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OPINION ON HUMAN RIGHTS DEFENDERS

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The opinion on human rights defenders

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1. On 9 December 1998, on the 50th anniversary of the Universal Declaration of Human Rights, and after 14 years of negotiations, the United Nations General Assembly adopted 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, known as the ‘Declaration on Human Rights Defenders’¹.

2. One of the major contributions of this Declaration is that it helps to define defenders, their rights and their methods of action. Defenders are individuals, groups and organs of society that “*individually and in association with others*” promote “*the protection and realization of human rights and fundamental freedoms at the national and international levels*”. Their activities cover a wide range of areas, covering the entire spectrum of civil and political rights, as well as economic, social and cultural rights. Defenders take action against attacks on life, torture, slavery, enforced disappearances, social injustice, or to draw attention to women’s rights, people in vulnerable situations or the environmental cause, for example. On a daily basis, they raise public awareness, organise advocacy campaigns and lobby decision-makers at national and international level to ensure that human rights are respected.

3. In order to promote the effective implementation of the Declaration through cooperation and dialogue with governments and other relevant stakeholders, in 2000, the UN Commission on Human Rights created the mandate of Special Representative of the Secretary-General on the situation of human rights defenders². The special representative’s reports show the crucial role played by defenders around the world but also provide a worrying snapshot of their situation.

4. The Declaration has been supplemented by other texts and institutions, such as the Special Rapporteur on Environmental Defenders under the Aarhus Convention³, the Resolution of the African Commission on Human and Peoples’ Rights creating a mandate for a Special Rapporteur on the situation of human rights defenders⁴, the

Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities⁵, the Special Rapporteur on Human Rights and Justice Operators set up by the Inter-American Commission on Human Rights⁶, and the OSCE Focal Point on Human Rights Defenders⁷.

5. However, 25 years after the adoption of the Declaration and despite these developments, it has to be said that this text remains largely unknown and is often not applied throughout the world, including when it comes to defenders in France. At the Paris Summit in 2018⁸, participants called on governments, in conjunction with civil society, to draw up a ‘national action plan’ aimed at guaranteeing a safe and favourable environment for those who defend human rights, both in France and abroad. Five years on, most countries, including France, have still not adopted such action plans.

Recommendation 1: The CNCDH recommends that ministries, within their respective scopes of intervention, set up dissemination and training initiatives on the 1998 Declaration on Human Rights Defenders.

1. An alarming global situation

6. Since the adoption of the 1998 Declaration, the situation of human rights defenders around the world has not improved. For example, in the space of two years (May 2021 to May 2023), the Special Rapporteur on the situation of human rights defenders received 722 communications concerning violations against human rights defenders⁹.

7. The CNCDH has noted that civic space is narrowing, while at the same time authoritarianism is on the rise as well as various attacks on defenders on every continent.

1.1. Attacks

8. The CNCDH has observed an increase in attacks on human rights defenders, particularly those campaigning for the right to a clean, healthy and sustainable environment, who denounce the practices of certain companies¹⁰. Since 2012, the NGO Global Witness has counted 1,733 murders of defenders trying to protect their land and natural resources around the world, an average of one every two days¹¹. Indigenous communities are particularly targeted in struggles to protect the environment, especially as part of local conflicts which involve defending land against land grabbing and soil destruction by the extractive industry¹².

9. Attacks on defenders of sexual and reproductive rights and the rights of LGBTI people are on the increase, often taking the form of gender-based attacks, with international observers noting that sexual orientation and gender identity are risk multipliers¹³. This is because their work is perceived as threatening traditional and family values and the gender-based distribution of roles¹⁴. This can lead to stigmatisation, ostracism, exclusion and hostility by government and non-government actors, including community leaders and family members, who perceive them as threats to their religion, honour or culture¹⁵.

1.2. Criminalisation and repression

10. The narrowing of civic space, the control of independent information channels and the strengthening of security considerations often facilitate the development of actions to stigmatise and criminalise human rights defenders. National legislation such as counterterrorism laws, laws to combat human trafficking, and legislation on ‘foreign agents’ inspired by the Russian law of 2012¹⁶ can thus be used to criminalise the actions of human rights NGOs¹⁷.

11. In France, judicial harassment practices have been observed, particularly against defenders of migrants’ rights and environmental rights. Several of them have been prosecuted in connection with humanitarian aid to migrants and their opposition to environmental

projects such as mega-basins¹⁸ or nuclear storage facilities¹⁹. Prosecutions have also been brought against activists following civil disobedience actions²⁰. Les soulèvements de la terre, a movement defending land rights, was dissolved by a decree adopted by the Council of Ministers, before the Council of State overturned it²¹. As part of the 2023 pension reform, demonstrations organised by trade unions were banned²² or violently repressed by the police²³. Striking employees have also been forced to work²⁴.

12. In some cases, the climate of impunity may be due to the involvement of non-government actors. More specifically on the issues of land grabbing and mining, it is not uncommon for multinational companies whose interests are threatened to be accused of actions that violate the rights of defenders²⁵. However, companies are required to comply with international standards in this area, such as the United Nations Guiding Principles on Business and Human Rights²⁶, or with laws, such as the French Duty of Vigilance Law²⁷ - soon to concern all European Union countries too²⁸.

1.3. Impact of counterterrorism laws and mechanisms

13. The security environment strengthened due to the threat of terrorism has actively contributed to the use of this threat to restrict civic space and defenders' activity around the world and in France. In a recent study, the Special Rapporteur on human rights and counterterrorism, Fionnuala D. Ni Aolain, specifically documents the negative effects of counterterrorism measures and measures to combat extremist movements on activities to promote and protect human rights²⁹.

14. Counterterrorism measures can reduce legal, judicial and administrative safeguards for defendants. Moreover, there is still no consensus in international law on how to define the concept of 'terrorism'. This encourages arbitrary practices by certain public authorities, including judicial authorities, which are detrimental to

defenders.

15. In addition, it has been widely documented that anti-money laundering and counter-terrorist financing measures are sometimes misused and abused against civil society organisations³⁰. The lack of studies with sufficient detail on the risks of terrorist financing, encouraged by the temptation of a ‘zero risk’ policy, including by banks and various financial intermediaries, can lead to adopting unwarranted, disproportionate and discriminatory measures against civil society organisations, and to considering that the not-for-profit and charity sector as a whole is at high risk³¹. It can also undermine their legitimacy.

Recommendation 2: The CNCDH recommends that all measures be taken to minimise the negative impact of counterterrorism legislation on defenders.

Recommendation 3: The CNCDH recommends ensuring that no anti-money laundering and counter terrorist financing (AML/CTF) measures are adopted or implemented without a thorough and detailed risk assessment, including an independent human rights impact assessment³².

1.4. Surveillance software

16. The rapid growth of the digital market means that the legal and regulatory frameworks governing it need to be adapted to meet the challenges of protecting human rights. In this respect, surveillance devices, whether mass surveillance or surveillance targeting defenders, represent a considerable threat that the law is struggling to come to grips with. The risks for those under surveillance are all the greater as they are often unaware that they are being subjected to such measures, which violate their right to privacy³³. The most emblematic of these targeted surveillance tools is Pegasus spyware. The extent of its surveillance of human rights defenders, journalists and political opponents was revealed thanks to an investigation by the Forbidden stories network³⁴ and Amnesty International’s Security Lab in July 2021. Even more recently, the investigative journalism network,

European Investigative Collaborations, in conjunction with Amnesty International, and various media including Mediapart, have highlighted the existence of other targeted digital surveillance attacks deployed by Predator spyware.

17. In France, despite the introduction of a system for controlling export licences for dual-use goods (DUG)³⁵ in application of international³⁶, European³⁷ and French³⁸ regulations, various NGO³⁹ reports mention the many surveillance tools from France that may have been used for repressive purposes by authoritarian regimes, including against human rights defenders.

Recommendation 4: In line with the requests of the United Nations High Commissioner for Human Rights, the CNCDH recommends that France impose an immediate moratorium on the export, sale, transfer, use and maintenance of digital surveillance technologies and hacking tools, which may only be lifted on the condition that a guarantee system that is sufficiently compliant with human rights is adopted.

Recommendation 5: The CNCDH recommends that France significantly strengthen its export licence control system for dual-use goods in order to increase its transparency and stop exports to countries where there is a risk of human rights violations. In particular, provision should be made for jurisdictional and parliamentary control and effective appeal mechanisms for all victims of surveillance.

1.5. Detention and enforced disappearance

18. The CNCDH deplores the fact that hundreds of defenders are still detained around the world, following unfair trials, on the basis of unsubstantiated, trumped-up or legally ill-defined charges, often relating to treason, subversion or terrorism. Many of them are held in inhumane or degrading conditions, and some in forced labour camps. Many have had to ‘confess’ under duress to crimes they did not commit. Some are in poor health, deprived of proper medical care and visits from their families. Others are facing the death penalty or have died in prison while serving long sentences⁴⁰. Several victims of enforced

disappearance are still missing⁴¹.

19. In many cases, the detention of defenders galvanises strong support for their release, sometimes accompanied by intense international media coverage and pleas from foreign governments and United Nations mechanisms. However, even in the case of prominent defenders, this attention often wanes over the years. Many defenders serving long sentences feel forgotten or abandoned.

1.6. Stigmatisation and disparagement

20. The CNCDH also warns that campaigns to stigmatise and demonise defenders are on the increase, both internationally and in France, contributing to the polarisation of public debate, misinformation and the weakening of the situation of certain categories of defenders. This type of discourse particularly affects defenders of women's rights⁴², LGBTI and migrant rights, as well as environmental activists. Very often, accusations of 'enemy within', 'foreign agent', 'threat to national security', 'extremism', 'terrorism', 'ecoterrorism', 'antisemitism', 'far-left group' wanting to 'bring down democracy' are unduly made against defenders in an attempt to justify criminalising them, detaining them, dissolving their organisations and movements or disparaging them.

21. In France, for example, several United Nations Special Rapporteurs have expressed concern about *"a trend towards the stigmatisation and criminalisation of individuals and civil society organisations working to defend human rights and the environment, which seems to be increasing and justifying the excessive, repeated and amplified use of force against them"*⁴³. The Special Rapporteur on environmental defenders has denounced the tendency in France to criminalise environmental defenders, who are wrongly labelled 'eco-terrorists' by government officials and prosecuted on false grounds⁴⁴.

22. A number of defenders are disparaged in the course of their work and subjected to hate, defamation and harassment online. In its concluding observations addressed to France as part of its periodic review, the Committee on the Elimination of Racial Discrimination

(CERD) asks the State party to “take the necessary measures to protect human rights defenders against threats and reprisals”⁴⁵. The Committee on Economic, Social and Cultural Rights (CESCR) also points out, in its general observations addressed to France, that union members are also victims of violence, harassment and intimidation⁴⁶.

23. Furthermore, on 7 April 2023, the CNCDH questioned the Prime Minister about “a tendency that has become systematic in the rhetoric of the Minister of the Interior to disparage human rights defenders and civil society organisations, and to threaten to cut their grants”. In its letter, the CNCDH also denounced the fact that the Minister of the Interior presented the defenders “as agitators, delinquents, even terrorists”. This is not unlike the rhetoric widely used by autocracies and which “leads to a dangerous questioning of the usefulness and value of the actions [of] those committed to defending human rights”⁴⁷.

1.7. Obstacles to the work of organisations

24. In France, the 2021 law reinforcing respect for the principles of the Republic (known as the “separatism law”) introduced an agreement to commit to republican values [contrat d’engagement républicain] which requires public-interest organisations or those receiving public grants to undertake to comply with, in particular, the principles of the Republic⁴⁸. After several months of implementation, a number of civil society organisations have expressed their concerns about this provision, which in some cases is hampering their work⁴⁹.

25. Furthermore, when it comes to protecting migrants, certain assistance initiatives have been hampered: in Calais, for example, community workers have been booked and the municipality has banned the distribution of food and drink⁵⁰.

26. Finally, legal proceedings known as ‘Strategic Lawsuits Against Public Participation’ (SLAPP) are sometimes initiated to intimidate and silence defenders, journalists or whistleblowers⁵¹. These are usually lengthy and costly proceedings (or threats of proceedings), the aim of which is not so much to win in court as to intimidate the defendant

sufficiently or deplete their finances to silence them. These practices, which are on the increase around the world and in France, are particularly common among multinationals when, for example, NGOs denounce the negative impact of their activities on the rights of local populations or on the environment⁵².

Recommendation 6: In order to ensure the effective implementation of the United Nations Declaration on Human Rights Defenders, the CNCDH recommends adopting legislation that guarantees the recognition and legal protection of defenders. The provisions of this text, reiterating Article 1 of the Declaration on Human Rights Defenders, would aim to:

- define the term ‘human rights defender’;
- establish a framework ensuring a safe and favourable environment for defenders (in particular by specifying the obligations of the public authorities towards them);
- create a mechanism to protect defenders.

Recommendation 7: The CNCDH recommends that France draw up a strategy and a ‘national action plan’ aimed at guaranteeing a safe and favourable environment for those who defend human rights, both in France and abroad. This strategy and action plan should be developed jointly with civil society and the CNCDH, in a spirit of constructive dialogue, listening and mutual enrichment.

Recommendation 8: The CNCDH recommends that France, in the context of the negotiations on the proposal for a directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), ensure that the necessary measures are adopted to effectively combat these ‘gagging proceedings’.

1.8. Network shutdowns

27. The Internet has become a major tool for defending rights, enabling defenders to inform, communicate, denounce violations and organise events. However, the Office of the United Nations High Commissioner

for Human Rights is concerned that civic space is shrinking, partly as a result of an increase in network shutdowns⁵³. Between 2016 and 2021, the ‘#KeepItOn’ movement recorded 931 network shutdowns in 74 states⁵⁴. India alone accounts for more than 50% of Internet shutdowns worldwide and has a sorry record in this respect⁵⁵. These practices mainly occur in two types of situation: a conflict and post-conflict situation in which the authorities try to conceal the violations perpetrated, and a context of social or political tension in which the government tries to curb collective and social protest movements. In all cases, these shutdowns hinder media coverage of certain events or prevent the organisation of public demonstrations.⁵⁶

Recommendation 9: The CNCDH recommends that France, in the name of freedom of expression, information and demonstration, condemn, in multilateral forums and in its bilateral relations with the countries concerned, the practice of shutting down the Internet and mobile networks, and refrain from resorting to generalised or targeted network shutdowns.

1.9. NGO funding

28. Defending all aspects of human rights, including social justice objectives, is a long-term process. To be adequately supported, the strategies implemented by defenders and their organisations therefore require long-term investment, as well as capabilities that often go beyond the borders of a single country. It is often necessary to involve regional and international institutions, or other levers of influence such as international financial institutions, foreign investors, businesses, international media or foreign judicial institutions, particularly when initiating procedures under the authority of international institutions.

29. However, the OECD notes that public funding from all its member states and institutions for actions to strengthen human rights and governance is limited to \$3.5 billion⁵⁷. In addition, a list of the funds disbursed by 791 private philanthropic foundations around the world shows a total of \$4.1 billion in 2019, which corresponds to less than 5% of their total funding capacity⁵⁸.

30. In addition, the conditions for granting funding dedicated to strengthening human rights and the conditions of its use are often problematic. In fact, most of this funding is provided within the framework of time-limited ‘programmes’, which contribute to continuing a vicious circle of organisations’ dependence on a programme-based logic, at the expense of long-term investment. In an appeal to institutional donors to critically reassess their role in the human rights business model, Maina Kiai, then United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, denounced the models under which donors support human rights, which have changed the way human rights groups operate, pushing them to present short-term, quantifiable results and to devote their energies to project activities, rather than to social change⁵⁹.

31. In contrast to this model, the Special Rapporteur called on donors to focus on other ways of supporting the defence of rights, so that they support long-term struggles for social justice and the advancement of human rights, through multiyear commitments and ‘soft’ or ‘core’ funding, i.e. funding to support ideas, promote common strategies and advance organisational capacity. These same analyses are also used by institutes and consortiums of private foundations⁶⁰.

32. In France, international aid to human rights NGOs is mainly deployed by the French Development Agency [Agence Française du Développement (AFD)] – particularly through programmes run by French NGOs. The French embassies in each country concerned must give their backing to the support granted to human rights NGOs in the field. In some cases, this deployment has been prevented by embassies which have objected to funding local human rights NGOs on the grounds of protecting other French diplomatic interests.

Recommendation 10: The CNCDH calls on public and private donors to adopt forms of financial support that prioritise flexible, multiyear funding (also known as ‘unrestricted’ or ‘unearmarked’ funding) for human rights organisations. Rather than funding programmes, priority should be given to funding the structural reinforcement of these organisations.

Recommendation 11: The CNCDH recommends that the French authorities, and embassies in particular, respect the universal nature of the objectives of support for human rights organisations, by allowing funding in all regions of the world, even when this may appear to contradict other ‘diplomatic interests’ in the countries concerned.

2. France’s responses

33. In order to comply with the standards of protection set out in the 1998 Declaration, France should adopt new practices and improve existing ones in favour of human rights defenders abroad or arriving in France.

2.1. Embassies and consulates

34. The CNCDH welcomes the crucial role played by embassies and consulates in protecting defenders. In 2016, French diplomacy developed a booklet of actions to support human rights defenders at embassy and consulate level⁶¹. This document, inspired by the European Union Guidelines on Human Rights Defenders⁶², in particular calls on embassies to identify defenders and ensure the visibility of the support given to them; establish communication channels with defenders under threat and their families, in a secure manner if necessary, to ensure greater responsiveness in the event of a sudden deterioration in their situation; provide direct support through statements, as part of a dialogue with the authorities; observe the trials of defenders; visit prisons; make bilateral or joint representations with the diplomatic community to the authorities; or even provide shelter for a defender and their family, inside or outside the country, and facilitate any steps taken to seek asylum.

35. In practice, and more than seven years after adopting this booklet, the CNCDH believes that France’s diplomatic and political action in support of human rights defenders could be strengthened and systematised. This should involve awareness-raising and training

for embassy and consulate staff on the protection of defenders, with particular emphasis on the specific challenges they face, and on the best protection practices implemented at diplomatic level.

Recommendation 12: The CNCDH recommends that embassies and consulates provide regular and systematic training for all their staff on human rights, and in particular on the protection of human rights defenders.

36. The CNCDH also recommends that embassies play an active role and encourages them to continue and develop close collaboration with NGOs, which could take the form of frequent exchanges, invitations to embassies or visits to their premises.

37. It also encourages diplomatic authorities to make greater use of the instruments at their disposal, such as lists of individual sanctions against those responsible for repressive systems, where possible and appropriate, in order to strengthen the protection of defenders and condemn human rights violations.

Recommendation 13: The CNCDH calls on France to strengthen the commitment of its embassies and consulates to the protection of human rights defenders, by ensuring that they adopt more active and specific measures such as the systematic establishment of a point of contact for rights defenders and civil society.

2.2. International forums

38. As part of its action within the United Nations Human Rights Council, France regularly reiterates its support for human rights defenders. During its term of office as a member of the Human Rights Council for the period 2021-2023, it included support for defenders and civil society among its priorities for action⁶³. Re-elected by the United Nations General Assembly on 10 October 2023 as a member of the HRC for the period 2024-2026, France has indicated in its voluntary commitments that it supports “defenders of rights in their

own countries and welcomes those who are threatened, through its development aid policy”⁶⁴.

Recommendation 14: The CNCDH recommends that France continue and step up its actions in favour of rights defenders in multilateral forums, in particular by systematically inviting defenders to play an active part in the conferences and sessions of the intergovernmental forums that it organises or chairs. It also recommends continuing to support the resolutions of the Human Rights Council and the United Nations General Assembly on defenders.

Recommendation 15: The CNCDH recommends supporting and cooperating effectively with the relevant United Nations special procedures, in particular with the United Nations Special Rapporteur on the situation of human rights defenders and the United Nations Special Rapporteur on environmental defenders and responding to their requests to visit France within a reasonable timeframe or, where appropriate, as a matter of urgency. The CNCDH also calls on France to ensure effective follow-up to the implementation of the recommendations made by the special procedures and other international human rights bodies.

2.3. Welcoming defenders to France

39. When threats against human rights defenders put them in danger, when the obstacles put in place by the public authorities prevent a non-profit organisation from operating effectively, or when the public authorities of a country decide to dissolve an organisation, it becomes necessary for defenders to leave their country and consider redeploying their operations in exile. The relocation and resettlement of human rights defenders or organisations ‘at risk’ or ‘dissolved’ requires the host country to implement special measures to meet their specific needs. For non-profit organisations, adequate funding needs to be put in place to support the rollout of their operations in exile, as well as to provide psycho-social care for their displaced and often dispersed teams.

40. In France, there is no real institutionalised system for welcoming human rights defenders. However, a number of initiatives have been put in place to support and protect defenders.

41. Launched under the aegis of the President of the Republic on 10 December 2021, the Marianne initiative for human rights defenders⁶⁵ is a programme that rewards around fifteen defenders around the world each year. The winners, selected by a committee, receive accommodation in France for six months, a grant (€2,000 per month) and training to enhance their capacity for action. This initiative also includes an international component, in collaboration with the French Development Agency (AFD), aimed at supporting human rights defenders in their own countries.

42. In addition to the Marianne initiative, there are other programmes, most of which are private initiatives, such as the Répit programme run by the Paris Bar⁶⁶, the PAUSE programme run by the Collège de France⁶⁷, the Reporters Without Borders (RSF) scholarships⁶⁸, the Observatory for the Protection of Human Rights Defenders (FIDH-OMCT) programme⁶⁹, the ‘cities of refuge’ network⁷⁰, and the European mechanism ProtectDefenders.eu⁷¹, which can also welcome and support human rights defenders.

43. Despite the benefits of these programmes, the CNCDH regrets that these initiatives are not complemented by real political strategy at government level that would make it possible to respond to all the issues concerning rights defenders and to achieve positive changes in the long term. In particular, there is currently no infrastructure or system for effectively welcoming defenders in emergency situations. In addition, the entry points to existing programmes are not systematically coordinated and do not always have the flexibility needed to respond individually to the specific needs of defenders.

44. It therefore seems essential to strengthen listening and closer cooperation in order to ensure an appropriate response and tailored support for defenders. To that end, it would be advisable to establish a centralised ‘entry point’ or to promote mutual knowledge of the

different programmes by the stakeholders involved, so as to guide defenders towards programmes adapted to their specific needs. Similarly, it would seem appropriate to set up an ‘exit door’ system to support defenders at the end of their programme to ensure that they can resume their work under the best possible conditions⁷².

Recommendation 16: The CNCDH recommends that a national action plan to protect human rights defenders at risk be put in place to prioritise the protection and shelter in France of defenders who need it, including in the context of a possible application for asylum. This strategy must include:

- a dedicated system to increase the capacity to welcome defenders, and in particular the provision of appropriate infrastructure and facilities to deal with emergency situations;
- care for the families of relocated rights defenders, where necessary;
- psycho-social support for beneficiaries, their families and those working to welcome them to France;
- simple and effective access to information on the various shelter and support services to ensure better guidance for defenders;
- administrative support for defenders seeking asylum in France, so that they can be given the best possible guidance, in a language they understand, and so that they can continue their human rights work from France as soon as possible and under the best possible conditions;
- monitoring beneficiaries after their programme ends to ensure that they are able to continue their work under the best possible conditions.

2.4. Granting visas

45. Given the threats faced by defenders and their families, the CNCDH stresses the importance of coherent action to support and protect them. To that end, the issue of visas is an important tool enabling them to avoid perilous situations and offering them the possibility of leaving their country of origin as soon as a threat is identified.

46. However, the Commission deplors the fact that many defenders

and their families continue to have their visa applications refused because of the strict conditions under which they are granted, or without being given any specific reason for the refusal. There are currently no accurate statistics on the number of visa applications submitted by defenders and the number of visas granted or refused by countries, including France.

Recommendation 17: The CNCDH calls on France to provide statistics on visa applications made by defenders: number of applications received; number of visas approved (stating the time limit); number of visas refused, stating the reasons for refusal.

47. In addition, the CNCDH notes that defenders with a certain reputation can obtain visas more easily, but they represent only a small proportion of defenders who are actually threatened and need to flee their country, often around 5 to 10 people per country. Furthermore, the Commission is concerned that most host countries, particularly France and Germany, outsource the visa application procedure to agencies, thereby subjecting applicants to criteria that are not very strict, vague or difficult to access. The same applies to the procedures for appealing a refusal. The current system for issuing visas, which in general does not fully guarantee respect for applicants' rights, does also not seem to be at all adapted to the needs of human rights defenders who need access to France or even Europe in an emergency or to carry out their human rights activities. In this respect, the CNCDH stresses the appropriateness of multiple-entry visa schemes, which would allow defenders to enter and leave a country to take part in a particular event, or to take refuge there temporarily in an emergency.

Recommendation 18: The CNCDH recommends that France, as a Member State of the European Union, continue its efforts to create a specific multiple-entry visa for defenders in the EU Visa Code, while taking care to provide for facilitated procedures, as soon as the applicant has been identified as a 'human rights defender' by the relevant NGOs or international or regional mechanisms. Pending the creation of such a visa, the CNCDH recommends simplifying the process of granting visas, especially short-term multiple-entry visas,

by relaxing the requirements and conditions for defenders in need of emergency evacuation. It is also essential that embassy and consulate procedures are accessible, understandable and quick for defenders.

Recommendation 19: In general, the CNCDH calls on France to step up protection and accommodation measures for defenders at risk and their families, particularly in the context of their temporary relocation. The Commission encourages the development of local accommodation initiatives and the implementation of special measures to facilitate the temporary stay, employment and mobility of defenders and their families within the European Union.

End notes

1. General Assembly, Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, Resolution A/RES/53/144 of 9 December 1998.
2. See E/CN.4/RES/2000/61. The mandate was changed to a Special Rapporteur mandate in 2000 and has been regularly extended since then. It was renewed in 2020 by the Human Rights Council in its decision 43/115 and resolution 43/16.
3. The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters focuses on the development of environmental democracy, promoting public participation and specifically protecting environmental rights defenders via a Special Rapporteur mandate created in 2022 under the aegis of this Convention.
4. African Commission on Human and Peoples' Rights / Res. 69(XXXV)04: Resolution on the protection of human rights defenders in Africa, 2004.
5. The Committee of Ministers adopted its Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities, 6 February 2008.
6. See <https://www.oas.org/en/iachr/defenders/mandate/composition.asp>.
7. OSCE Parliamentary Assembly Resolution of 10 July 2007.
8. The Human Rights Defenders World Summit 2018, organised by 8 human rights organisations (Amnesty International, AWID, FIDH, Frontline Defenders, ISHR, OMCT, Protect Defenders and RSF) in Paris with the participation of around 30 civil society organisations (<https://hrdworldsummit.org/le-sommet/?lang=fr#orga>).
9. Hearing of the representative of the United Nations Special Rapporteur on the situation of human rights defenders, Michael Phoenix, 7 September 2023.
10. See CNCDH report, *Entreprises et droits de l'homme : Protéger, respecter, réparer*, [Companies and human rights: protect, respect, repair] 2023, p. 359 et seq.
11. Global Witness, "Decade of defiance - ten years of reporting land and environmental activism worldwide", 29 September 2022. In 2022, 177 people were murdered for defending their land and environment: https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/?gclid=EAlaIqobChMimfnPkfbFggMVND8GAB3NPg-KoEAAYASAAEgLoV_D_BwE
12. Indigenous communities are overwhelmingly affected by the murders of defenders (accounting for 22% of all murders of defenders of all categories in 2022), due to the high level of impunity of government and non-government actors (Report A/HRC/46/35 of the Special Rapporteur on the situation of human rights defenders, December 2020). The majority of murders of environmental defenders take place in Latin America, particularly in Brazil, Colombia, Ecuador and Guatemala.
13. See in particular the 2022 Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, which notes that "LGBT and gender-diverse activists and human rights defenders are targeted on the basis of both their gender and/or sexual identity and their role as social leaders". A/77/235, para. 31. See also the Report of the Special Rapporteur on the situation of human rights defenders, *Pathways to peace: women human rights defenders in conflict, post-conflict and crisis-affected settings*,

July 2023, A/78/131. The Rapporteur points out that “During times of conflict or in post-conflict or crisis settings, women human rights defenders who work on gender equality, sexual health and reproductive rights, LGBT rights, gender-based violence and conflict-related sexual violence are singled out for specific attacks”. (para. 78.)

14. See Eric Young et al., “The mobilization of Conservative civil society”, Carnegie Endowment of International Peace, 2018.

15. UNHCHR, “Human Rights and civic space in the UN system supporting women human rights defenders”, 2021.

16. Russian Federal Law No. 121-FZ of 20 July 2012 ‘on amending certain legislative acts of the Russian Federation on regulation of the activities of non-commercial organisations acting as foreign agents’ (the ‘Foreign Agents Act’). The law allows the authorities to designate non-profit organisations that receive funding outside Russia and engage in ‘political activity’ as ‘foreign agents’. Under the threat of heavy fines or restrictions, the law requires entities recognised as such to take restrictive administrative measures and to mention this status in all their publications.

The law has been regularly amended and strengthened since 2012. In 2017, the provisions of the law were extended to the media. In 2019, a new text further extended the provisions to any individual receiving foreign funding and creating or distributing publications for a media outlet, meaning that any individual who shares publications on social networks or is quoted by a journalist may fall within the scope of the law. For more information on Russia’s ‘foreign agent’ laws and their impact on civil society, see: <https://www.fidh.org/fr/regions/europe-asie-centrale/russie/russie-la-nouvelle-legislation-sur-les-agents-de-l-etranger-va-encore> and <https://www.amnesty.org/fr/latest/press-release/2016/11/russia-four-years-of-putins-foreign-agents-law-to-shackle-and-silence-ngos/>.

The European Court of Human Rights (ECHR) ruled in *Ecodefence and others v. Russia* (nos. 9988/13 and 60 others) of 14 June 2022 that the law of 20 July 2012 violated Article 11 (freedom of assembly and association) interpreted in the light of Article 10 (freedom of expression) of the European Convention on Human Rights.

17. See for example: Joint NGO statement, Nicaragua: Asamblea Nacional no debe aprobar la iniciativa de Ley de Regulación de Agentes Extranjeros, 28 September 2020: <https://www.fidh.org/es/temas/defensores-de-derechos-humanos/nicaragua-asamblea-nacional-no-debe-aprobar-la-iniciativa-de-ley-de>.

18. Five demonstrators accused of damage and violence during the demonstration in Mauzé-le-Mignon against the mega-basin project on 22 September 2021 appeared before the Niort Criminal Court in January 2023. Four activists were given suspended prison sentences of between two and six months, banned from appearing in les Deux-Sèvres, Mauzé-le-Mignon and Sainte-Soline, and fined for refusing to take a DNA sample.

19. On 28 November 2022, seven activists appeared before the Nancy Court of Appeal for opposing the Cigéo nuclear waste storage project during an undeclared demonstration held in August 2017. On 26 January 2023, the Court of Appeal acquitted four activists and gave the others three to four-month suspended prison sentences for taking part in an unarmed gathering and refusing to disperse.

20. A company brought action against two Extinction Rebellion activists on 15 October 2021 for protesting against the construction of a metro line as part of the ‘Grand Paris Express’. Approximately two years after the events, the activists appeared before the Evry Criminal Court on a charge of “opposing, by assault or violence, the performance of works or public utility works”, punishable by one year’s imprisonment and a €15,000

fine. The prosecutor considered that the action in question was legitimate but not legal and requested a two-month suspended prison sentence. The court found that the facts were not sufficiently clear-cut and ultimately acquitted the accused.

21. Conseil d'État, 9 November 2023, *Les Soulèvements de la Terre*, no. 476384 <https://www.conseil-etat.fr/actualites/soulevements-de-la-terre-gale-alvarium-crie-conseil-d-etat-precise-les-criteres-justifiant-la-dissolution-d-une-association-ou-d-un-groupement>

22. A prefectural order prohibiting trade union organisations from holding any demonstrations and gathering around a secondary school in the town of Saintes was adopted on 3 May 2023 during a visit by the President.

23. According to the International Trade Union Confederation in its 2023 report on workers' rights, some legally organised demonstrations resulted in “*vicious police beatings, indiscriminate arrests and tear gas*”, International Trade Union Confederation, ITUC Global Rights Index 2023 *The World's Worst Countries for Workers*, June 2023, p. 6, available online: <https://files.mutualcdn.com/ituc/files/ITUC-Global-Rights-Index-2023.pdf>.

24. In October 2022, a number of prefectural orders were adopted to force striking employees to work to ensure ‘service continuity’ during strikes at several French refineries.

25. E.g. the Business and Human Rights Resource Centre has recorded 4,661 attacks against human rights defenders attributable to companies worldwide since 2015, see: <https://www.business-humanrights.org/en/from-us/human-rights-defenders-database/>.

26. United Nations Guiding Principles on Business and Human Rights: implementing the «Protect, Respect and Remedy» Framework, A/HRC/17/31, June 2011.

27. Law No. 2017-399 of 27 March 2017 *on the duty of vigilance of parent companies and principal contractors*.

28. European Commission, Proposal for a Directive of the European Parliament and of the Council on corporate sustainability due diligence and amending Directive (EU) 2019/1937, 23 February 2022, available online: <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A52022PC0071>.

29. Fionnuala Ní Aoláin, *Global study on the impact of counter-terrorism on civil society and civic space*, 2023, available online: https://defendcivicspace.com/wp-content/uploads/2023/06/SRCT_GlobalStudy.pdf.

30. Fionnuala Ní Aoláin, *Global study on the impact of counter-terrorism on civil society and civic space*, 2023, *op. cit.*

31. *Ibid.*

32. As a reminder of the impact of counterterrorism measures on compliance with international humanitarian law and humanitarian principles, see in particular: CNCDH, *Avis sur la proposition de loi relative à la préservation de l'espace humanitaire* [Opinion on the draft law on the protection of humanitarian space], Plenary Assembly of 25 November 2021, JORF no. 0283 of 5 December 2021, text no. 119.

33. Office of the United Nations High Commissioner for Human Rights, *Report The right to privacy in the digital age*, A/HRC/51/17, August 2022.

34. Forbidden Stories is a network of journalists from around the world that has enabled 60 media outlets and 150 journalists to collaborate since its creation in 2017: <https://forbiddenstories.org/fr/>

35. DUG are goods and equipment – including technology, software and intangible know-how – that are likely to have both civilian and military uses or that could, in whole or in part, help to develop, produce, handle, operate, maintain, stockpile, detect, iden-

tify or disseminate weapons of mass destruction. These are sensitive goods which, in most cases, are intended for civilian applications, but which may be used for military, surveillance or enforcement purposes.

36. See *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*: <https://www.wassenaar.org/app/uploads/2021/12/Public-Docs-Vol-I-Founding-Documents.pdf>

37. Regulation (EU) 2021/821 (replacing Regulation (EC) No 428/2009) on the control of exports of dual-use items.

38. Circular of 16 November 2021 on export controls and the transfer of dual-use goods and technologies, available at: <https://www.econo-mie.gouv.fr/documents-opposables>. The Dual-Use Goods Department (SBDU), assisted by the Interministerial Commission for Dual-Use Goods (CIBDU), is responsible for French export controls.

39. FIDH report, *Egypt: a repression made in France*, 2 July 2018: export of surveillance software by French companies, such as CEREBRO or CORTEX, available online: <https://www.fidh.org/fr/regions/maghreb-moyen-orient/egypte/egypte-une-repression-made-in-france>.

Ministry of the Economy, Finance and Industrial and Digital Sovereignty, DGE, 2022 *Report to Parliament on exports of dual-use goods from France*, July 2022. See also: Disclose, “*La France a autorisé l’exportation vers la Chine, la Russie et l’Égypte de technologies pouvant être utilisées à des fins militaires*” [France authorised the export to China, Russia and Egypt of technologies that may be used for military purposes], 27 September 2022: of the 4,040 export licences for dual-use goods recorded, China would rank 1st among recipients (for technologies that could be used in cyber-surveillance, and Russia in third place (for technologies linked to civil nuclear power). The list also includes export licences for ‘telecommunications and information security’ dual-use goods (particularly sensitive) to Egypt and Libya.

See also: <https://www.amnesty.fr/actualites/predator-files-le-logiciel-espion-europeen-qui-cible-journalistes-et-personnalites-politiques>.

40. For example, human rights defender Azimjan Askarov, unjustly sentenced to prison in 2010 in Kyrgyzstan, who died in prison after 10 years due to serious medical problems, despite appeals to the authorities by NGOs, the Special Rapporteur at the time, the UN, the European Union and the Organization for Security and Cooperation in Europe to obtain his release on health grounds.

41. For example, Syrian human rights defender Razan Zaitouneh, who, according to available information, was captured by a militia several years ago and is now missing. See in particular the Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, on the long-term detention of human rights defenders, A/76/143, 19 July 2021.

42. Office of the United Nations High Commissioner for Human Rights, *Human Rights and civic space in the UN system supporting women human rights defenders*, 2021: attacks on the reputation and integrity of women defenders have been widely documented by the UNHCHR. These women are subjected to defamation campaigns and misogynistic discourse, often relating to their private lives, sexuality, bodies, marital status or reproductive rights, with the aim of undermining their work defending human rights.

43. Office of the United Nations High Commissioner for Human Rights, Press release, “France must respect and promote right to peaceful protest: UN experts”, 15 June 2023: <https://www.ohchr.org/fr/press-releases/2023/06/france-must-respect-and-promote-right-peaceful-protest-un-experts>.

44. For example, the Déméter cell has been singled out for having organised institutionalised surveillance of environmental non-profit organisations in France. Created at the beginning of October 2019 within the General Directorate of the National Gendarmerie [Direction générale de la gendarmerie nationale], the National Unit for Monitoring Attacks on the Agricultural Sector [Cellule nationale de suivi des atteintes au monde agricole] is designed to provide a global and coordinated response to all issues affecting the agricultural sector. On 1 February 2022, the Paris Administrative Court ruled that the missions of preventing and monitoring ideological actions against the agricultural sector were illegal and ordered the Minister of the Interior to cease the activities of the Déméter unit. The Ministers of the Interior and Agriculture have appealed the ruling. The decision of the Administrative Court of Appeal is expected in late autumn 2023.

45. CERD, *Concluding observations on the combined twenty-second and twenty-third periodic reports of France*, CERD/C/FRA/CO/22-23, 14 December 2022.

In addition, the Committee stated that it was “concerned that human rights defenders have been subjected to intimidation and threats, especially in connection with their cooperation with the Committee, which constitutes an impediment to its effective functioning. In this respect, it is alarmed by reports that Assa Traoré, who provided information about her brother, has been the subject of defamatory and threatening messages online, specifically on the social media accounts of police unions (arts. 2 and 5)”, see § 27 and 28.

46. CESCR, *Concluding observations on the fifth periodic report of France*, E/C.12/FRA/CO/5, 30 October 2023, § 28 and 29.

47. CNCDH, Attacks by the Minister of the Interior against the LDH: the CNCDH writes to the Prime Minister, 7 April 2023, available at: <https://www.cncdh.fr/actualite/attaques-du-ministre-de-linterieur-contre-la-ldh-la-cncdh-ecrit-la-premiere-ministre>

48. Law no. 2021-1109 of 24 August 2021 reinforcing compliance with the principles of the Republic, article 12:

“After Article 10 of Law no. 2000-321 of 12 April 2000 on the rights of citizens in their relations with authorities, a new Article 10-1 is inserted, worded as follows:

“Art. 10-1 - Any non-profit organisation or foundation applying for a grant within the meaning of article 9-1 from a statutory authority or a body responsible for managing an industrial and commercial public service undertakes, by signing an agreement to commit to republican values:

“1° To respect the principles of liberty, equality, fraternity and human dignity, as well as the symbols of the Republic within the meaning of Article 2 of the Constitution;

“2° Not to call into question the secular nature of the Republic;

“3° To refrain from any action detrimental to public order.

[...]”.

49. In Poitiers, for example, the prefect ordered the town to withdraw part of the grant awarded to an environmental non-profit organisation because it was organising a workshop on civil disobedience. In Lille, a social economy non-profit organisation was challenged by the Mayor for not complying with the agreement to commit to republican values because it was hosting a meeting of a non-profit organisation fighting against the extension of Lille-Lesquin airport.

50. On this subject, CNCDH, *Avis sur la situation des personnes exilées à Calais et Grande Synthe* [Opinion on the situation of exiles in Calais and Grande Synthe] (A - 2021- 3), Plenary Assembly of 11 February 2021, in particular Part I ‘The tightening of security policy against exiles and those helping them’.

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51. See the case brought by TotalEnergies against Greenpeace: https://www.lemonde.fr/les-decodeurs/article/2023/11/23/greenwashing-greenpeace-reclame-la-nullite-de-la-procedure-bailлон-de-totalenergies_6201907_4355770.html.
52. See *CNCDH report, Entreprises et droits de l'homme* [Companies and human rights], *op.cit.*, p. 365-366.
53. Report of the Office of the United Nations High Commissioner for Human Rights, “Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights”, A/HRC/50/55, 13 May 2022.
54. <http://www.accessnow.org/keepiton/%23coalition>.
55. <https://www.hrw.org/fr/news/2023/06/14/des-coups-internet-des-a-treuses-dans-l-inde-numerique>
<https://www.rfi.fr/fr/asie-pacifique/20230614-l-inde-championne-du-monde-des-coups-volontaires-d-internet>.
56. Network shutdowns vary in severity. Some consist of ‘digital sieges’ that cut off access to the Internet on a more widespread basis and for a long and indefinite period of time. With the emergence of new technologies, shutdowns now seem to be moving in the direction of increasingly sophisticated targeting. These targeted shutdowns pose a significant risk because they are discreet and difficult to detect. Companies now have the option of targeting certain websites, mobile networks, services and bandwidth. In addition, the arrival of 5G, which will enable the various Internet and network service providers to be fragmented even further, will make it possible to develop the technique of targeted shutdowns even further, thereby increasing its use now and in the future.
57. OECD, *Aid for Civil Society Organisations*, June 2022.
58. Advancing Human Rights, *Annual Review of Global Foundation Grantmaking*, 2022.
59. Open Global Rights, Maina Kiai, *From funding projects to funding struggles: Reimagining the role of donors*, 17 January 2017, available online: <https://www.openglobalrights.org/from-funding-projects-to-funding-struggles-reimagining-role-of-donors/>.
60. Tim Boyes-Watson, Siham Bortcosh, *Breaking the Starvation Cycle*, 28 March 2022, available online: <https://interagencystandingcommittee.org/sites/default/files/migrated/2022-11/Humentum-ACR-Research-Report-FINAL.pdf>.
61. See: https://www.diplomatie.gouv.fr/IMG/pdf/plaquette_defenseurs_droits-29-03-2016_cle891cd7.pdf.
62. EU Guidelines on Human Rights Defenders, 2016: https://www.eeas.europa.eu/node/3958_fr.
63. Ministry for Europe and Foreign Affairs, *La France candidate au Conseil des droits de l’Homme* (France a candidate for the Human Rights Council), available online: https://www.diplomatie.gouv.fr/IMG/pdf/candidature_cdh_fr_cle825da2.pdf.
64. See: <https://onu.delegfrance.org/candidature-de-la-france-au-conseil-des-droits-de-l-homme-2024-2026>.
65. See the initiative’s website <https://www.initiativemarianne.fr/>.
66. The aim of the Répit programme, developed and organised by the Paris Bar, is to offer lawyers threatened in the course of their professional work and sensitive cases they are handling a temporary break in France. This respite, which lasts between two and three weeks, is a tailor-made programme. In this sense, the aim is to support the beneficiary lawyers according to their needs, which means that a lawyer who, for example, needs medical support will benefit from medical care.
67. The PAUSE programme of the Collège de France is an initiative created in 2017 by the French Minister for Higher Education and Research to welcome scientists and artists to higher education and/or research institutions and cultural institutions in France.

68. See: <https://rsf.org/sites/default/files/medias/file/2023/02/BILAN%20ASSISTAN-CE%202022%20VF.pdf>.

69 See: <https://www.omct.org/fr/ressources/nouvelles/the-observatory-for-the-protection-of-human-rights-defenders>.

70. ICORN (International Cities of Refuge Network) is an international network of ‘cities of refuge’, set up in Norway in 2006 to provide shelter for two years to writers, journalists, human rights defenders and artists threatened in their home countries. ICORN currently has a network of 84 cities and regions across Europe and the Americas (in France, Paris, Poitiers and Lyon are members of the network).

71. See: <https://protectdefenders.eu/>.

72. See the observations of the Committee on the Elimination of Discrimination against Women on the occasion of the periodic review of France: “*The Committee is further concerned that the Marianne Initiative without sufficient safeguards will increase the vulnerability of women human rights defenders to threats and backlash from their governments*”, October 2023.







Créée en 1947 sous l'impulsion de René Cassin, la **Commission nationale consultative des droits de l'homme (CNC DH)** est l'**Institution nationale de promotion et de protection des droits de l'homme française, accréditée de statut A par les Nations Unies.**

L'action de la CNC DH s'inscrit dans une quadruple mission :

- Conseiller les pouvoirs publics en matière de droits de l'Homme ;
- Contrôler l'effectivité des engagements de la France en matière de droits de l'Homme et de droit international humanitaire ;
- Assurer un suivi de la mise en oeuvre par la France des recommandations formulées par les comités de suivi internationaux et régionaux ;
- Sensibiliser et éduquer aux droits de l'Homme.

L'indépendance de la CNC DH est consacrée par la loi. Son fonctionnement s'appuie sur le principe du pluralisme des idées.

Ainsi, seule institution assurant un dialogue continue entre la société civile et les experts français en matière de droits de l'homme, elle est composée de 64 personnalités qualifiées et représentants d'organisations non gouvernementales issues de la société civile.

La CNC DH est le rapporteur national indépendant sur la lutte contre toutes les formes de racisme depuis 1990, sur la lutte contre la traite et l'exploitation des êtres humains depuis 2014, sur la mise en oeuvre des Principes directeurs des Nations Unies sur les entreprises et les droits de l'Homme depuis 2017, sur la lutte contre la haine et les discriminations anti-LGBTI depuis avril 2018 et sur l'effectivité des droits des personnes handicapées depuis 2020.

La CNC DH est en outre la Commission française de mise en oeuvre du droit international humanitaire au sens du Comité international de la Croix-Rouge (CICR).

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