

## Opinion on Development, the Environment and Human Rights

*Plenary Assembly of 16 April 2015*

*(Adopted unanimously)*

1. 2015 will see a number of major milestones reached for the future of humanity: the 3<sup>rd</sup> Conference on Financing for Development (July, Addis Abeba), the adoption of the Sustainable Development Goals (September, New-York) and the 21<sup>st</sup> Conference of Parties on Climate Change (December, Paris).
2. The Sustainable Development Goals (SDG) will build upon the Millennium Development Goals (MDG) defined at the United Nations Millennium Summit and covering the period 2000-2015<sup>1</sup>. These Goals constitute a full work programme for 2015-2030, mobilising all States and all actors through their universal nature.
3. The MDG report, on what were the first concrete efforts by the United Nations to promote development, revealed that a more systematic approach is needed. The United Nations has highlighted the fact that several of the MDG have been accomplished<sup>2</sup> and that although the goals set have not been attained in every particular, substantial efforts have been made in a number of areas<sup>3</sup>. The MDG served as an "*instrument of accountability and an incentive to action*"<sup>4</sup>. Accordingly, in terms of the first MDG seeking the elimination of extreme poverty, the first target aiming to "halve the proportion of people living on less than \$1 a day" has been reached<sup>5</sup>. However, this purely financial calculation fails to reflect the reality of extreme poverty and cannot conceal the fact that inequality has continued to increase in recent years (between countries and between the inhabitants of the same country)<sup>6</sup>. Similarly, although the number of undernourished persons in the world has fallen<sup>7</sup>, the reduction of hunger is still progressing too slowly<sup>8</sup>.

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<sup>1</sup> The 8 MDG are: 1. To eliminate extreme poverty and hunger 2. Achieve universal primary education 3. Promote gender equality and empower women 4. Reduce child mortality, 5. Improve maternal health 6. Combat HIV/AIDS, malaria and other diseases 7. Ensure environmental sustainability 8. Develop a global partnership for development.

<sup>2</sup> And this is particularly true regarding extreme poverty, access to water, the participation of women in politics, the schooling of girls, combating malaria and tuberculosis and universal access to HIV treatment. See United Nations, *Millennium Development Objectives*, report 2014, p.4.

<sup>3</sup> It concerns sanitation, child and maternal mortality and schooling, *Ibid.* p.4-5.

<sup>4</sup> United Nations High Commissioner for Human Rights and the Center for Economic and Social Rights, *Who will be responsible? Human rights and post-2015 development agenda*, summary, p.1.

<sup>5</sup> In 1990, almost half of the population in developing regions was living on less than 1.25 dollars a day. By the end of 2010, this figure had fallen to 22%, meaning that 700 million fewer persons were living in extreme poverty. See United Nations, *Millennium Development Objectives*, report 2014, p.4.

<sup>6</sup> See, in particular, UNDP, Human Development Report 2014, *Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, 2014, p.42-43.

<sup>7</sup> The proportion of undernourished people fell from 23.2% in 1990-1992 to 14.9% in 2010-2012. See United Nations, *Millennium Development Objectives*, report 2014, p.4.

<sup>8</sup> The number of people suffering from hunger is estimated to be 805 million, or 1 in 9 people, and the number of children under the age of 5 suffering from acute undernourishment is estimated to be 52 million, or one in

4. There are several reasons why the MDG were insufficient, particularly the fact that they were kept separate from human rights. The lack of an explicit link between the MDG and human rights "*masked inequalities and slowed progress*", by giving priority to a quantitative approach, with no detailed analysis of "aggregates"<sup>9</sup>. The MDG have also drawn criticism for failing to be coherent and systematic and for not incorporating two key factors: participation and accountability. These criticisms ought to inform the way in which the SDG are structured and implemented.
5. The adoption of the SDG in September 2015 by the United Nations General Assembly will mark the completion of a long, global process that has mobilised numerous actors since the Rio+20 Conference in 2012. This Conference resulted in the adoption of an outcome document entitled "*The future we want*"<sup>10</sup>, a starting point for discussions on the future post-2015 development agenda<sup>11</sup>. Following an initial consultation stage, the open working group of the General Assembly on SDG presented its final report in August 2014 in which 17 SDG were proposed, setting out 169 targets. The report was evaluated by the United Nations Secretary-General in 2014 in a synthesis report entitled "*The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet*". On this basis, implementation measures, including at the financial level, are under discussion with a view to adopting these commitments in their entirety at the Summit to be held on 25-27 September 2015. The definition of measuring and evaluation indicators currently being negotiated will continue beyond the Summit<sup>12</sup>.
6. Another crucial meeting in 2015 is the 3<sup>rd</sup> International Conference on Financing for Development. This will be decisive in that it will determine the resources allocated to attaining the SDG . We know at this stage that the financing needs will be immense. This conference must serve as an opportunity for France to take stock of its financial efforts in the field of development, and in particular the repeatedly stated goal of allocating 0.7% of GNI to the financing of public development aid<sup>13</sup>. France's current level of public development aid is under 0.4% of GNI<sup>14</sup> and this figure includes items that should not be placed under development aid<sup>15</sup>. The CNCDH highlights the

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12. See, in particular, the United Nations Food and Agriculture Organisation (FAO), *The State of Food Insecurity in the World*, 2014.

<sup>9</sup> Joint Statement of the Chairpersons of the United Nations Human Rights Treaty Bodies on the Post-2015 Development Agenda, May 2013; See also *Joint Statement of the Chairpersons of the United Nations Human Rights Treaty Bodies on the Post-2015 Development Agenda*, 18 January 2015.

<sup>10</sup> Resolution adopted by the United Nations General Assembly, *The future we want*, A/RES/66/288, 11 September 2012.

<sup>11</sup> This process has in particular involved the following bodies: the open working group, the Inter-Governmental Committee of Experts on Sustainable Development Financing and the High-Level Political Forum on Sustainable Development.

<sup>12</sup> For the indicators, see Revised Working Draft of the *Leadership Council of the Sustainable Development Solutions Network, Indicators and a Monitoring Framework for Sustainable Development Goals*, 16 January 2015.

<sup>13</sup> The adoption of the 0.7% target is on the basis of the definition of public development aid (PDA) formulated by the OECD Development Aid Committee (DAC) in 1969. In 1972, the DAC adopted a stricter definition of PDA since it was recommended that it include special conditions for the aid set aside for the least developed countries (PMA). In 2002, within the framework of the International Conference on Financing for Development, the Monterrey consensus called upon developed countries to attain the objectives of devoting 0.7% of their GNI to PDA and allocating 0.15% to 0.20% to LDC. French Act No. 2014-773 concerning *the steering and programming of development policy and international solidarity* of 7 July 2014 underscored this commitment in its annex.

<sup>14</sup> The figure currently stands at 0.36% of GNI and France has even posted the fifth largest decline (- 9.2%) of the 19 EU member countries in the OECD DAC. Currently, Denmark, Luxembourg, Norway, Sweden and the United Kingdom are meeting the 0.7% target. See OECD, *Development aid stable in 2014 but Flows to poorest countries still falling*, 8 April 2015.

<sup>15</sup> For example, according to France's *Cour des comptes*, public development aid " includes a range of different components: the reception of refugees and foreign students and debt cancellation do not constitute genuine

importance of the commitment to 0.7% and recommends that every effort be made to achieve this as soon as possible<sup>16</sup>. It would also point out that the State cannot offload its financial commitments onto private-sector actors and that effective combating of tax fraud could be a source of considerable revenue for States, who could in turn allocate these to sustainable development<sup>17</sup>.

7. The third major milestone in 2015, the 21<sup>st</sup> Conference of Parties on Climate Change, or "COP21", follows on from the Rio Conference at which international climate negotiations began and the United Nations Framework Convention on Climate Change (CCNUCC) was adopted. The goal of the conference is to conclude a new legally-binding climate agreement to continue on from the Kyoto Protocol which is being implemented until 2020. France, which holds the presidency for the COP21, must work to ensure that States adopt this agreement and commit to the "Paris Climate Alliance" which comprises four components: the text of the agreement, national contributions by States<sup>18</sup>, the agenda for solutions and financing of the transition to low carbon economies.
8. These international milestones are particularly important insofar as they have set themselves the goal of setting out a conceptual framework and a work programme for coming decades, giving priority to a whole series of very varied and highly ambitious objectives which, if followed with action, have *"the potential to transform societies"*<sup>19</sup>. For the United Nations Secretary-General, who has launched a universal call for action, *"the year 2015 offers a unique opportunity for global leaders and people to end poverty and to transform the world to better meet human needs and the necessities of economic transformation, while protecting our environment, ensuring peace and realizing human rights."*<sup>20</sup>.
9. One point that is common to all issues pertaining to development and climate change - that we shall include here within the broader issue of environmental protection<sup>21</sup> - lies in their close links with human rights, which ought to be explicitly recognised and reinforced. The links between development, the environment and human rights calls for this work to be decompartmentalised and viewed as a whole (1<sup>st</sup> part). This interdependency requires that development and environmental protection policies adopt a rights-based approach (2<sup>nd</sup> part). This approach, which seems to be crucial for

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*transfers of resources; expenditure on the overseas territories do not benefit third party countries. It encompasses ambitions as varied as cultural action or aid benefiting national businesses (termed linked aid)" - See the summary report on the French development aid policy report (Synthèse du rapport public du rapport sur la politique française d'aide au développement) from June 2012.*

<sup>16</sup> CNCDH, Opinion on the bill concerning the steering and programming of development policy and international solidarity *Avis sur le projet de loi d'orientation et de programmation relatif à la politique de développement et de solidarité internationale*, 30 January 2014.

<sup>17</sup> Synthesis report of the Secretary-General for the post-2015 sustainable development agenda, *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet*, A/69/700, 4 December 2014, §31.

<sup>18</sup> The contribution by the European Union fails to mention human rights and limits itself principally to setting out ambitions for greenhouse gas emissions reduction. Conversely, Mexico's contribution refers to human rights and adaptation measures. These contributions may be consulted [online](#).

<sup>19</sup> Mary Robinson Foundation - Climate Justice, *Position Paper: Human Rights and Climate Justice*, 27 June 2014.

<sup>20</sup> Synthesis report of the Secretary-General for the post-2015 sustainable development agenda, *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet*, A/69/700, 4 December 2014, §1.

<sup>21</sup> The High Commissioner for Human Rights identifies the following phenomena as environmental threats having an impact on human rights: environmental impacts on the atmosphere, land-based environmental threats, among which are soil degradation, deforestation and desertification, degradation of the marine environment, hazardous waste, contamination by chemical waste and pollution, reduced biodiversity and finally natural disasters.

an overall response to global challenges, involves a number of operational implications which ought to be assessed.

10. In preparing this opinion, the CNCDH consulted a range of civil society organisations, public authority representatives and academics<sup>22</sup>. It also conferred with other national human rights institutions (NHRI) worldwide on the post-2015 agenda<sup>23</sup>. The CNCDH also had the opportunity to meet with John Knox, United Nations Independent Expert on Human Rights and the Environment, when he visited France<sup>24</sup>, and with Mary Robinson, President of the *Mary Robinson Foundation - Climate Justice* and United Nations Secretary-General Special Envoy on Climate Change.

## 1<sup>st</sup> part - Interdependency between development, the environment and human rights, embodied in the notion of sustainable development

11. The environment as a factor that is indissociable from development was recognised at the United Nations Conference on the Environment held in Stockholm and confirmed in 1992 by the United Nations Conference on the Environment and Development. At the end of this conference, the States reaffirmed that "*the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.*" (Principle 3, Rio Declaration) and that "*in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.*" (Principle 4, Rio Declaration). A healthy and sustainably managed environment was therefore acknowledged to be an essential condition for the development of a society.
12. The integration of issues is reflected in the notion of sustainable development, which rests on three pillars: economic, social and environmental. The decision to move on from Development Goals to Sustainable Development Goals clearly illustrates an overall recognition of development and environmental issues<sup>25</sup> and their interdependency for the future of the planet.
13. Environmental protection is directly addressed in the SDG, for example Goal No. 13 on climate change, Goal No. 14 on the conservation of oceans, seas and marine resources and Goal No. 15 on the protection and restoration of terrestrial ecosystems. The SDG will be implemented from 2016 and may begin to produce their effects even before the entry into effect of the climate agreement planned for 2020.
14. Climate change may be a barrier to sustainable development. So, if the Paris Climate Convention fails to address climate change-related challenges in full, it may undermine the new sustainable development agenda<sup>26</sup>. According to the United

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<sup>22</sup> Please refer to the annex for a list of persons interviewed.

<sup>23</sup> These discussions were formalised through the setting out of an NHRI joint position: NHRI International Coordinating Committee, *National Human Rights Institutions and the Post-2015 Development Agenda*, October 2014.

<sup>24</sup> Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, *Addendum Mission to France*, A/HRC/28/61/Add.1, 18 February 2015.

<sup>25</sup> Article 37 of the Charter of Fundamental Rights: "A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development".

<sup>26</sup> Synthesis report of the Secretary-General for the post-2015 sustainable development agenda, *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet*, A/69/700, 4 December 2014, §21-24.

Nations Secretary-General, *"Tackling climate change and fostering sustainable development agendas are two mutually reinforcing sides of the same coin"*<sup>27</sup>.

15. *Conversely*, development, particularly in terms of its social dimension and fighting poverty, is only infrequently referred to in climate discussions. The opposing nature of the two world views that characterises these discussions goes part way to explaining this failure to clearly take into account development imperatives; whilst developed countries take the view that the principal goal of the negotiations is to reduce the volume of greenhouse gas emissions, and therefore to pursue "mitigation", developing countries want a connection to be made between climate change, poverty reduction and development policy in order to move towards "adaptation" and address the current and future impacts of climate change. These disagreements stem from the call by developing countries for clear acknowledgement of the historical responsibility of developed nations for climate change. This responsibility would then force them to provide a solution to those populations most impacted by climate disruption, who are to be found in developing countries. Although it has been established that all countries must pool their efforts to combat climate change effectively, the corresponding level of contribution is the subject of considerable debate. Developing countries highlight the need to acknowledge joint but varying degrees responsibility.
16. Human rights, for their part, are now considered to be integral to the notion of sustainable development, or sustainable human development, informing its three pillars in a cross-cutting manner<sup>28</sup>. The Rio+20 declaration contains specific references reaffirming *"the importance of freedom, peace and security, respect for all human rights, including the right to development and the right to an adequate standard of living, including the right to food, the rule of law, gender equality, women's empowerment and the overall commitment to just and democratic societies for development"*<sup>29</sup>, and *"the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law"*<sup>30</sup>. Human rights are also viewed not only as an end in themselves but also as a means of sustainable development, with the universality of the SDG reflecting the universality of human rights.
17. Another comprehensive concept, "human security", allows links to be forged between development, peace and human rights. This concept, which places the human being at the centre, combines a number of closely linked elements that are also important for a life that is *free from fear and from want*, among which are food security, health security, environmental security and personal security<sup>31</sup>. Furthermore, the Inter-Governmental Panel on Climate Change(IPCC) makes reference to this concept in its work. The goal of human security could therefore be reaffirmed within the framework of the SDG and the COP21, complementing and supporting the concept of sustainable development.

#### A - Tangible interrelation

18. Upholding, safeguarding and implementing all human rights is key to sustainable development and a healthy environment. Conversely, human rights violations are

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<sup>27</sup> *Ibid*, §49.

<sup>28</sup> See, in particular, the Report of the United Nations High-Commissioner for Human Rights, *Analytical study on the relationship between human rights and the environment*, A/HRC/19/34, 16 December 2011.

<sup>29</sup> Resolution adopted by the United Nations General Assembly, *The future we want*, A/RES/66/288, 11 September 2012, §8.

<sup>30</sup> *Ibid*, §9.

<sup>31</sup> Report by the Secretary-General, *Human Security*, A/64/701, 8 March 2010.

exacerbated by maldevelopment and environmental degradation, with an even greater impact on vulnerable groups and particularly people living in extreme poverty.

### ***Development and human rights***

19. The 1986 declaration on the right to development reflects this relationship between human rights and development on a number of levels, affirming in particular that "*in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights*". This declaration enshrines the concept of person-centred development, in which the person is "*the active participant and beneficiary*" of development, and a multi-dimensional understanding of development that takes into account at least equality of opportunity, access to resources, education, health services, food, housing and employment, and the fair distribution of income.
20. An insufficient level of development may lead to human rights violations, be these economic, social or cultural rights, or civil and political rights. Furthermore, that state of poverty complicates access to rights<sup>32</sup>. Indeed, the Guiding Principles of the United Nations on Extreme Poverty and Human Rights<sup>33</sup> highlight the fact that "*poverty is not solely an economic issue*", but rather a "*multi-dimensional phenomenon*" as a poor person is not only deprived of financial resources but also "*of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living*"<sup>34</sup> and fully accessing all of their rights. In its various reports, the CNCDH has always affirmed that combating exclusion was indissociable from recognition of the inherent dignity of the person and the effective guaranteeing of human rights for all.
21. The impact of under-development on the upholding of human rights has also been confirmed in a number of other fields. Also, lack of nutritious food and malnutrition, and scarcity of drinking water, which are characteristic of developing countries, are violations of the right to health, the right to water and the right to food, which in turn have an impact on the enjoyment of all other rights.

### ***Environment and Human Rights***

22. Similarly, environmental damage and alteration of the environment due to climate change may result in human rights violations, for example, violation of the right to health, the right to water, the right to food, the right to housing, the right to life, etc. At the global level, the impact of climate change on human rights is particularly visible and documented.
23. Climate change has become one of the greatest threats for human rights at this time for current generations and even more so for generations to come who will suffer irreversible loss and damage<sup>35</sup>. The Special Procedures of the UN Human Rights Council highlight in particular the fact that climate change is "*one of the greatest human rights challenges of our time*". Similarly, the Human Rights Council has pointed out that

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<sup>32</sup> This is particularly due to dangerous working conditions, unsafe housing, lack of nutritious food, unequal access to justice and limited access to healthcare and education.

<sup>33</sup> United Nations General Assembly, *Final version of Draft Guiding Principles on Extreme Poverty and Human Rights presented by the Special Rapporteur on Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona*, 18 July 2012, A/HRC/21/39.

<sup>34</sup> Statement of the Committee on Economic, Social and Cultural Rights, 2001, E/C.12/2001/10, §8.

<sup>35</sup> *Submission to the ad hoc working group on the Durban Platform for enhanced action calling for human rights protections in the 2015 climate agreement*, 7 February 2015 signed by over 240 civil society organisations.

climate change is an "immediate and far reaching" threat to communities around the planet with "implications for the full enjoyment of human rights"<sup>36</sup>.

24. Indeed, natural disasters<sup>37</sup>, conflicts over natural resources, forced displacement and migration due to climate change have the potential to result either directly or indirectly in human rights violations. They may result in loss of livelihood and lead entire communities into a vicious circle of poverty, and even extreme poverty.
25. Although all countries are affected by climate change, the vast majority of people affected live in developing countries<sup>38</sup>. Furthermore, the negative consequences of climate change are mainly inflicted upon people who are already vulnerable<sup>39</sup>. Climate change leads to the increased incidence of diseases, droughts, flooding and cyclones, malnutrition and the lack of nutritious food<sup>40</sup>, and the victims of these phenomena are the poorest and most vulnerable populations. The same generally applies to women and girls, particularly those living in poverty or within vulnerable groups. In fact, inequality and discrimination are factors that increase the threat posed to them by climate change<sup>41</sup>. Therefore, they are the greater victims of the impact of natural disasters<sup>42</sup>, experiencing the brunt of extreme climate-related impacts, and environmental and economic changes. Indeed, the livelihoods of women depend to a large extent on natural resources (for example, water, farmland, firewood and fish) which are heavily impacted by natural variables and climate change (soil degradation and deforestation, lower yields, etc.). Furthermore, the resources and options available to people in order to deal with these shocks and changes are also highly dependent on gender-related norms and expectations. Access to and limited control by women over natural resources and also obstacles encountered in exercising their rights are further difficulties in adapting to climate change. Although women are responsible for the vast majority of food production in developing countries, they only hold a tiny fraction of the land rights<sup>43</sup>. Also, migration, which is chiefly undertaken by men, results in increased workloads and responsibilities for women remaining in rural zones and heightened vulnerability to gender-related violence. Therefore, environmental damage and climate change have a direct impact on the upholding of human rights and the most vulnerable people are also those likely to be the worst affected by these phenomena.

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<sup>36</sup> Human Rights Council, *Human Rights and Climate Change*, Resolution 7/23, 28 March 2008.

<sup>37</sup> 87% of natural disasters are climate-related. See the UNISDR, the United Nations Office Disaster Risk Reduction. *The Economic and Human Impact of Disasters in the last 10 years*.

<sup>38</sup> See, in particular, the Report of the United Nations High-Commissioner for Human Rights, *Analytical study on the relationship between human rights and the environment*, A/HRC/19/34, 16 December 2011.

<sup>39</sup> In this regard, the Human Rights Council recognises that "the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights, including the right to development, and that the effects of climate change will be felt most acutely by individuals and communities around the world that are already in vulnerable situations owing to geography, poverty, gender, age, indigenous or minority status or disability" See Human Rights Council, *Human Rights and Climate Change*, Resolution A/HRC/26/L.33, 23 June 2014.

<sup>40</sup> According to a Report by the United Nations Development Programme, *around 50% of the world population will be at risk of undernourishment by 2050 due to increased demand and to climate change (in a scenario of global warming of 2 °C) against around 30% without climate change.*" See also the WHO Fact Sheet on Climate Change, No.266, August 2014.

<sup>41</sup> For further information on the material impact of climate change on women, see The Global Gender and Climate Alliance, *Overview of Gender and Climate Change issues*

<sup>42</sup> In the event of a natural disaster, women and children are 14 times more likely than men to lose their lives. See United Nations Programme on Development, Gender and Disasters, October 2010.

<sup>43</sup> See, in particular, United Nations Inter-Agency Task Force on Rural Women, *Rural Women and the Millennium Development Goals*, 2012; UN Women, *A transformative stand-alone goal on achieving gender equality, women's rights and women's empowerment: imperatives and key components*, 2013.

26. It is precisely these developing countries and most vulnerable populations that are least able to withstand such impacts by adopting adaptation and mitigation measures, and the most likely to be affected by irreversible loss and damage (loss of territory, cultural heritage, etc.). This situation is paradoxical in that those contributing the least to global warming are the ones who suffer the most from it. Also, for certain regions of the world such as Sub-Saharan Africa and South-East Asia, the capacity to adapt is in any case insufficient to withstand repeated shocks, such as drought, flooding and cyclones, which jeopardise food security and the livelihoods of a great many people<sup>44</sup>.
27. Furthermore, measures intended to protect the environment or combat climate change in the interests of sustainable development, that are implemented savagely and without accompanying support, could have harmful consequences on the upholding of human rights. For example, in developed countries combating pollution, they could lead to higher fuel bills, undermining already precarious family living conditions when the local environment fails to meet pollution protection standards. Equally, in developing countries, to prevent desertification, banning charcoal is likely to affect the living conditions of families. Also, the relevance of policies conducted in these fields must be assessed in the light of their ability to meet the goal of "leaving no one behind"<sup>45</sup>.
28. Taken as a whole, these factors underline how important it is for the link between development, the environment and human rights to be further strengthened since only development and full access to rights will provide the tools to enable adaptation to the impacts of climate change.

## B - The legal consequences: a more robust legal basis for development and environmental protection

29. In its "*opinion on the bill concerning the steering and programming of development policy and international solidarity*", the CNCDH pointed out that the right to development, fully enshrined in the Declaration of 1986<sup>46</sup>, is an integral component of human rights, as was highlighted by the World Conference on Human Rights held in Vienna in 1993<sup>47</sup>. It is a universal and inalienable right that must be upheld and implemented just like all other rights, in accordance with the principles of indivisibility and interdependency.
30. This right, which is both individual and collective, is intrinsically linked to the full attainment of all human rights, be these civil, political, economic, social or cultural. Accordingly, the Vienna Declaration and Programme of Action forcefully affirm that "democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing."<sup>48</sup>

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<sup>44</sup> Action on hunger, *Who is addressing the impact of climate change on hunger and undernourishment? (Qui tient compte de l'impact du changement climatique sur faim et la sous-nutrition?) An appeal to decision-makers (Un appel aux décideurs)*, Advocacy Brief, March 2014.

<sup>45</sup> This is the first recommendation of the high-level panel on the post-2015 development agenda, tasked with studying the development agenda. Report of the high-level panel of eminent persons on the post-2015 development agenda, *A new global partnership: eradicate poverty and transform economies through sustainable development*, 2013, p.19.

<sup>46</sup> United Nations General Assembly, *Declaration on the Right to Development*, Resolution 41/128, 4 December 1986.

<sup>47</sup> Vienna Declaration and Programme of Action, 1993, I §10.

<sup>48</sup> *Ibid*, I §8.



31. The body of international human rights law does not expressly enshrine the right to a healthy environment as such, even though the Universal Declaration on Human Rights refers to the requirements of "*general welfare in a democratic society*" (article 29). Nonetheless, the International Covenant on Economic, Social and Cultural Rights, refers to "*safe and healthy working conditions*" (article 7b) and more broadly, regarding the right to health, to "*environmental hygiene*" and "*industrial hygiene*" (article 12 §2 b)<sup>49</sup>. Equally, one may take the view that the right to life, and specifically the "*right to an adequate standard of living*" and "*improving living conditions*", expounded by the Covenant (article 11) imply living conditions within a healthy environment enabling each individual to "live with dignity"<sup>50</sup>. Recent instruments contain even more specific provisions, for example the Convention on the Elimination of all Forms of Discrimination Against Women, which refers to the right of "rural women" to "*enjoy adequate living conditions, particularly in relation to ...sanitation*" (article 14 h). The Convention on the Rights of the Child, concerning the health of children, makes reference to the "*dangers and risks of environmental pollution*" (article 24 §2c) and the importance of "*hygiene and environmental sanitation*" (§2e).
32. The same dynamic may be observed in regional human rights documents. Article 24 of the African Charter on Human and Peoples' Rights was the first to refer to the "*right to a general satisfactory environment*" supportive of development. The Additional Protocol to the Inter-American Convention on Human Rights concerning economic, social and cultural rights, devotes a specific article to the "*right to a healthy environment*" (article 11), stating that "*the States Parties shall promote the protection, preservation, and improvement of the environment.*". At the European level, the case law of the European Court of Human Rights has addressed issues pertaining to the environment and to "environmental risks", drawing upon the rights of the European Convention on Human Rights such as the right to life and the right to privacy. The Charter of Fundamental Rights of the European Union adopted in Nice in 2000 introduced an article on the "protection of the environment" without enshrining a right, strictly speaking, but stating that "*a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development*".
33. Furthermore, the United Nations Human Rights Council has instituted numerous special procedures, particularly on the right to health, the right to food and water, the right to housing, and on extreme poverty making it possible to set out the environmental dimensions of the various human rights and consequently, the legal obligations incumbent upon States and also on all "stakeholders", specifically financial institutions and businesses. Resolution 19/12 of the Human Rights Council created a new mandate devoted to human rights and the environment, which was recently stepped up and made more detailed<sup>51</sup>, to clarify the legal obligations pertaining to the environment that are already present in the human rights field.
34. The impact on the rights of certain population categories of environmental damage, violations of the right to development and climate change has been specifically studied in relation to women's rights, children's rights and the rights of indigenous peoples. For example, the United Nations Committee on the Elimination of Discrimination against

<sup>49</sup> And even more explicitly: "*the improvement of all aspects of environmental and industrial hygiene*".

<sup>50</sup> In its recent general comments, the Committee on Economic, Social and Cultural Rights has emphasised these priorities. In its General Comment No.14 (2000) on the right to health, the Committee expressly refers to the "*right to healthy natural and workplace environments*", on the basis of article 12 §2b, with reference to the first principle of the Stockholm Declaration of 1972 and to the first principle of the Rio Declaration of 1992. General Comment No. 15 (2002) concerning the "right to water", on the basis of articles 11 and 12 of Convention, develops the concept of environmental hygiene.

<sup>51</sup> Human Rights Council, *Human Rights and the Environment*, Resolution of 24 March 2015 A/HRC/28/L.19.

Women has identified a number of forms of environmental harm that could be prejudicial to women's rights. Also the Special Rapporteur on Toxic Waste has highlighted violations of the right of children to health brought about by exposure to mercury and other hazardous substances attributable to extractive industries. Finally, the Special Rapporteur on the Rights of Indigenous People has emphasised the impacts of the activities of extractive industries on children's rights to life, health and hygiene<sup>52</sup>. The United Nations Committee on the Elimination of Racial Discrimination has also had cause on a number of occasions to address the issue of the rights of indigenous peoples, namely in relation to the violation of the right to their ancestral lands due to extractive, forest mining and hydroelectric activities and to the building of dams resulting in a deterioration in the quality of soil, water, the environment, the climate and the health of these peoples<sup>53</sup>.

35. Given the imperative for coherence, which ought to guide international initiatives, the international obligations of States in the field of human rights ought to form the legal basis and reference framework for current negotiations on development and climate. For the CNCDH, human rights should form the *backbone of the SDG*<sup>54</sup> and even the *"foundation for policy coherence"*<sup>55</sup>. Human rights must not be seen as a new priority countering the economic logic of globalisation but rather as a factor serving to clarify policy in the field of development and the environment<sup>56</sup>, thereby contributing to the consolidation of *"the coherence and legitimacy of policy and to sustainable results"*<sup>57</sup>. A more explicit and more consistent alignment of the SDG and the climate agreement on the universal obligations of States in the area of human rights serves as a gauge of efficacy, performance and accountability, by preventing any risk of a challenge to international human rights law<sup>58</sup>.

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36. In view of the demonstrated links between development, the environment and human rights, there is a vital need for dialogue and understanding between these three excessively compartmentalised spheres. Human rights experts should also be able to participate in discussions on the SDG and on the climate. This is the aim of the (*Geneva Pledge*), signed on 13 February 2015 by several States, including France<sup>59</sup>, who pledge to *"enable meaningful collaboration between [the] national representatives in these two processes to increase [their] understanding of how human rights obligations inform better climate action"*. This pledge fosters the exchanging of expertise and best practice between experts in various different fields, including within government delegations, whether to the UNFCCC or to the Human Rights Council. Implementation of this initiative should be monitored and mobilise more delegations and national human rights bodies.

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<sup>52</sup> For a more in-depth look at these developments, see the Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, *Mapping Report*, A/HRC/25/53, 30 December 2013.

<sup>53</sup> General Recommendation No. 23/1997, Concluding Observations on Several Latin-American States, NGO referral through the rapid alert and emergency action procedure.

<sup>54</sup> International Trade Union Confederation, interview of 25 March.

<sup>55</sup> United Nations High Commissioner for Human Rights and the Center for Economic and Social Rights, *Who will be responsible? Human Rights and the Post-2015 Development Agenda*, summary, p.9.

<sup>56</sup> Human Rights Council, *Human Rights and Climate Change*, Resolution 10/4, March 2009.

<sup>57</sup> *The Geneva Pledge for Human Rights in Climate Action*.

<sup>58</sup> United Nations High Commissioner for Human Rights and the Center for Economic and Social Rights, *Who will be responsible? Human Rights and the Post-2015 Development Agenda*, summary, p.2.

<sup>59</sup> The other States signatories are: Costa Rica, Chile, Guatemala, Ireland, Marshall Islands, Kiribati, Maldives, Micronesia, Mexico, Palau, Panama, Peru, Philippines, Samoa, Sweden, Uganda and Uruguay.

37. The links in law and in practice described above, necessitate the adoption of a rights-based approach to dealing with development and environmental issues. This is also the approach that has been favoured by the United Nations for many years<sup>60</sup>, and more recently by the European Union<sup>61</sup>. It involves going beyond mere impact observation and towards a complete paradigm shift, by optimising measures taken to improve the upholding of human rights by increasing the ability of individuals to claim their rights.

## 2<sup>nd</sup> Part - A Rights-Based Approach to Development and the Environment, a Logical and Desirable Consequence of Interdependency

38. Those principally concerned by development and the environment are States, the foremost duty bearers, and also private actors, whose responsibility in these fields, be this positive or negative, has been amply demonstrated. For example, the extractive, oil, mining<sup>62</sup> and agrifood industries and forestry companies can have a negative impact on the environment and on development, in addition to having an impact on workers' health. Furthermore, the activities of industrial companies often emit greenhouse gases. The responsibility of these non-state actors must be clearly recognised within the framework of development and climate processes, in a manner that is fully commensurate with recent developments in the field<sup>63</sup>.

39. This responsibility is borne not only by private actors themselves who must fully integrate this into their internal processes, but also by States, who must ensure that human rights are upheld by these private actors. Indeed, recognising the responsibility of private actors does not diminish the obligations incumbent upon States. These must use a legislative framework to<sup>64</sup> fully assume their implementation and monitoring roles in the area of public policy in the development and environmental fields. This requires the adoption of robust and coherent measures as regards *due diligence*, transparency, value chain responsibility, *reporting*, and international taxation, etc. to ensure that the activities of private actors contribute to the attainment of the SDG and bring people out of poverty.

40. The United Nations Guiding Principles on Business and Human Rights<sup>65</sup> highlight the additional responsibilities of States and businesses: obligations incumbent upon States to protect individuals against third parties, namely businesses, who could violate human rights, by causing environmental damage, for example; the role conferred upon businesses, who are bound to uphold human rights, and finally the need for the appropriate means of recourse (legal or otherwise) to be set in place by States and businesses. Therefore, the obligation of businesses to uphold human rights gives rise to

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<sup>60</sup> See, for example, *Statement of Common Understanding on Human Rights-based Approaches to Development Cooperation and Programming*, backed by the Programme Working Group of the United Nations Development Group (UNDG), 2003.

<sup>61</sup> See, in particular, *Council Conclusions on a Rights-based Approach to Development Cooperation, Encompassing all Human Rights.*, Foreign Affairs (Development) Council, 19 May 2014 and the Council of the European Union, *Transformative Post-2015 Agenda, Council Conclusions*, 16827/14, 16 December 2014.

<sup>62</sup> See, for example, FIDH, KONTRAS, *Indonesia: No development without Rights*, International Fact-Finding Report, April-May 2014; Amnesty International, *Mining Activities in Guatemala: Rights at Risk*, September 2014; Amnesty international, *Bulldozed: How a Mining Company Buried the Truth about Forced Expulsions in the DRC*, November 2014.

<sup>63</sup> See, in this regard, CNCDH, *Opinion on the priorities for France's application of the United Nations Guiding Principles on Business and Human Rights (Avis sur les enjeux de l'application par la France des Principes directeurs des Nations unies relatifs aux entreprises et aux droits de l'homme)*, 24 October 2013, §7-22.

<sup>64</sup> In France, this is the focus of Act No. 2014-773 on the steering and programming of development policy and international solidarity (LOPDSI - loi d'orientation et de programmation de la politique de développement et de solidarité internationale) adopted on 7 July 2014.

<sup>65</sup> The United Nations Guiding Principles on Businesses and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework by the United Nations, 2011.

a series of "operational" consequences, certain of which are mentioned below and which naturally apply to all of their activities, including when they have an impact upon development and the environment.

41. In practice, the solutions agenda, one of the four pillars of the "Paris Climate Alliance" proposed by a broad range of stakeholders, including non-governmental actors such as businesses, international organisations and civil society organisations, ought to promote projects that uphold human rights. More broadly, all of the commitments made in the development and environmental fields must take into account and clearly acknowledge the obligations and responsibilities of each actor concerned.

#### A - Taking human rights into account in current processes

42. Due to their demonstrable impact on human rights, efforts made in the areas of development, environmental protection and climate change prevention must, in addition to being quantitative, have a qualitative dimension, integrating the general obligation to uphold, protect and implement human rights, without discrimination. Accordingly, health services and education departments must not only be developed but, in order to guarantee the right to health and to education, be accessible and of an appropriate quality<sup>66</sup>.
43. As it highlighted in its *opinion on the steering and programming of development policy and international solidarity* of 30 January 2014, the CNCDH takes the view that human rights, as these are defined in the international agreements referred to previously, ought to form the conceptual and operational policy framework for development and environmental protection. Chiefly, this involves the explicit acknowledgement of the legal links with human rights in framework texts on development and environmental protection.
44. Since 2013, the United Nations Secretary-General has called upon the international community to develop a universal sustainable development agenda that is "*integrated and human rights-based, (...) highlighting the link between peace, development and human rights*"<sup>67</sup>. He takes the view that the upholding and promotion of human rights through all of the measures taken within the framework of the SDG is one of the keys to the success of the post-2015 agenda<sup>68</sup>.
45. It must be admitted that references to human rights in the text on the SDG currently being negotiated are relatively scarce, even though for the most part, the SDG concern issues that ought to be viewed from a human rights standpoint. As the Chairpersons of the Human Rights Treaty Bodies have stated, the SDG cover fields in which international human rights law has established a whole series of standards and mechanisms for implementation<sup>69</sup>. For example, goals 2, 3 and 4 respectively address the elimination of hunger, food security, improved nutrition and sustainable agriculture, ensuring healthy lives and promoting well-being at all ages, ensuring inclusive and equitable quality education, yet without viewing these goals from the standpoint of the right to food, the

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<sup>66</sup> United Nations High Commissioner for Human Rights and the Center for Economic and Social Rights, *Who will be responsible? Human Rights and the Post-2015 Development Agenda*, summary, p.11.

<sup>67</sup> See the Report by the Secretary-General, *A life of dignity for all: accelerating progress towards the Millennium Development Goals and advancing the United Nations development agenda beyond 2015*, A/68/202, 26 July 2013.

<sup>68</sup> Synthesis report of the Secretary-General for the post-2015 sustainable development agenda, *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet*, A/69/700, 4 December 2014, §64.

<sup>69</sup> *Joint Statement by the Chairpersons of the Human Rights Treaty Bodies on the Post-2015 Development Agenda*, May 2013.

right to health or the right to education. Equally, goal 6 concerns "access" to water and target 11-1 concerns "access" to housing even though these are established rights.

46. Some references to rights are made in target 4.7 concerning "*education for sustainable development and sustainable lifestyles, humanrights, gender equality, promotion of a culture of peace and non- violence (...)*", in target 5.6 concerning "*sexualand reproductive health and reproductive rights*" and in target 8.8 concerning labour rights, or 3 targets out of 169.
47. Goal 5 on gender equality and the empowerment of women, Goal 8 calling for the promotion of decent work for all, Goal 10 on reducing inequalities within and among countries and Goal 16 on access to justice are all Goals that are conducive to the universal respect for human rights. Equally, target 16.2 on ending torture, trafficking and child exploitation, whilst being too limited in scope, is also a goal that is directly linked to the absolute prohibition of torture and inhumane and degrading punishment and treatment, trafficking and forced labour, and the protection of children's rights, provided for under international human rights law and international humanitarian law, particularly regarding "child soldiers". It is therefore even more prejudicial that they have not been formulated and thought out from a rights-based standpoint, with reference to the international standards and protection mechanisms that are already in place.
48. Furthermore, in their current form, targets 5.a and 16.10, respectively: "Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws" and "Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements", risk making backsliding very likely. They place national and international law on the same setting, whereas the latter makes the principle of non-discrimination the foundation of the United Nations Charter and of all international agreements on the protection of human rights.
49. Although it is not possible to re-open negotiations on the SDG and insert express references to the primacy of "universally recognised human rights and fundamental freedoms", it is essential that the "human rights" language, such as it is, be preserved in principle by negotiators and developed in the implementation of certain aspects of these goals. Furthermore, human rights should figure centrally in the policy declaration accompanying the SDG that will provide the framework and dynamism for the implementation of the SDG at the national level. At the very least, this declaration ought not to fall short of previous statements, such as the Millennium Declaration, which enshrined the link between sustainable development and human rights<sup>70</sup>.
50. Furthermore, the CNCDH is concerned by the fact that in target 1.1, extreme poverty is only assessed in terms of the cut-off point of 1.25 dollar a day, when such a method will not allow for a nuanced understanding of the reality of poverty. Moreover, target 1.2 - "reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions" risks only addressing the most "reachable" persons, with efforts at the margins resulting in threshold effects, by resolving to leave the most impoverished "half" of the population to their fate. Also, this target is at a far remove from the recommendation of the High-Level Panel on the Post-2015 Development Agenda, which is to ensure that "nobody is left behind" and which ought to be a central pillar of the post-2015 agenda, particularly goal 1, as was highlighted by the Secretary-General in his own report.

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<sup>70</sup> Indeed, human rights, democracy and good governance are one of the principal objectives of the Millennium Declaration adopted by the United Nations General Assembly in 2000.

51. In terms of the climate agreement under negotiation, human rights language has been included in various parts of the draft text. For example, the draft preamble stresses that *"all actions to address climate change and all the processes established under this agreement should ensure [...] respect for human rights"*, notes that the *"Parties should ensure in all climate change related actions full respect of all human rights"*, and above all states that *"all actions on climate change shall significantly contribute to the post-2015 development agenda of the United Nations with a particular focus on human rights, good governance, gender equality and the needs of particularly vulnerable groups"*. Also, human rights are referred to in the text itself of the draft agreement in the general section and in the section on adaptation and loss and damage. Despite all this, it is still uncertain whether these references to human rights will be retained. During the negotiations on the 86-page text being undertaken by negotiators until December 2015, there is a need to ensure that references to human rights are retained in the preamble to the agreement, and in the general section and the specific entries (mitigation, adaptation, finance) in order to guarantee the practical conditions for implementation in governmental initiatives to combat climate change.
52. As holder of the COP21 presidency, France will have a particularly important role to play in bringing the integration of human rights into climate change prevention. Speeches by the President of the Republic have stressed the importance of these key issues<sup>71</sup>, but there is an urgent need now to go further in the response to climate change and in environmental protection and for commitment on the concrete implications of a rights-based approach, with express references to "human rights". In this regard, reference to "individual rights", and even to generations of human rights, serves only to dilute France's historic message regarding the indivisible and universal nature of "human rights"<sup>72</sup>.

## B - Operational implications of a rights-based approach

53. Beyond a clear statement that human rights form the conceptual basis for development and environmental protection policies, a rights-based approach carries with it a number of operational implications that must be evaluated. First and foremost is the obligation of development and environmental policies to respect and implement human rights. These policies must pursue realisation of human rights and ensure respect for the principle of equality and equal dignity, and its corollary, the prohibition of discrimination in accessing rights. The national legal framework must be built around this idea.
54. Human rights must therefore be placed *"at the centre of development governance and planning at the national level"*<sup>73</sup> and energise the three fronts on which climate change must be tackled: mitigation, adaptation loss and harm (loss of territory, cultural heritage, etc.). The Cancun Agreements of 2010 state very clearly in point 8 that *"Parties should, in all climate change related actions, fully respect human rights;"*<sup>74</sup>. This must be remembered and emphasised. Furthermore, the transition to low carbon must promote

<sup>71</sup> See, in particular, the President's speech at France's *Conférence environnementale 2014* in which he affirmed that *"On 10 December 1948, France hosted the United Nations at the Palais de Chaillot to adopt the Universal Declaration of Human Rights. And, seventy years later, France will be welcoming all countries of the world for a new era in human rights with this climate conference. Following the rights of the individual, we shall set down the rights of humanity, the right of all of the inhabitants of planet Earth to live in a world in which the future is not compromised by the irresponsibility of the present. And we are duty-bound to succeed"*.

<sup>72</sup> See, in particular, in this regard, CNCDH, *Opinion on the term "Human Rights (Avis sur la dénomination "Droits de l'Homme)*, 19 November 1998.

<sup>73</sup> Joint Statement by the Chairpersons of the Human Rights Treaty Bodies on the Post-2015 Development Agenda, May 2013.

<sup>74</sup> The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, 2010.

respect for human rights, and, for example, sustainable quality employment that protects health.

55. This includes not only measures taken at the national level, but also international cooperation and development aid policies, and the international agreements binding different States and international organisations. These agreements must guarantee the application of human rights, and particularly internationally recognised basic labour standards. At the EU level, despite the inclusion of human rights clauses in trade or investment agreements focussing on economic development, a number of examples exist of negative consequences of these agreements on the respect for human rights (land confiscation, freedom of association violations, etc.)<sup>75</sup>. It is therefore vital for these clauses to be accompanied by more robust monitoring and sanctioning mechanisms.
56. To ensure full implementation of a rights-based approach, two "procedural" stages are essential, and must be adhered to by both public and private actors: the first, upstream stage, consists in ensuring that fundamental rights are systematically upheld in the formulation, implementation and monitoring of environmental policy and development projects, with the active and free participation of the populations concerned, including the most marginalised. This must in particular be pursued using thorough, exhaustive, independent impact studies meeting high-level quality standards<sup>76</sup>. The second, downstream stage, entails the systematic evaluation of the policies implemented, on the basis of qualitative, participatory indicators anchored in human rights.
57. Furthermore, of the rights that must be implemented within the framework of development and environmental policies, the right to information, the right to participate in the conduct of the public affairs of one's country and freedom of expression and freedom of association are of the utmost importance. These require full and effective participation of individuals in the process concerning them, with participation being understood to be a "*right in itself and an essential tool for exercising other rights*"<sup>77</sup>. A rights-based approach also emphasises participatory mechanisms for use by individuals, who must not merely be viewed as beneficiaries but as rights holders and protagonists in their own development<sup>78</sup>. The various 2015 processes must ensure fair participation by all individuals concerned in all stages (definition, implementation, monitoring) and at every level (local, regional, national and international). The Rio Declaration in 1992 had already recognised that *Environmental issues are best handled with the participation of all concerned citizens at the relevant level*".
58. Full participation means adequate access to information, and openness and transparency of decision-making processes from the design of projects to their evaluation. Moreover, trained individuals should be tasked specifically with ensuring this participation on the ground, including participation by the poorest members of society, by building up trust with individuals. The Rio+20 Declaration underscored the fact "*that broad public participation and access to information and judicial and administrative proceedings are*

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<sup>75</sup> Concerning Cambodia, increasing numbers of reports indicate that preferential trade arrangements have led to the monopolisation of land in certain sectors and the United Nations Special Rapporteur on the human rights situation in Cambodia has reported that the relevant measures to deal with the issue of land affected by these preferences have yet to be taken.

<sup>76</sup> See, in particular, the Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, formulated by the Special Rapporteur on the Right to Food (2011).

<sup>77</sup> Report by the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products on the enjoyment of human rights, M. Okechukwu Ibeanu A/HRC/7/21, 18 February 2008, p.2.

<sup>78</sup> See points 37 and 38 of the Guiding Principles on Extreme Poverty and Human Rights which stress, in particular, that: "*States must ensure the active, free, informed and meaningful participation of persons living in poverty at all stages of the design, implementation, monitoring and evaluation of decisions and policies affecting them*".

*essential to the promotion of sustainable development*"<sup>79</sup>. Target 16.7 of the SDG echoes these declarations in its call to "*Ensure responsive, inclusive, participatory and representative decision-making at all levels*". Targets 6b and 11.3 refer to the participation by communities in water management and urbanization, but individuals, including those living in poverty, should also be able to participate in the creation, implementation, monitoring and assessment of policy and the agendas that will give concrete form to the SDG. The UNFCCC underscores the fundamental importance of participation by the various parties in the attainment of the goals set by the Convention and the draft climate agreement states that "*the global nature of climate change calls for the widest possible cooperation*"<sup>80</sup>.

59. The Aarhus Convention on Access to Information, public participation in the decision-making process and access to environmental justice sets out the obligations of the public authorities in this regard. It deserves to be better known and promoted within the context of current processes<sup>81</sup>. The United Nations Independent Expert on the Environment and Human Rights has pointed out that "*many Aarhus parties have discussed their compliance with that agreement in their reports under the universal periodic review process*"<sup>82</sup>. This trend must be encouraged and broadened.
60. Moreover, the possibility of access to redress - via a complaints mechanism, for example, or simply through facilitated access to justice -, is vital to ensure that human rights violations committed within the framework of development or environmental protection policies are duly penalised.
61. Access to redress must be accompanied by a stepping up of the accountability process in the development and environmental fields. By anchoring commitments and objectives in law, and in human rights in particular, the responsibilities of actors are better defined and can therefore be challenged to a greater extent. These accountability mechanisms, which must contain a strong participatory element, are relevant at both the national and international levels, depending on the measures concerned. Within the framework of a rights-based approach to development and the environment, national and international human rights mechanisms, including ILO mechanisms, ought to be deployed, particularly in order to increase consistency between policies. The recommendations of the treaty bodies formulated during the Universal Periodic Review Process could accordingly be developed so as to more systematically incorporate and evaluate human rights compliance by development and environmental policies.

### C - Defenders of human rights and environmental rights and trade unions: vital actors in a rights-based approach

62. Individuals and groups of individuals and associations seeking to protect human rights at the national or international level, within the framework of development projects, for example, through the use of surveys, evidence-based reports, correspondence with national and international bodies, legal action and peaceful demonstrations, must be

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<sup>79</sup> Resolution adopted by the United Nations General Assembly, *The future we want*, A/RES/66/288, 11 September 2012, §43.

<sup>80</sup> Preamble (option a). Furthermore, reference is also made to participation by the parties in: Preamble (option b, c and d); General Section/Goals: 2; 14 (option 1, 2 and 15); 21.1 (option 2); 39.8; 48.2; 51.2; 82.1 (h); 95; 132.6 (d); 136 (d).

<sup>81</sup> France ratified the Aarhus Convention on 8 July 2002. It entered into effect on 6 October 2002 (see Act No. 2002-285 of 28 February 2002 authorising approval of the Aarhus Convention and Decree No. 2002-1187 of 12 September 2002 publishing the Aarhus Convention).

<sup>82</sup> Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, *Mapping Report*, A/HRC/25/53, 30 December 2013, §34.



protected under international law<sup>83</sup>. Defenders of human rights and environmental rights are an essential link in the chain in terms of implementation of a rights-based approach.

63. Yet, all too often, the actions of these actors are challenged by the authorities. Their isolation in the face of all-powerful economic actors makes them particularly vulnerable. In its annual report for 2014, the Observatory for the Protection of Human Rights Defenders highlighted the situation of land rights defenders, based on an analysis of some thirty countries and 74 cases<sup>84</sup>. This issue is allied to the SDG insofar as it concerns the right to land, the right to water access, the right to health, and the issues linked to the forced displacement of populations<sup>85</sup>. Between 2011 and 2014, the Observatory recorded "112 acts of or threats of physical aggression, [...] 43 assassinations [and] 123 cases of harassment of land rights defenders". The impunity characterising acts committed against defenders of human and environmental rights is also striking. In fact, out of the 106 cases dealt with by the Observatory from January 2011 to August 2014 reporting violations against 282 land rights defenders and 19 NGO, more than 95% have gone unpunished<sup>86</sup>.
64. In 2006, the Special Representative of the United Nations Secretary-General on the Situation of Land Rights Defenders, observed that "*the second most vulnerable group when it comes to the danger of being killed because of their activities in the defence of human rights, are defenders working on land rights and natural resources.*"<sup>87</sup>. Equally, in his report in 2014, the Special Rapporteur on the Situation of Land Rights Defenders recommended "*pay[ing] particular attention to the most exposed groups: those who work for economic, social and cultural rights or minority rights; environmental defenders; [...]; defenders who work in the area of business and human rights; those who work in an area exposed to internal conflict or a natural disaster*"<sup>88</sup>.
65. Trade unions are also vital development, environmental and human rights actors, particularly in terms of their development cooperation activities and in the day-to-day solidarity that they develop among workers. These too have been victims of anti-unionist repression for speaking out in favour of the emancipation of workers and their families and must be protected from acts as grave as assassination and from the climate of impunity that prevails in certain countries.
66. It is also vital that the situation of human and environmental rights defenders, including trade unions, be taken into account in the SDG process and at the Climate Conference, and that their contribution to environmental protection and development be recognised.

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67. The universality of concerns in the areas of sustainable development and environmental protection means that all public authorities, including at the local level, and non-state

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<sup>83</sup> See, in particular, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998.

<sup>84</sup> Observatory for the Protection of Human Rights Defenders *We are not afraid!: Land rights defenders attacked for confronting unbridled development*, Annual Report 2014.

<sup>85</sup> FIDH interview, 14 December 2014 and Friends of the Earth France interview, 28 January 2015.

<sup>86</sup> Above-mentioned report by the Observatory. Furthermore, according to Global Witness, out of almost one thousand cases of murder of land rights defenders between 2002 and 2013, only 1% of perpetrators have been brought to trial, convicted and sentenced. See *Global Witness: Deadly Environment: The Dramatic Rise in Killings of Environmental and Land Defenders*, 2014.

<sup>87</sup> Report by the Special Representative on the Situation of Land Rights Defenders, Hina Jilani, A/HRC/4/37, 24 January 2007.

<sup>88</sup> Report by the Special Rapporteur on the Situation of Land Rights Defenders, Michel Forst, A/HRC/28/63, 29 December, p.20.

actors must engage with commitments made at the highest level concerning these two processes.

68. In particular, this will require a proper break-down of the SDG within national and local policy and the implementation of national contributions in the field of climate change action. Quantitative and qualitative indicators will need to be used to monitor this implementation.
69. The CNCDH, together with all NHRI, will remain vigilant to ensure that human rights and a rights-based approach inform the implementation at the national level of commitments in the fields of development and the environment and that there is no backsliding in terms of the legal obligations weighing upon States under international human rights law.

### **Recommendations**

**The CNCDH recommends that the government should:**

1. Recognise and ensure recognition of strong links between development, the environment and human rights within the framework of the SDG and COP21 processes. This reference to the internationally recognised human rights framework is vital in order to prevent any risk of backsliding in terms of the legal obligations already incumbent upon States.
2. Explicitly underscore the existence of the right to development, defined as an individual and collective human right, and the human right to a healthy and sustainable environment.
3. Insist on a cross-cutting approach giving full scope to a gender-based approach and encouraging the participation of women in the decision-making process and fully incorporating women's rights into sustainable development policies.
4. Pay particular attention to combating all forms of discrimination and protect vulnerable groups, particularly those persons living in extreme poverty, indigenous and island peoples, whose livelihoods are directly threatened by climate change.
5. Call for the setting in place or stepping up of effective and transparent tools for implementing commitments in the fields of development and the environment, drawing fully upon existing human rights monitoring mechanisms.
6. Support the proposal on the agenda of the UNFCCC Conference of Parties to develop a work programme on human rights and climate change in order to monitor and evaluate efforts already made and still to be made to protect human rights within context of climate action.
7. Propose ambitious financial commitments at the Conference on Financing for Development, in accordance with the Monterrey consensus calling for the allocation of 0.7% of GNI to public development aid.
8. Continue to support the Geneva Pledge to include climate expertise in the human rights field in climate discussions.
9. Support the work of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and

call upon all actors concerned to follow the examples of good practice identified by him.

10. Call for universal ratification of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

***In the policy statement accompanying the SDG and in the preamble, the general section and the specific points of the climate agreement***

11. Support the inclusion of a specific reference to the obligation to comply with, protect and implement human rights by all within the framework of national and international development and environmental protection policies, including action on climate change.
12. Propose recognition of the fact that climate change results in human rights violations including the right to an adequate standard of living, the right to health and the right to development, and that actions undertaken to combat such violations must take into account the interests of the poorest communities and the obligation not to cause harm.
13. Call for recognition of the major role played by human and environmental rights defenders and the importance of creating a legal framework conducive to their action, by defending freedom of association and freedom of expression, and by ending the repression directed against them, as well as by confronting the impunity that prevails for those who harass them.
14. Back the clear reference to the United Nations Guiding Principles on Extreme Poverty and Human Rights and the United Nations Guiding Principles on Business and Human Rights, both key tools that are fully applicable to development and environmental issues.
15. Call for explicit mention of the responsibility of private actors in development, environmental protection and the upholding of human rights.
16. Back the retention in the climate agreement of a specific section on loss and damage linked to climate change, that includes the issue of financing.
17. State the importance of pursuing a rights-based approach in the development and environmental protection fields and highlight the components that make up this approach:

***For States***

- a. Adopt a legislative framework for the environment and environmental protection that complies with international human rights obligations
- b. Adopt a policy of international cooperation that upholds human rights and steps up their implementation
- c. Include human rights clauses in international agreements on development, trade, investment and the environment, together with an effective mechanism for the monitoring of compliance.
- d. Adopt a legislative framework that obliges businesses to uphold human rights in the country in which they are domiciled and in terms of their activities abroad, and to set in place the required tools for ensuring that these rights are upheld.

***For States and private actors***

- e. Ensure that the populations concerned are informed and participate, which will require trained teams in order to include the poorest communities in this dynamic
- f. Ensure access to forms of national and international legal or quasi-legal redress
- g. Conduct participatory, independent, high-quality impact assessments of the upholding of human rights in development and environmental policies and projects, particularly in terms of the impact on the poorest 20%, so as to leave no one behind.
- h. Adopt qualitative and participatory indicators that are anchored in human rights at the national and international levels
- i. Set in place transparent, open accountability mechanisms

***At the national level***

- 18. Include in the contribution of the European Union and in France's national contribution components that take into account human rights in climate change action measures.
- 19. Adopt a national SDG implementation strategy that is based on the legal framework of human rights.
- 20. Adopt a national implementation plan for the Guiding Principles of the United Nations on Business and Human Rights, drawing upon the recommendations of the CNCDH and addressing the role of businesses in development and environmental protection (*opinion of 24 October 2013 on priorities for implementation by France of the United Nations Guiding Principles on Business and Human Rights*).
- 21. Step up the fight against fraud and tax evasion and continue France's efforts in the elaboration of new international tax regulations so as to be able to channel revenue thereby obtained into sustainable development, climate change action and human rights.

## Annex 1 - Historical overview of climate negotiations

Since the adoption in 1992 of the United Nations Framework Convention on Climate Change (UNFCCC), the taking into account of the negative impacts of climate change has steadily been incorporated into the international agenda.

To add to the commitments made in Rio in 1992 under the UNFCCC to stabilise greenhouse gas (GHG) emissions at a level that would prevent any dangerous interference with the climate, the COP3 adopted the Kyoto Protocol in December 1997.

Under the Protocol, the Parties named in Annex 1 of the UNFCCC that ratified the Protocol - i.e. developed countries - were under an obligation to jointly reduce the level of emissions of six GHG by 5.2%, compared to 1990 levels, during the first period committed to, between 2008 and 2012.

In 2007, the 13th COP provided the Bali Action Plan which ought to have concluded with an agreement on a post-2012 climate programme in Copenhagen.

Having failed to reach an agreement in Copenhagen, the Parties decided to move negotiations forward to a post-2012 programme at the next COP.

Accordingly, at the COP16 in Cancun in 2010, a number of institutions were created, including the Green Climate Fund and the REDD+ mechanism was launched for Reducing Emissions from Deforestation and Forest Degradation in developing countries.

In Durban, in 2011, the COP17 created the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP). The mandate of the ADP is to enable the adoption of a new protocol, another legal instrument or a legally binding outcome under the Convention that will apply to all Parties.

This agreement will need to be adopted by 2015 in order to be implemented in 2020.

## Annex 2 - List of persons interviewed / met

### Persons interviewed ex-officio

Christel Cournil, Senior Lecturer in Public Law, Environmental and Human Rights Law Specialist, 28 January 2015

John Knox, United Nations Independent Expert on the Environment and Human Rights, 24 October 2014

Mary Robinson, United Nations Special Envoy on Climate Change, President of the *Mary Robinson Foundation - Climate Justice*, 19 March 2015

Bernard Perret, Socio-economist, essayist and member of the Inspectorate-General of the French Ministry of Ecology, 28 January 2015

### Civil Society Organisations and institutions

Action contre la Faim, Stéphanie Rivoal, President, 20 February 2015

CARE France, Fanny Petitbon, Head of Advocacy Mission, 20 February 2015

International Trade Union Confederation (ITUC), Anabella Rosemberg and Matt Simonds, 25 March 2015

International Federation of Human Rights Leagues (FIDH), Antoine Bernard, Director-General, 12 December 2014

Friends of the Earth - France, Juliette Reynaud, *Extractive Industries Campaign Head*, 28 January 2015

4D, Marc Darras, 12 December 2014

Friends of the Earth - France, Anais Saint-Gal, Head of Advocacy, 12 December 2014

Secours catholique-Caritas France, Grégoire Niaudet, 12 December 2014

French Ministry of Foreign Affairs and International Development, Claire Delessard, Directorate-General for Globalisation, 12 December 2014