

# FRANCE'S HUMAN RIGHTS OBLIGATIONS IN THE CONTEXT OF THE CLIMATE CRISIS

## REPORT OF *NOTRE AFFAIRE À TOUS* TO THE COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS (CESCR) 28 AUGUST 2023



### EXECUTIVE SUMMARY

As the Committee on Economic, Social and Cultural Rights (CESCR) and other UN-Human Rights Treaty Bodies have repeatedly acknowledged, State parties to the Convention have obligations to mitigate and adapt to global warming.

This report addresses France's measures on climate mitigation, as well as adaptation in overseas territories. Concerning mitigation, France does not properly implement its greenhouse gas (GHG) emission reduction targets, especially those stemming from the European Union, which remain furthermore clearly insufficient in light of the principles of the Paris Agreement and some scientific estimations of its fair share. Furthermore, the French policies in terms of extraterritorial emissions are insufficient : France does not efficiently regulate i) embedded emissions in product imports, (ii) bunker fuel emissions and (iii) emissions linked to transnational corporations and value chains. Concerning adaptation, this report highlights numerous issues in France's overseas territories with respect to the access of water, but also its costs, quality, becoming even more problematic with the aggravation of global warming. This report argues a clear discrimination against the overseas regions.

We thus urge the CESCR the following recommendations:

- **The Committee recommends that France increase its climate mitigation actions and ambitions in line with the Paris Agreement principles of progression, highest possible level of ambition, common but differentiated responsibilities, and best available science, including by accounting for maritime and aviation emissions and taking measures to ensure that public and private financial institutions and corporations under its jurisdiction or effective control do not endanger the rights protected under the Covenant through their involvement and support of fossil fuel-related activities.**
- **The Committee also recommends that France adopt climate adaptation measures, notably by enacting an enforceable right to drinking water in its domestic legislation and applying it without discrimination throughout its territory, in particular in overseas territories by developing access to drinking water there through improved research in these territories, renovation and reinforcement of water and sanitation networks, depollution of water and aquifer reserves as well as the implementation of water programmes based on citizens and communities' participation and proper information.**

## 1. Submitting Organisation

**NOTRE AFFAIRE A TOUS (NAAT)** is a French NGO created in 2015 using litigation and advocacy tools to improve environmental and climate protection laws. NAAT is *inter alia* at the origin of some climate mitigation legal actions against the French State and multinational corporations. NAAT also addresses climate related impacts through research, advocacy and other activities, especially on climate inequalities and discrimination throughout the French territory.

## 2. Climate-related human rights obligations

Climate change poses significant risks to the enjoyment of the human rights protected under the Covenant, such as the right to the enjoyment of the highest attainable standard of physical and mental health (art.12.1) to an adequate standard of living (art.11.1), to adequate food and housing (art.11.1), to education (art.13.1), to cultural life (art.15.1), to social security (art.9), to life and water. The scientific community has warned for decades that the combustion of fossil fuels is the main driver of anthropogenic climate change, which has contributed to about 78% of the total increase in greenhouse gas (GHG) emissions between 1970 and 2010. In 2022, fossil fuels alone were responsible for 91% of the carbon dioxide emissions. In this respect, businesses and financial actors contribute significantly to climate change impacts through their own operations as well as those of their business relationships, such as suppliers or subsidiaries; as well as via financing of highly polluting activities or other services provided such as underwriting and lending.

The joint statement on on human rights and climate change<sup>1</sup> co-signed by the CESCR stresses, among other things, that States “must adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development”. On the reduction of extraterritorial emissions, “States must regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially. States should also discontinue financial incentives or investments in activities and infrastructure which are not consistent with low greenhouse gas emissions pathways, whether undertaken by public or private actors as a mitigation measure to prevent further damage and risk.” Concerning climate adaptation, the statement reiterates that “States must seek to address all forms of discrimination and inequality, including advancing substantive gender equality, protecting the rights of indigenous peoples and of persons with disabilities, and taking into consideration the best interests of the child.”

## 3. France’s climate mitigation policies

### France’s responsibility to reduce its territorial emissions:

According to data published by the government itself, emissions of greenhouse gas emissions (GHG) have increased between 2014 and 2017 and have stagnated over a longer period. Consequently,

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<sup>1</sup> In September 2019, the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC), the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), and the Committee on the Rights of Persons with Disabilities (CRPD) adopted a [joint statement](#) on human rights and climate change, articulating the legal obligations of the 196 States that have signed the relevant UN human rights treaties in the context of climate change.

<https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and#:~:text=Joint%20Statement%20on%20%22Human%20Rights%20and%20Climate%20Change%22&text=The%20Committees%20welcome%20also%20the,dangerous%20impacts%20of%20climate%20change>

France has missed its own target of an annual carbon budget between 2015-2018 by 3.5%,<sup>2</sup> which led the French Administrative Court of Paris to hold the State accountable for its failure to prevent the ecological and climate injury resulting therefrom.<sup>3</sup>

France is also not on track with respect to its own GHG reduction objective of -40% by 2030 compared to 1990. The city of Grande-Synthe filed enforcement proceedings to compel the State to align itself with its target before the French Council of State (highest administrative Court), which ordered the government to devise measures to align itself with its target. The Conseil d'Etat recently reconfirmed this injunction in 2023, since the government still cannot show with sufficient credibility that its policies lead to a -40% reduction in GHG by 2030<sup>4</sup>.

Furthermore, the *Haut Conseil pour le Climat* (the French body specialised in climate action and counselling the government in that issue, while informing the public<sup>5</sup>) issued its annual report in June 2023, in which it found that the French domestic policies are still very much insufficient to reach the updated European goal of reducing GHG by 55% by 2030 compared to 1990<sup>6</sup>. The HCC highlighted that no comprehensive strategic document exists to reach the European objective, nor was the overall domestic GHG reduction target updated to reflect the increased European ambition. Furthermore, the HCC found numerous shortcomings in almost every sector, especially in the transportation, energy, land-use and agricultural sectors. Overall, the HCC found that the rhythm of GHG reduction must double to reach the European goals<sup>7</sup>.

In any case, even if France reaches the European objectives, its contribution will remain unfair, as the scientific<sup>8</sup> and legal<sup>9</sup> literature shows it. France should aim for climate neutrality by 2030, and not 2050. If it cannot reach those goals, then France and the EU should massively contribute to climate finance to reduce emissions overseas. The COP 26 and 27 also recognise the need to step up ambition, while recalling the relevant equity principles, being the common but differentiated

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<sup>2</sup> Haut Conseil pour le Climat, "Agir en cohérence avec les ambitions" (2019), at 28.

<sup>3</sup> *Notre Affaire à Tous et autres c. France*, N°1904967, 1904968, 1904972, 1904976/4-1, 3 février 2021, <http://paris.tribunal-administratif.fr/Actualites-du-Tribunal/Communique-de-presse/L-affaire-du-siecle> (last accessed on 28.05.2021).

<sup>4</sup>

<https://www.conseil-etat.fr/actualites/emissions-de-gaz-a-effet-de-serre-le-gouvernement-doit-prendre-de-nouvelles-mesures-et-transmettre-un-premier-bilan-des-cette-fin-d-annee>

<sup>5</sup> The "*Haut Conseil pour le climat*" was created in 2018, See <https://www.hautconseilclimat.fr/> (last accessed on 28.05.2021).

<sup>6</sup> HCC, Rapport Annual 2023, pp. 05 – 09.

<sup>7</sup> HCC, Rapport Annual 2023, pp. 05 – 09.

<sup>8</sup> <https://climateactiontracker.org/countries/eu/> (last accessed: 27 May 2021).

<sup>9</sup> Rajamani L., Jeffery L., Höhne N., Hans F., Glass A., Ganti G. & Geiges A. (2021) National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law, *Climate Policy*, 21:8, 983-1004, p. 11 DOI: 10.1080/14693062.2021.1970504

responsibilities<sup>10</sup>, but developed country parties such as France still refuse to accept the equity results from the literature and to do their fair share to solve the climate problem.

Overall, France's GHG reduction pathway does not reflect the Paris Agreement's principles of progression, highest possible ambition, nor its common but differentiated responsibilities. Given the historic responsibility and technological and financial capacity of France, it has to set and implement more ambitious goals to contribute its 'fair share' to global emission reduction and protect the human rights of climate-vulnerable groups. The current pathway disproportionately shifts the GHG reduction burden on other States, in particular to developing States which clearly violates the fundamental principles of the Paris Agreement.

The CESCR has already focused on the responsibility of developed States to reduce emissions, including with specific regard to fossil fuels.<sup>11</sup> France was requested the State party to "describe the measures that the State party intends to take in view of the delay in reducing its carbon dioxide emissions", and to explain "how the impact of these measures on the most disadvantaged and marginalized groups will be assessed", as well as "how the State party assesses the potential impact of climate change on the enjoyment of economic, social and cultural rights throughout its territory". France's failure to reduce its emissions was already highlighted by the Committee on the Rights of the Children (CRC) in its Concluding Observations in 2023.<sup>12</sup> In addition, the CESCR has also drawn attention to the responsibility of developed States concerning their emission reduction targets. In its Concluding Observations for Switzerland in 2019, the Committee made note of how "the State Party is not making the necessary efforts to achieve the greenhouse gas emission reduction target for 2020 and that the 50% reduction target compared to the 1990 emission level set for the year 2030 is not compatible with the global warming mitigation targets set by the international community."<sup>13</sup> It recommended for Switzerland to "intensify its efforts to achieve its greenhouse gas emission reduction targets for 2020 and increase the target for 2030 to be consistent with the commitment to limit temperature increases to 1.5°C."<sup>14</sup>

There is a need for the CESCR to ask France to do its fair share to limit global warming to 1.5°C, including by following the equity results from the scientific and legal literature.

### **France's duty to regulate extraterritorial emissions and private actors contributing to fossil fuels:**

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<sup>10</sup> The COP 26 Decision (Glasgow Climate Pact): "22. Recognizes that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around midcentury, as well as deep reductions in other greenhouse gases; 23. Also recognizes that this requires accelerated action in this critical decade, on the basis of the best available scientific knowledge and equity, reflecting common but differentiated responsibilities and respective capabilities in the light of different national circumstances and in the context of sustainable development and efforts to eradicate poverty;"

<sup>11</sup>See, for instance, the 2019 COBs to Switzerland and the 2018 COB to Argentina. .

<sup>12</sup> "the Committee [drew] attention to target 13.5 of the Sustainable Development Goals and [recommended] that the State party adopt and implement more ambitious mitigation targets..." CRC, *Concluding observations on the combined sixth and seventh reports of France* (2023) para [40].

<sup>13</sup> In its Concluding Observations for Switzerland in 2019, the Committee made note of how "the State Party is not making the necessary efforts to achieve the greenhouse gas emission reduction target for 2020 and that the 50% reduction target compared to the 1990 emission level set for the year 2030 is not compatible with the global warming mitigation targets set by the international community." CESCR, *Concluding observations on the fourth periodic report of Switzerland* (2019) para [18].

<sup>14</sup> Ibid, para [19].

Firstly, concerning “emissions embedded in product-imports”<sup>15</sup> :

According to the 2019 [report on carbon neutrality of the HCC](#), indirect embedded emissions from imports represented 60% of territorial emissions in 2015 (271 MtCO<sub>2</sub>e of “embedded emissions”, 445 MtCO<sub>2</sub>e of territorial emissions<sup>16</sup>). These emissions have doubled since 1995.<sup>17</sup> While Article 8 of the recent Energy and Climate Act ([LOI n° 2019-1147](#)) has introduced accounting for these indirect imported emissions, including a non-binding target, also criticised by the HCC for its insufficiency<sup>18</sup>. On the other hand, the European Carbon Border Adjustment Mechanism (CBAM)<sup>19</sup> is limited to some foreign products (the equivalent of the products stemming from the industrial sectors in Europe regulated by the ETS carbon market), therefore, the CBAM is not comprehensive. For instance, imported agricultural food products are insufficiently addressed<sup>20</sup>. These policies are therefore insufficient.

Secondly, concerning “international bunker fuel emissions” (maritime and aviation emissions):

France currently fails to account for the GHG emissions from international maritime transport and aviation that is linked to its territory 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 MtCO<sub>2</sub> in 2019, meaning more than the emissions of cars in the ten major cities of the country and the region of Grand Est.<sup>21</sup> In 2018, the aviation sector emitted 23.2 MtCO<sub>2</sub><sup>22</sup> adding onto the territorial emissions of 445 MtCO<sub>2</sub>. Worse, these emissions have increased by 40% between 1990 and 2017 and are 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, regarding emissions from transnational companies and value chains:

France does not impose a *substantive* 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, probably 10 times more according to the most recent calculations<sup>23</sup>.

French oil giant, Total SE, is among the private companies leading the development of the offshore gas extraction projects and onshore support facilities, and French public financiers and private banks are backing the buildout. France is listed as among the top six countries globally whose banks

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<sup>15</sup> Embedded emissions means “direct emissions released during the production of goods and indirect emissions from the production of electricity that is consumed during the production processes”. (See article 3 (22) of the so-called CBAM regulation (Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism)).

<sup>16</sup> HCC, *Rapport Annuel Neutralité Carbone* (2019) p. 30.

<sup>17</sup> *Ibid.*, p. 34

<sup>18</sup> HCC, *Rapport Annuel Neutralité Carbone* (2023) p. 18 and 176 ; See also HCC (2019) « Maîtriser l’empreinte carbone de la France »

<https://www.hautconseilclimat.fr/publications/maitriser-lempreinte-carbone-de-la-france/>

<sup>19</sup> [https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism\\_en](https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en)

<sup>20</sup> HCC, *Rapport Annuel Neutralité Carbone* (2023) p. 112.

<sup>21</sup> Transport & Environment, *EU Shipping’s Climate Record* (2019) p. 20, [https://www.transportenvironment.org/sites/te/files/publications/Study-EU\\_shipping\\_s\\_climate\\_record\\_2019\\_209\\_final.pdf](https://www.transportenvironment.org/sites/te/files/publications/Study-EU_shipping_s_climate_record_2019_209_final.pdf)

<sup>22</sup> 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](https://www.ecologique-solidaire.gouv.fr/sites/default/files/Emissions_gazeusesVF.pdf)

<sup>23</sup> Notre affaire à tous, [Benchmark de la vigilance climatique 2023](#); ; English Summary [here](#).

dominate fossil fuel finance, with their share of total financing increasing from 2021 to 2022.<sup>24</sup> In particular, fossil fuel financing by BNP Paribas, Crédit Agricole and Crédit Mutuel faced an increase of 21.55% from \$3.56 billion dollars, 6.33% increase from \$694 million dollars and 799.19% increase from \$108 million dollars between 2021 to 2022, respectively.<sup>25</sup> BNP Paribas is the worst actor in Europe, having financed \$20.8 billion in 2022, particularly in offshore oil and gas, along with Crédit Agricole.<sup>26</sup>

Although France adopted the Duty of Vigilance Law n°2017-399 that provides an obligation on parent companies to identify and prevent risks to human rights and the environment<sup>27</sup>, many companies do not adequately implement the requirements of the Law in climate matters.<sup>28</sup> Furthermore, our organisation faces substantial difficulties to enforce the Law in climate and deforestation cases due to procedural issues, including jurisdiction and admissibility, which undermines our right to seek a relief in due course with regards to the urgency of the climate crisis. We therefore believe the French government must regulate as soon and as precisely as possible companies to compel companies to devise a business model that is consistent with the goals of the Paris Agreement and the fight against deforestation, for instance in the course of the Corporate Sustainability Due Diligence Directive negotiations (CSDDD<sup>29</sup>).

On several occasions, this Committee has called upon States to take action to prevent and mitigate the threat of human rights harms induced by climate change by raising the ambition of emission reduction targets in accordance with their international climate commitments; and to effectively regulate the activities of private actors, including business entities and financial actors, to ensure effective protection against human rights violations linked to business activities.<sup>30</sup>

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<sup>24</sup> Oil Change International, *Banking on Climate Chaos 2023: Fossil Fuel Finance Report* (2023) p.15.

<sup>25</sup> Ibid.

<sup>26</sup> Oil Change International, *Banking on Climate Chaos 2023: Fossil Fuel Finance Report* (2023) <https://priceofoil.org/2023/04/13/banking-on-climate-chaos-2023/> (last accessed on 28.08.2023).

<sup>27</sup> More precisely, the French Duty of Vigilance Law n°2017-399 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 their own activities, and the ones of their subsidiaries, suppliers or subcontractors.

<sup>28</sup> Notre affaire à tous, [Benchmark de la vigilance climatique](#) 2023: ; English Summary [here](#).

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[https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en) ; Please note our opinion is shared by the French National Human Rights Institution, which recommends in its most recent report that “the public authorities [should] strengthen the control of the application of the Duty of Vigilance Law with regard to climate change.” Commission nationale consultative des droits de l'homme (CNCDH), Avis « Urgence climatique et les droits de l'Homme », 27 mai 2021, p. 25 [https://www.cncdh.fr/sites/default/files/a\\_-\\_2021\\_-\\_6\\_-\\_urgence\\_climatique\\_et\\_droits\\_de\\_lhomme\\_mai\\_2021.pdf](https://www.cncdh.fr/sites/default/files/a_-_2021_-_6_-_urgence_climatique_et_droits_de_lhomme_mai_2021.pdf) (last accessed on 28.05.2021).

<sup>30</sup> See, for instance,, CESCR, General Comment No. 24 (2017) on State obligations under the ICESCR in the context of business activities (“GC No. 24”). In its 2022 Concluding Observation (COB) to Luxembourg, this Committee expressed concern about public and private financial institutions’ investments into fossil fuel activities and other carbon intensive sectors, as well as the lack of transparency and regulation of the financial sector. The Committee recommended that the State party take the necessary measures to decrease public and private investments into fossil fuels and other activities that are incompatible with the need to reduce GHG emissions, including through regulation and transparency. In its COB to Switzerland in 2019, the CESCR noted with concern that “public and private financial institutions, including pension funds, maintain significant investments in the fossil fuel industry, despite its adverse impacts on the climate”. Additionally, the CESCR recommended that the State Party take the “necessary measures to reduce public and private investments in the fossil fuel industry and ensure that they are compatible with the need to reduce greenhouse gas emissions.”

Similar arguments have been developed by other UN Human Rights Treaty Bodies. For instance, in 2019, in its List of Issues Prior to Reporting (LOIPR) to Sweden, the Committee on the Elimination of Discrimination against Women (CEDAW) highlighted that the State Party's extraterritorial obligations included ensuring that the activities of companies registered in the State party, "including their financial flows and investments", do not "negatively affect human rights or endanger environmental, labour and other standards".

In essence, State parties must guarantee appropriate regulation of business actors as well as public and private financial actors within their jurisdiction, including of their activities outside their territories over which they can exert control, in order to comply with the obligations under the ICESCR and other human rights treaties. Therefore, the French government must intervene as soon as possible in the regulation of extraterritorial emissions to i) comprehensively regulate embedded emissions in product imports, (ii) bunker fuel emissions and (iii) emissions linked to transnational corporations and value chains.

### **Conclusion on climate mitigation**

As demonstrated above, France's climate action is inadequate in many ways. On the one hand, it does not implement its territorial GHG reduction targets, which are furthermore clearly insufficient in light of the principles of the Paris Agreement and some scientific estimations of its fair share. On the other hand, France climate policies with respect to extraterritorial emissions (linked to international trade and transnational companies) are non-binding and ineffective.

**We thus urge the CESCR to recommend France to increase its climate mitigation actions and ambitions, in line with the Paris Agreement principles of progression, highest possible level of ambition, common but differentiated responsibilities, and best available science, including by accounting for maritime and aviation emissions, and taking measures to ensure that public and private financial institutions and corporations under its jurisdiction or effective control do not endanger the rights protected under the Covenant through their involvement and support of fossil fuel-related activities.**

#### **4. France's climate adaptation policies: focus on the Right to water, discrimination and climate change in the French overseas territories**

The right to water and sanitation is recognised by the Committee and derives from article 11 of the Covenant. However, in its opinion of 25 October 2022 on access to water, the French Economic, Social and Environmental Council (CESE) noted that "access to drinking water is not guaranteed in many overseas territories". All the overseas territories are concerned, even if the problems may differ from one territory to another. All the components of the right to water are affected: access in sufficient quantity, at an affordable price, or to quality water that does not endanger people's health.

Therefore, in this subsection, Notre affaire à tous argues a violation of Article 11 in isolation and in conjunction with Article 2 of the Covenant.

##### *- Problems of access to sufficient water*

The French Overseas Territories face difficulties in accessing sufficient quantities of water to meet the most basic needs of their populations. Rates of access to drinking water are lower than in mainland France. Many disadvantaged neighbourhoods in Guadeloupe, French Guiana, Mayotte, Polynesia and Réunion Island are not connected to the drinking water network<sup>[1]</sup>. Although data is incomplete<sup>[2]</sup>, it is estimated that in Mayotte, 31.5% of families live without running water, i.e.



around 81,000 people<sup>[3]</sup> , and that 46,000 people in French Guiana (15% of the population) have no access<sup>[4]</sup> .

Water networks are often dilapidated (with numerous leaks) and pressure can be limited, which means that it is not always possible to supply communities located on high ground. Neighbourhoods and even entire communities are regularly cut off<sup>[5]</sup> . This has an impact on other rights, particularly health and education. For example, in 2020, the Baie-Mahault maternity hospital had to close for several days following a major water cut, as well as 43 schools in Guadeloupe<sup>[6]</sup> . This also has consequences for gender-based violence, with women and girls having to travel further to fetch water, particularly in Mayotte<sup>[7]</sup> .

- *The price of water: financial barriers to access to water in Overseas France*

Access to water is also limited by the financial aspect. Water charges are generally higher in the French overseas territories than in mainland France<sup>[8]</sup> , despite the fact that precariousness is higher there (with extreme poverty 5 to 10 times higher than in mainland France, peaking at 29.1% of the population in French Guiana)<sup>[9]</sup> . In Saint-Martin, a cubic metre costs €10, while in Guadeloupe it costs €6.17 (combined drinking water and sanitation)<sup>[10]</sup> . In addition, water is subject to dock dues (“octroi de mer” a tax specific to the French overseas departments)<sup>[11]</sup> . In Mayotte, water accounts for 17% of the average household budget, rising to 25% for the most vulnerable households<sup>[12]</sup> .

Faced with cut-offs and difficulties of physical access to drinking water, people have to buy bottled water. Those who cannot afford it have no choice but to drink uncontrolled rainwater<sup>[13]</sup> , the quantity of which is limited during periods of drought.

- *Problematic water quality*

The quality of water in the French overseas territories also raises questions. On Reunion Island, 46% of users receive water that does not meet health standards<sup>[14]</sup> . In Polynesia, tests show that only 5 of the 45 communes in the territory have water quality that fully complies with current regulations<sup>[15]</sup> .

Martinique and Guadeloupe are facing major pollution from chlordecone, a pesticide used in banana plantations until 1993 and linked to a real health scandal<sup>[16]</sup> . The situation is more worrying in Guadeloupe<sup>[17]</sup> where, in 2019, around 12,000 people had no access to drinking water services due to water contamination<sup>[18]</sup> . In French Guiana, gold mining is the main cause of resource pollution, particularly mercury pollution<sup>[19]</sup> .

- *A worrying situation in the face of the impact of climate change*

At present, it is not a lack of water resources that is the main root of this lack of access to drinking water, but rather a problem of management and infrastructure<sup>[20]</sup> . While access to good quality drinking water in sufficient quantity is already a problem in the French overseas territories, the situation is made worse by the consequences of climate change. According to the Observatoire National sur les Effets du Réchauffement Climatique (ONERC), the French overseas territories are among those most affected by global warming and are in a relatively urgent situation<sup>[21]</sup> .

As in mainland France, climate change is intensifying droughts, with major consequences for water resources<sup>[22]</sup> . In Martinique, for example, almost all the drinking water drawn from rivers (representing 90% of the water used for human consumption in the department) is collected in the north of the territory, which will be particularly affected by climate change, with a sharp reduction in water resources. Studies carried out by the Department of the Environment, Planning and Housing (DEAL) and the Bureau de recherches géologiques et minières (BRGM), based on climate



projections by Météo France, show that supplies will be disrupted from 2080<sup>[23]</sup>. Already during periods of drought, in certain districts and/or communes, water turns are organised to provide access to water, as in Martinique but also in Guadeloupe<sup>[24]</sup> and Mayotte<sup>[25]</sup>. In addition, periods of drought reduce low-water levels, which in turn has an impact on the dilution of pollutants (particularly pesticides). The concentration of these products in the water increases and can make the water unfit for consumption, as well as polluting the natural environment<sup>[26]</sup>. This is particularly worrying in areas where pollution is already high, such as Guadeloupe and Polynesia.

Another problem is linked to rising sea levels and the pumping of groundwater in coastal areas, particularly islands, which leads to salinisation of water resources. This is the case in Réunion where all the communes in the west of the island are subject to this risk. This risk is exacerbated by the overexploitation of groundwater and the low level of aquifer recharge<sup>[27]</sup>. However, few solutions are envisaged other than desalination of seawater, a solution that is both costly and harmful to the environment<sup>[28]</sup>, while periods of drought reduce the possibilities of collecting water from rivers.

Finally, extreme weather events such as storms and hurricanes can have an impact on access to water. In addition to the interruptions caused by the damage caused by these violent events (such as in Saint-Martin following hurricane Irma in 2017), these events can lead to the contamination of resources<sup>[29]</sup>. Scientific projections show that, while there does not appear to be an increase in the number of storms and cyclones in the near future, they will be more intense, particularly in the French West Indies<sup>[30]</sup> and the Indian Ocean.

- *Clear discrimination against the outermost regions*

This compares with the situation in mainland France, where the rate of access to safely managed water<sup>[31]</sup> was 97.9% in 2019<sup>[32]</sup>. In 2013, a report by the French General Council for the Environment and Sustainable Development (CGEDD) noted that there was a "40-year delay in implementing water and sanitation policy" in overseas France<sup>[33]</sup>. Ten years later, this observation is still valid, despite some progress<sup>[34]</sup>. In French Guyana, 4.5% of the population do not have access to basic drinking water services. The average efficiency rate for water infrastructure is over 80% nationally, compared with less than 70% in Guadeloupe, Martinique and Réunion<sup>[35]</sup>. The rate of loss can reach 80% in some areas of Guadeloupe<sup>[36]</sup>. These territories have faced constant under-investment for several decades<sup>[37]</sup>.

Studies, whether hydrological or climatic, are less comprehensive and less reliable than for mainland France<sup>[38]</sup>. In national reports, the ultramarine territories are only marginally covered<sup>[39]</sup> and sometimes completely absent. Moreover, unlike in mainland France, there are no water agencies ("Agences de l'eau") in the French overseas territories, which are responsible for coordinating issues of access to water and sanitation at territorial level, supervising investment and monitoring managers, as well as participating in research and data collection. Their absence in the ultra-marine territories therefore contributes to the invisibility of their situations.

The solutions provided by state actors are limited and do not ensure full respect for the right to water of the inhabitants of the overseas territories. For example, the specific Water Plan for Overseas France launched in 2016 has yet to show any real results<sup>[40]</sup>. The Emergency Plan for Mayotte has shown its limitations, and the new plan adopted for the period 2022-2026 does not seem to be up to the task, and water cuts are on the increase<sup>[41]</sup>. In addition, many local players and groups are mobilised around these issues and have proposals for improving access to water. However, they are not being listened to, and their opportunities to participate in discussions and in the creation and implementation of projects and plans are limited<sup>[42]</sup>.

Although water management in France (metropolitan and overseas) is the responsibility of local authorities, this does not exempt the State from its positive obligation to act to ensure respect for the right to water and sanitation throughout its territory and to ensure equal access to this right for all, including in overseas areas marked by France's colonial past. As a result, France is not fully complying with articles 11 and 2 of the Covenant.

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[1] CESE, *La gestion de l'eau et de l'assainissement dans les Outre-Mer*, opinion October 2022, NOR: CESL1100015X, p. 42.

[2] Coalition Eau, *Décryptage: Les chiffres de l'accès à l'eau et à l'assainissement en France*, 25 November 2021 - URL: [https://www.coalition-eau.org/actualite/les-chiffres-de-l-acces-a-l-eau-et-a-l-assainissement-en-france-2/#\\_ftn3](https://www.coalition-eau.org/actualite/les-chiffres-de-l-acces-a-l-eau-et-a-l-assainissement-en-france-2/#_ftn3)

[3] CESE, *La gestion de l'eau et de l'assainissement dans les Outre-Mer*, opinion October 2022, NOR: CESL1100015X, p. 33.

[4] *Ibid.*

[5] Défenseur des Droits, *Services Publics aux Antilles: garantir l'accès aux droits*, Rapport 2023, p.8 et 9 - URL : [https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd\\_rapport-antilles\\_20230317.pdf](https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_rapport-antilles_20230317.pdf)

[6] CESE, *La gestion de l'eau et de l'assainissement dans les Outre-Mer*, opinion October 2022, NOR: CESL1100015X, p. 25.

[7] *Ibid.*, p. 33.

[8] Défenseur des Droits, *Services Publics aux Antilles: garantir l'accès aux droits*, Rapport 2023, p. 9 - URL: [https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd\\_rapport-antilles\\_20230317.pdf](https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_rapport-antilles_20230317.pdf)

[9] Observatoire des inégalités, *DOM: une grande pauvreté cinq à dix fois plus élevée qu'en métropole*, 31 January 2023 - URL: <https://www.inegalites.fr/DOM-une-grande-pauvrete-cinq-a-dix-fois-plus-elevee-qu-en-metropole>

[10] CESE, *La gestion de l'eau et de l'assainissement dans les Outre-Mer*, avis octobre 2022, NOR : CESL1100015X, p. 29 et p. 48 - URL : [https://www.lecese.fr/sites/default/files/pdf/Avis/2022/2022\\_15\\_gestion\\_eau.pdf](https://www.lecese.fr/sites/default/files/pdf/Avis/2022/2022_15_gestion_eau.pdf)

[11] *Ibid.*

[12] *Ibid.*, p. 43.

[13] *Ibid.*, p. 25.

[14] Assemblée nationale, rapport fait au nom de la commission d'enquête relative à la mainmise sur la ressource en eau par les intérêts privés et ses conséquences, PANOT Mathilde (présidente), SERVA Olivier (rapporteur), registered on 15 July 2021 - URL: [https://www.assemblee-nationale.fr/dyn/15/rapports/ceeau/15b4376\\_rapport-enquete.pdf](https://www.assemblee-nationale.fr/dyn/15/rapports/ceeau/15b4376_rapport-enquete.pdf)

<sup>[15]</sup> Sénat, Rapport d'information fait *au nom de la commission de l'aménagement du territoire et du développement durable (1) et de la délégation sénatoriale à l'outre-mer (2), en conclusion des travaux du groupe de travail (3) commun sur la situation des outre-mer confrontés aux dérèglements climatiques*, par MM. Jérôme BIGNON et Jacques CORNANO, enregistré le 3 novembre 2015 - URL: <https://www.senat.fr/rap/r15-131/r15-1310.html#fn5>

<sup>[16]</sup> Parquet de Paris, Order of 2 January 2023, Procedure no. 2234/08, URL: <https://www.mediapart.fr/journal/france/080123/scandale-du-chlorodecone-mediapart-publie-l-integralite-de-l-a-decision-des-juges>

<sup>[17]</sup> Défenseur des Droits, Services Publics aux Antilles: garantir l'accès aux droits, Rapport 2023, p.9 - URL: [https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd\\_rapport-antilles\\_20230317.pdf](https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_rapport-antilles_20230317.pdf)

<sup>[18]</sup> CESE, La gestion de l'eau et de l'assainissement dans les Outre-Mer, opinion October 2022, NOR : CESL1100015X, p. 28

<sup>[19]</sup> *Ibid.*, p. 72

<sup>[20]</sup> *Ibid.*, p.25, p. 31, p. 35, p. 54.

<sup>[21]</sup> ONERC, *Les Outre-Mer face au défi du changement climatique*, Report to the Prime Minister, La Documentation Française, 2012, p. 19 - URL : [https://www.ecologie.gouv.fr/sites/default/files/ONERC\\_Rapport\\_2012\\_OutreMer\\_WEB.pdf](https://www.ecologie.gouv.fr/sites/default/files/ONERC_Rapport_2012_OutreMer_WEB.pdf)

<sup>[22]</sup> Préfecture de Mayotte, Préservation de la ressource en eau : évolution des tours d'eau, press release, 2 June 2023 - URL : <https://www.mayotte.gouv.fr/contenu/telechargement/26228/236341/file/CP%20-%20Situation%20de%20l%E2%80%99eau%2002062023.pdf>

<sup>[23]</sup> Sénat, Rapport d'information fait *au nom de la commission de l'aménagement du territoire et du développement durable (1) et de la délégation sénatoriale à l'outre-mer (2), en conclusion des travaux du groupe de travail (3) commun sur la situation des outre-mer confrontés aux dérèglements climatiques*, par MM. Jérôme BIGNON et Jacques CORNANO, enregistré le 3 novembre 2015 - URL: <https://www.senat.fr/rap/r15-131/r15-1310.html#fn5>

<sup>[24]</sup> Cour des Comptes, , Rapport Public Thématique, *La gestion quantitative de l'eau en période de changement climatique, exercice 2016-2022*, July 2023, p. 38 - URL : <https://www.ccomptes.fr/system/files/2023-07/20230717-gestion-quantitative-de-l-eau.pdf>

<sup>[25]</sup> Préfecture de Mayotte, Préservation de la ressource en eau : évolution des tours d'eau, press release, 2 June 2023 - URL : <https://www.mayotte.gouv.fr/contenu/telechargement/26228/236341/file/CP%20-%20Situation%20de%20l%E2%80%99eau%2002062023.pdf>

<sup>[26]</sup> Sénat, Rapport d'information fait *au nom de la commission de l'aménagement du territoire et du développement durable (1) et de la délégation sénatoriale à l'outre-mer (2), en conclusion des travaux du groupe de travail (3) commun sur la situation des outre-mer confrontés aux dérèglements climatiques*, par MM. Jérôme BIGNON et Jacques CORNANO, enregistré le 3 novembre 2015 - URL: <https://www.senat.fr/rap/r15-131/r15-1310.html#fn5>

[27] KLOPPMAN W. et alt, *Salinisation des masses d'eaux en France : du constat au diagnostic*, Rapport Final, ONEMA et BRGM, Partenariats 2010, Savoirs, Action n°3, Août 2011, p. 15 - URL : <https://infoterre.brgm.fr/rapports/RP-60186-FR.pdf>,

[28] CESE, *La gestion de l'eau et de l'assainissement dans les Outre-Mer*, opinion October 2022, NOR: CESL1100015X, p. 69 and p. 70. See also CESER île de la Réunion, *Mieux connaître et mieux gérer l'eau à la Réunion*, Rapport adopté par l'assemblée plénière du 1er décembre 2017, p. 49, URL: <https://www.ceser-reunion.fr/wp-content/uploads/2022/03/cBD-A4-CESER-EAU.pdf>

[29] Défenseur des Droits, *Services Publics aux Antilles: garantir l'accès aux droits*, Rapport 2023, p.9 - URL: [https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd\\_rapport-antilles\\_20230317.pdf](https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_rapport-antilles_20230317.pdf)

[30] Université de Montpellier, *Changement climatique et conséquences sur les Antilles françaises*, last update June 2019 - URL : <https://c3af.univ-montp3.fr/3-resultats.html>

[31] Safely managed water means water that is available in the immediate vicinity of their homes, regularly every day, in compliance with health standards. Source: Joint Monitoring Program for Water Supply - URL: <https://washdata.org/>

[32] Joint Monitoring Program for Water Supply - URL: <https://washdata.org/>

[33] quoted by Cour des Comptes, Rapport Public Thématique, *La gestion quantitative de l'eau en période de changement climatique, exercice 2016-2022*, July 2023, p. 38 - URL: <https://www.ccomptes.fr/system/files/2023-07/20230717-gestion-quantitative-de-l-eau.pdf>

[34] Cour des Comptes, Rapport Public Thématique, *La gestion quantitative de l'eau en période de changement climatique, exercice 2016-2022*, July 2023

[35] CESE, *La gestion de l'eau et de l'assainissement dans les Outre-Mer*, opinion October 2022, NOR: CESL1100015X, p. 41.

[36] Cour des Comptes, Rapport Public Thématique, *La gestion quantitative de l'eau en période de changement climatique, exercice 2016-2022*, July 2023 - URL: <https://www.ccomptes.fr/system/files/2023-07/20230717-gestion-quantitative-de-l-eau.pdf>

[37] Assemblée nationale, rapport fait au nom de la commission d'enquête relative à la mainmise sur la ressource en eau par les intérêts privés et ses conséquences, PANOT Mathilde (présidente), SERVA Olivier (rapporteur), registered on 15 July 2021 - URL: [https://www.assemblee-nationale.fr/dyn/15/rapports/ceeau/l15b4376\\_rapport-enquete.pdf](https://www.assemblee-nationale.fr/dyn/15/rapports/ceeau/l15b4376_rapport-enquete.pdf)

[38] SIAUVE Sonia, DIJOUX Salomé, BORNANCIN-PLANTIER Audrey, SAUQUET Eric, *Production de projections hydro-climatiques en Outre-Mer : synthèse des connaissances et frains scientifiques*, Explore2 Les futurs de l'eau, Janvier 2023 - URL : [https://www.gesteau.fr/sites/default/files/gesteau/content\\_files/document/Explore2-RapportOM-Jan2023.pdf](https://www.gesteau.fr/sites/default/files/gesteau/content_files/document/Explore2-RapportOM-Jan2023.pdf)

[39] Cour des Comptes, , Rapport Public Thématique, *La gestion quantitative de l'eau en période de changement climatique, exercice 2016-2022*, July 2023 - URL: <https://www.ccomptes.fr/system/files/2023-07/20230717-gestion-quantitative-de-l-eau.pdf>

[40] *Ibid.*

<sup>[41]</sup> DECLOITRE Laurent, "A Mayotte, les coupures d'eau potable s'intensifient", *Libération*, 17 July 2023, [https://www.liberation.fr/societe/a-mayotte-les-coupures-deau-potable-sintensifient-ca-va-etre-vraiment-critique-pour-se-laver-et-cuisiner-20230717\\_P2CEYFU675CLVELQ6MOTKK22QA/](https://www.liberation.fr/societe/a-mayotte-les-coupures-deau-potable-sintensifient-ca-va-etre-vraiment-critique-pour-se-laver-et-cuisiner-20230717_P2CEYFU675CLVELQ6MOTKK22QA/)

<sup>[42]</sup> CESE, La gestion de l'eau et de l'assainissement dans les Outre-Mer, opinion October 2022, NOR: CESL1100015X, p. 79.