risks.”

**On risk mitigation and prevention measures:**

“ORDER TOTAL S.A. to publish, within six months from the date of the judgement, a new vigilance plan including the following measures, which it will undertake to publish and effectively implement:

Primarily,

- To align its activities with a GHG emissions reduction pathway (including scope 1, 2 and 3) compatible with limiting global warming to 1.5 °C above pre-industrial levels without overshoot, in order to achieve carbon neutrality by 2050, which implies:



- Aligning its activities with the GHG emissions reduction pathway known as "P1" as defined in 2018 by the IPCC, to the extent that it is, in the current state of scientific and technological knowledge, the only pathway that allows to limit global warming to 1.5°C with an acceptable degree of probability and without overshoot;
- Setting interim targets for reducing the carbon intensity of its products in line with this trajectory;
- Reducing its natural gas production by -25% in 2030 and -74% in 2050 (compared to 2010);
- Reducing its oil production by -37% in 2030 and -87% in 2050 (compared to 2010);
- Immediately ceasing the exploration and exploitation of new hydrocarbon deposits."

## 5/ INTERNATIONAL CONTEXT

An increasing number of citizens and communities is rising up against the impunity of multinational corporations in order to hold them accountable for their climate and environmental impact.

**In the US**, several local authorities and major cities, including New York City, San Francisco and Oakland, have submitted claims for compensation to some Carbon Majors, including Total, because of the impact of their activities on climate change. In particular, these local authorities have to build dikes to protect the cities from rising sea levels.

**In Germany**, a Peruvian farmer, Saul Antonio Luciano Lliuya, has initiated litigation against the German coal company RWE, responsible for 0.5% of annual GHG emissions. He requests compensation for the adaptation costs he is forced to incur in order to protect his business from the ever-increasing level of the high mountain lake in the Andes.

**In the Netherlands**, the NGO Friends of the Earth Netherlands (MilieuDefensie), together with Dutch citizens, is suing the oil company Shell, responsible for nearly 2% of annual GHG emissions. They rely on the company's duty of care and call on Shell to undertake an unprecedented energy transition to drastically reduce its emissions.

**Elsewhere, other legal actions aim to guarantee public authorities' action and ambition, especially the States' ones** : this is the case of the successful Urgenda case in the Netherlands, of the case of DeJusticia against the Colombian government, or the case of Pakistani farmers against Pakistan.



According to the *Sabin Center for Climate Change Law* at Columbia University in New York City, nearly 1,000 climate lawsuits have been filed in the last decade.

**The approach taken by local authorities and NGOs in their action against Total is therefore part of this worldwide movement**, which aims to recognize the climate responsibility of the most polluting companies, in order to contribute to the end of fossil fuels and to the massive and rapid reduction of GHG emissions.

## 6/ THE CLAIMANTS

### LOCAL AUTHORITIES

All claimant local authorities are already suffering from the effects of global warming: rising sea levels, coastal erosion, melting glaciers and rock break-up, new diseases, increased frequency and intensity of extreme weather events and flooding, collapse of biodiversity and proliferation of invasive species, etc. By being at the forefront of the climate change's impacts, they are also the ones incurring the growing cost of adaptation to these impacts. According to the latest studies, those costs will amount up to hundreds of billion dollars per year starting in 2025, a cost mostly borne by taxpayers. Given this injustice, local authorities around the world are standing up to end the impunity of polluters and to demand their commitment to immediately limit the threats to their citizens' security, health and finance due to their inaction.

**Arcueil**, a plural left-wing municipal majority (citizens' left, ecologists, communists and socialists) with a population of 21,500 inhabitants, is actively working on the ecological transition through the collective reappropriation of common goods (water, gardens...), the improvement of housing, energy and food supply, the fight against endocrine disruptors, the promotion of soft transport modes, the improvement of air quality. Within the Parisian metropolis, Arcueil actively promotes the issues related to urban agriculture and nature in the city.

**Bayonne**, with 50,000 inhabitants, is the second largest city in the Pyrénées-Atlantiques *département*. Bayonne is committed to ambitious and participative action plans and Agendas 21, and has 40% of green spaces, that is, 160 hectares and 40 km of cycle paths. Situated only 3m above the sea, the city is also subject to extreme weather events linked to climate change. Its inhabitants are particularly committed to the ecological transition.

**Bègles**, with 27,589 inhabitants, is a municipality in the heart of the Bordeaux conurbation, with a plural left-wing municipal majority bringing together ecologists, socialists and representatives of civil society since 1989. Political ecology is reflected on a daily basis in the actions carried out by the municipality, in favor of the most fragile people, the younger generations and beyond the Béglais population as a whole: environmental education, development of a democratised urban agriculture accessible to everybody, preservation of nature in the city, revitalisation of local biodiversity, development of the energy mix or a plan for public spaces' sharing and accessibility (for all publics and types of mobility).

**Bize-Minervois**, with 1,300 inhabitants, is located at the junction of the Narbonnaise plain and the last foothills of the Montagne Noire, in the south of the Massif Central. The village is

crossed by the river Cesse. The medieval quarter is subject to floods which are more and more frequent (named Cevennes episodes). Three floods that occurred in 18 months have caused 430,000€ of public damage, not to mention the damage to the 74 flooded houses (4 million € of damages in 20 years). The origin of the frequency of flood is climate disruption. The municipality just obtained the “Terre Saine label”, the “eco-mobility label” and is seeking to install photovoltaic electricity production on the communal buildings. Rich of a remarkable biodiversity (“Natura 2000 zone”), young organic farmers, beekeepers, olive growers and wine growers are moving into the municipality. Resolutely committed to an economic strategy of environmental tourism that promotes local products, Bize-Minervois no longer accepts that its citizens should be put at risk, that they should suffer financial losses and that their local sustainable development efforts should be questioned by polluting companies like TOTAL, the French leader in GHG emissions.

**Région Centre-Val de Loire**, with 2.58 million inhabitants, is a territory crossed by the Loire from East to West, with to the South the Sologne, Berry and Brenne’s forests, to the West the clayey plateaus of Touraine and to the North the limestone plateaus of Beauce. All the inhabitants were marked by the terrible drought that took place in 2019, which caused major damages. The river Indre’s alluvial table collapsed over 80 km because of the lack of water, leading to a significant fall of 60 centimetres in 48 hours. For the first time, the natural flow of the Loire felt to zero near to Orléans. From now on, an unprecedented mobilization began, as the Region decided to commit itself to a regional COP in order to encourage all the players, from citizens to companies, including local authorities, banks, associations, laboratories and schools, to make unprecedented commitments to deal with this unprecedented situation. The Region, behind this mobilization, is transforming its practices : 100% of high schools involved in an energy saving programme, creation of an Assembly for Climate and Energy Transition (ACTE), etc. The Region cannot accept that the result of all the commitments made will be wiped out by the failure of such a major TOTAL company to comply with the rules.

**Champneuville**, with 120 inhabitants, is located in the middle of the Meuse valley. 12 kilometers away from Verdun, the commune is located in the Red Zone, surrounded by villages totally destroyed in 1916. It covers 1.100 hectares of mainly agricultural lands, 45% of which is labeled “Natura 2000 zone”. In the heart of the WWI battlefields, this specific situation helps to be aware about the links between climate change, protection of biodiversity and the culture of Peace. Since 2008, the municipality has been committed to a process of implementing sustainable development on its territory. In 2010, the municipality renovated the town hall with bio-sourced materials and exemplary energy efficiency, a project that the European Commission took as an example in 2016. The municipality also requalified a wasteland into a participative garden and theatre. Beyond its playful and

cultural vocations, the garden is above all an educational tool for raising awareness of the protection of local biodiversity in everyday life.

**Correns**, with 893 inhabitants, is one of the few organic villages in France. Respecting the soil and the environment is a twenty-five year old choice for the municipality, since the 25 winegrowers of the village have all switched to organic farming. Playing together, sharing resources, this is the spirit of the village. As for the children, the school canteen is eco-certified. For 3 €, the meal is largely composed of organic and local products. The older children sort waste and use compost bin. Correns village is also energy self-sufficient, thanks to 4,000 m<sup>2</sup> of solar panels. In thirty years, its population has doubled: it shows that the village has become a model in terms of sustainable development.

**Est Ensemble - Grand Paris**, with 412,000 inhabitants, is a Public Territorial Establishment that includes 9 cities in the eastern suburbs of Paris. It carries out, on a daily basis, public policies in favour of environmental protection, as urban agriculture, responsible waste management, democratisation of compost, support for renewable energies, or signature of a PCAET. Ecological themes must irrigate all public policies. "In our territory, which is one of the poorest in the metropolis, we know that social fractures always overlap with ecological fractures, and that the most precarious populations are, and will be, the first ones to suffer from climate changes. These populations have a well-understood interest in the ecological transition. Public action is absolutely necessary to face this 21st century challenge ; but only actions by local authorities are not enough. And yet, despite regular alerts from scientists and obvious consequences of climate change on our society, some multinationals do not seem to want to face up to their responsibilities, particularly by initiating a radical change in their practices and economic model."

**Grenoble**, with 160,000 inhabitants, is the capital of the Isère département and the third largest municipality in the Rhône-Alpes region. Its town council has a left-wing majority, the party "Rassemblement Citoyen de la Gauche et des Ecologistes". Since the beginning of their mandate, these elected representatives have undertaken to make the city of Grenoble a sustainable city, at the service of everyone.

**La Possession** (Reunion Island), with 33,000 inhabitants, is a municipality led by a list of citizens, which is actively working on the ecological transition, through sustainable development adapted to the tropical climate. For example, they are working on improvement of housing, production of renewable energy, efficient water and waste management through the circular economy, healthy food, promotion of active transportation modes, preservation of biodiversity, promotion of local economic development, citizen participation and solidarity. As the only insular and tropical Ecocity, La Possession promotes and carries the values of nature, well-being, dynamism, ethics and citizenship.

**Mouans-Sartoux**, with 10,000 inhabitants and located on the French Riviera, has long been committed to preserving the environment. It has been labeled “Energie Positive territory” and elected regional capital of biodiversity ; it directly manages all public services. The municipality has a very proactive policy of relocating agriculture to its territory in a very tense housing context. Mouans-Sartoux is known for its unique approach to collective catering by offering 100% local organic meals, with a vegetables’ supply coming from its municipal farm.

**Nanterre**, with a population of 95,000 inhabitants, is a city-prefecture of the Hauts-de-Seine led by a left-wing municipal team. It was one of the first large municipalities in France to adopt a territorial climate plan in the early 2000s. Convinced of the seriousness of the climate crisis and its direct consequences on the population and the management of a community, Nanterre has committed itself to determined local action to reduce GHG emissions, to develop the use of clean energy and to protect biodiversity. As the organizer of the annual “Ecozone festival”, Nanterre puts ecological transition at the heart of its municipal project.

**Sevran**, with more than 50,000 inhabitants, is located in Seine-Saint-Denis, in the Paris region. It is a young city, with more than 25% of its population under the age of 15-years-old. Since 2001, the municipality has been implementing a real energy transition policy, by cleaning up lands left as wasteland polluted by deindustrialisation, by preserving green spaces and by opening them up to the public. It is part of “Caisse des Dépôts’ Nature 2050 plan” for the preservation of biodiversity and the enhancement of nature in cities.

**Vitry le François**, with 13,000 inhabitants, is a left-wing and progressive municipality, and is actively working on ecological transition. It has activated 33 projects, resulting from an energy diagnosis of the territory: improvement of housing, diagnosis of public buildings, development of new energy channels, refurbishment of urban heating, reflexion on the resilience of the City and the greening of the City, promotion of soft transportation modes, development of urban beehives, preservation of biodiversity, development of wind and photovoltaic farms, and so on.

## NGOs

**Notre Affaire à Tous**, (Acting together for climate justice) is an NGO making the Law a subject and a tool of mobilization in order to protect the common goods and living. Notre Affaire à Tous is part of the global landscape of climate justice and nature’s rights. It aims to initiate and support legal steps in this direction, in favor of social and environmental justice.



**Les Eco Maires** has been bringing together mayors and elected officials involved in sustainable development since 1989. This NGO federates territories around environmental protection. The network now has more than 2000 local authorities as members in mainland France and overseas territories, and some committees in Africa. The organization provides methodological and institutional support, promoting successful examples and proposing joint actions to its mayors.

**Sherpa** was created in 2001 to combat the new forms of impunity linked to the globalization of economic and financial exchanges. The NGO also has the mission to defend communities that are victims of economic crimes. It works to build a world where the law is at the service of a fair economy.

**ZEA** considers that in order to maintain a viable planet and limit global warming, the oceans and seas must be protected. This is the reason why the NGO is taking actions to obtain a moratorium on the exploration and exploitation of fossil fuels into the sea. It has for mission to block offshore oil permits, unnecessary projects related to offshore oil exploitation, and to advocate to protect the ocean and the climate. The NGO is also fighting against pollution at sea (red mud, hydrocarbons, plastics).

**France Nature Environnement** is a French federation of NGOs for the protection of nature and the environment. It is the spokesperson for a movement of 3,500 NGOs, grouped into 71 member organizations, present throughout metropolitan and overseas territories of France. Find the federation on [fne.asso.fr](http://fne.asso.fr), Facebook, Twitter (@FNEasso) and LinkedIn.