



## EUROPEAN TRIBUNAL IN DEFENSE OF AQUATIC ECOSYSTEMS

### MER DE GLACE VS. THE FRENCH STATE AND TOTAL

#### FINAL VERDICT

In the case of Mer de Glace Alpine Glacier, Mountain Wilderness and Notre affaire à tous versus the French State (hereinafter also "the State" or "France") and TOTAL, the European Tribunal in Defense of Aquatic Ecosystems (hereinafter "the Tribunal"), by virtue of the hearing held on January 30, 2020<sup>1</sup>, renders the following verdict:

#### **I. Law applicable to the European Tribunal in Defense of Aquatic Ecosystems**

1. The Tribunal is established to promote universal respect for the rights set forth in the Universal Declaration of the Rights of Mother Earth (hereinafter "the Declaration") in order to foster harmonious coexistence between human beings and other entities of the community of life.
2. The Declaration was approved by the Peoples' Conference on Climate Change and the Rights of Mother Earth, which met in the city of Cochabamba, Bolivia, from 19 to 22 April 2010. At this conference, 142 countries were represented by official delegations, groups and social movements. This Declaration is the first international civil society instrument to consider Nature as a subject of rights, thus going beyond the anthropocentric paradigm of environmental protection.
3. The Declaration recognises, in Article 2, that Mother Earth has the right to live, to be respected, to regenerate, to continue its life cycles and processes without human disturbance, to maintain its identity and integrity as a collective of distinct, self-regulating and interrelated beings, to have access to water

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<sup>1</sup> Review the Tribunal hearing: <https://www.facebook.com/102874091171981/videos/225718685857159>

as a source of life, to enjoy full health, to be free from contamination, pollution and toxic wastes, as well as the right to its full and prompt restoration.

4. Similarly, the Tribunal considers the relevant European instruments for the protection of Nature, environment and biodiversity, such as the Water Framework Directive (2000/60/EC), as well as international texts such as the Alpine Convention.

## **II. Competence**

5. The Tribunal shall have the competence to promote the respect and recognition of the rights established in the Universal Declaration of the Rights of Mother Earth, in order to promote harmonious coexistence between human beings and the rest of the living community within the European Union. This competence is based on Article 3 II B of the Universal Declaration of the Rights of Mother Earth, providing that “human beings, all States and all public and private institutions have the duty to recognize and promote the full and complete application of the rights and obligations set out in this Declaration ”.
6. To this end, it is the responsibility of this tribunal to investigate and adjudicate on any violation of the rights, or breach of the responsibilities established in the Declaration, whether committed by the State, private or public legal entities, and/or individuals.

## **III. Procedural context of the case**

7. On the occasion of the call for applications for the European Tribunal in Defense of Aquatic Ecosystems launched by the European Hub of the Global Alliance for the Rights of Nature at the end of 2019, the association Mountain Wilderness and Notre affaire à tous filed an application relating to the case of the disappearance of the Alpine glacier, Mer de Glace.
8. During a hearing process, the Tribunal listened to the allegations presented by applicants on behalf of the Mer de Glace affected by human-induced climate change, which is having a strong impact on the state of European glaciers. Indeed, the Tribunal heard the argument that glaciers are good indicators of climate change and their disappearance is directly linked to the increase in greenhouse gas emissions. In particular, it has taken note of the importance of protecting glaciers, not only as reflectors of solar radiation reaching the Earth (which increase the Earth's albedo), without which the energy that would

have previously returned to space is transformed into heat and contributes to the increase in temperature, but also as a reservoir of water, since they concentrate more than 70% of the solid freshwater of our planet. Their melting threatens local populations' access to water, the glacial habitat, the adjacent ecosystems, and causes a rise in sea level (+23 cm between 1900 and 2020) which modifies the tidal regime.

9. In 23 years, between 1994 and 2017, the Earth lost 28 billion tons of ice<sup>2</sup>. According to one study, Alpine glaciers could lose 95% of their surface area if nothing is done before 2100 to curb climate change<sup>3</sup>. If greenhouse gas emissions were to remain at the current rate, experts consider that "the Alps could be almost totally deprived of ice in 2100, with only a few isolated pieces remaining at high altitudes<sup>4</sup>.
10. On the basis of the evidence provided and in response to the request of the plaintiffs, the Tribunal decided to accept the Mer de Glace case against the French State and TOTAL as a potential case of wrongful failure to act and violation of the rights of aquatic ecosystems, environmental duty of care and duty of care law.
11. The Secretariat of the Tribunal (hereinafter referred to as "the Secretariat") put out a communication announcing this decision and inviting the representatives of France and TOTAL to participate in the Tribunal (see Appendix). However, the accused did not respond to the invitation to participate and the hearing was therefore held without their presence.
12. The Tribunal, composed of Judges Richard Falk, Valerie Cabanes, Cormac Cullinan, Tom Goldtooth and Lisa Mead, conducted the hearing, which was held virtually due to the COVID 19 outbreak, on January 30, 2021.
13. During a hearing that lasted almost 3 hours, the Tribunal examined the oral and written evidence presented by Marine Yzquierdo, lawyer and member of the board of directors of Notre affaire à tous, glacier expert Jean-Baptiste Bosson, Fiona Mille and Yann Borgnet of Mountain Wilderness France, and legal expert Pierre Spielwoy.

#### IV. The Facts

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<sup>2</sup> Futura Sciences article of August 26, 2020, See: <https://www.futura-sciences.com/planete/actualites/climatologie-terre-perdu-28000-milliards-tonnes-glace-23-ans-35124/>

<sup>3</sup> H. Zekollary, M. Huss, D. Farinotti, *Modelling the future evolution of glaciers in the European Alps under the EURO-CORDEX RCM ensemble*, The Cryosphere, 9 April 2019, See: <https://tc.copernicus.org/articles/13/1125/2019/>.

<sup>4</sup> See above.

14. The facts of the present case refer to the allegations of wrongful failure to act on behalf of:
- France, because of its inability to actively and effectively fight to contain the magnitude of climate change and thus address the violation of the Rights of aquatic ecosystems, especially the Mer de Glace entity,
  - The company TOTAL, because of its massive and deliberate participation in the emissions of GHG, responsible for climate change and therefore the melting of the glacier.
15. The Mer de glace is the largest glacier in France and the third largest alpine glacier. It is located on the north face of the Mont Blanc massif, in the French department of Haute-Savoie. It is formed by the confluence of the glaciers of Tacul and Leschaux. It currently has an area of 40 km<sup>2</sup> and its thickness is locally around 300 meters.
16. Since the end of the 19th century, the Mer de glace (Sea of Ice) has become a victim of climate change.

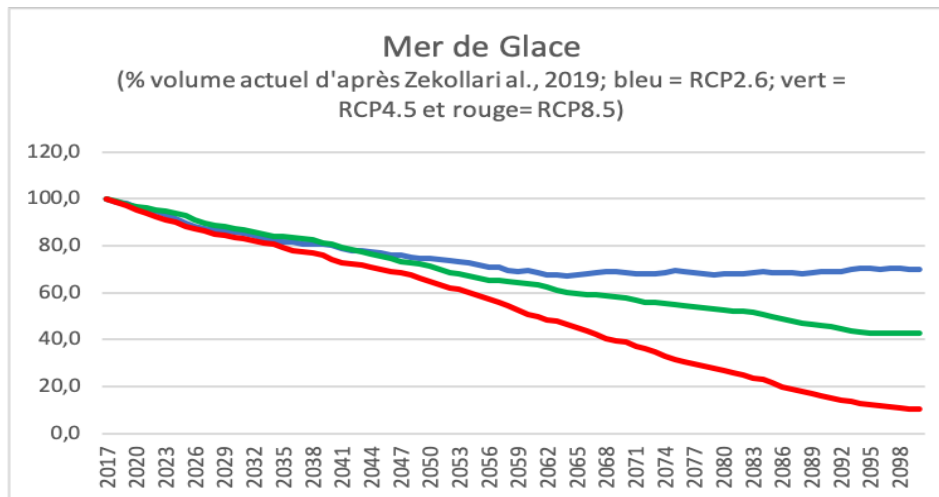
## V. Causes of damage

17. The annual change in the mass of a “temperate glacier”, such as the Mer de Glace, results from the effects of winter snowfall and summer temperatures. This means that the mass of this glacier depends on the balance between the amount of snowfall in winter and the heat in summer. Currently, scientists observe that the loss of volume of the Mer de Glace glacier is related to very high summer heat.
18. Moreover, according to figures from the Ministry of Ecological Transition, *“over the last few decades, there has been a decrease in the amount of water stored in the form of snow in mid-spring in all French high mountain ranges. This decrease is linked to atmospheric warming, which reduces the fraction of precipitation falling as snow in favor of rain and reinforces the melting of the snowpack.”*<sup>5</sup>
19. Thus, the Mer de Glace has lost 32% of its depth since the beginning of the 20th century. Each year, the glacier loses about 30 to 40 meters in length and 4 to 5 metres in thickness.
20. Based on the Intergovernmental Panel on Climate Change (IPCC) reports, Swiss scientists recently estimated that the Mer de Glace could lose about 80% of its volume by 2100 without the

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<sup>5</sup> Publication "Impacts of Climate Change: Mountains and Glaciers  
<https://www.ecologie.gouv.fr/impacts-du-changement-climatique-montagne-et-glaciers>

implementation of measures to limit greenhouse gas emissions (RCP8.5 in red below). In the case of a low-emissions scenario (RCP2.6 in blue below), close to the commitments of the Paris Agreement, nearly 60% of the current glacier volume could collapse according to these projections made at the Alpine scale.



*Projection of the evolution of the Mer de Glace during the 21st century according to different scenarios established by the IPCC. The curves correspond to average results obtained from different models. The margins of error are not indicated here and the values indicated must be approached with caution, and considered as important orders of magnitude and possible future evolutions.*

21. The melting of the sea ice, as well as that of 200,000 glaciers worldwide, is already having an impact on mountain ecosystems and contributing to the global planetary imbalance. Indeed, melting glaciers contribute, among other things, to sea level rise, increased extreme weather events (deterioration of cyclonic and anticyclonic activities and weather conditions), freshwater shortages, and pollution of rivers and groundwater due to the discharge of industrial pollutants, which is only getting worse. The melting of glaciers also disrupts the natural balance of human, animal and plant populations through the destruction of habitats and the disruption of food chains, threatening the preservation of biodiversity.

## VI. Legal framework applicable to this case

22. This Tribunal applies the Universal Declaration of the Rights of Mother Earth. In this case it is relevant to note that the Declaration states that Mother Earth and all beings of which she is composed (i.e. including glaciers) have inherent rights: to exist; to be respected; to continue their vital cycles and processes free from human disruptions; to maintain their identity and integrity; to integral health; to full and prompt restoration for the violation of the rights recognized in this Declaration caused by human activities; The

Declaration also refers to the duties of human beings, all States, and all public and private institutions :  
to “establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles” (Declaration, article 3(2)(i)); and to “promote economic systems that are in harmony with Mother Earth, now and in the future” (article 3(2)(l)).

23. In the absence of an international convention directly protecting cryospheric entities, the Tribunal will rely on the agreements to combat global warming of which France is a member, such as the United Nations Framework Convention on Climate Change (UNFCCC)<sup>6</sup> and the Paris Agreement. These treaties commit member states to reduce their greenhouse gas emissions to limit global warming. The applicant association Mountain Wilderness maintains that *"the simple application of the greenhouse gas reduction measures of the Paris Agreement would allow the conservation of more than 60% of the current volume"* of the Mer de Glace.

24. The Tribunal refers to what is stated in the constitution of the Charter of the Environment:

*"That biological diversity, human flourishing and the progress of human societies are affected by certain patterns of consumption or production and by the excessive exploitation of natural resources ;*

*That the preservation of the environment must be sought in the same way as the other fundamental interests of the Nation;*

*That in order to ensure sustainable development, choices made to meet the needs of the present must not compromise the ability of future generations and other peoples to meet their own needs,*

*PREAMBLE:*

*Article 1. Everyone has the right to live in a balanced and healthy environment.*

*Article 2. Everyone has the duty to take part in the preservation and improvement of the environment.*

*Article 3. Any person must, under the conditions defined by the law, prevent the attacks which it is likely to carry to the environment or, failing that, limit their consequences.*

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<sup>6</sup> Read the convention: <https://unfccc.int/fr>

*Article 4. Every person must contribute to the repair of the damage he causes to the environment, under the conditions defined by the law. "*

25. The Tribunal also refers to the protection of the alpine glaciers, which is governed by the decree N° DDT-2020-1132 creating the Mont Blanc natural habitat protection zone - Site d'exception<sup>7</sup>. This text states:

*"Given that:*

- *the Mont Blanc area is home to exceptional natural habitats that must be preserved from any damage likely to cause a deterioration in their conservation status, their rarefaction or even their disappearance,*
- *the remarkable intrinsic characteristics of these habitats, their landscape importance and the scarcity of protection measures for this type of geotope in France and/or in the Alps gives great interest to this heritage inherited from the geological and climatic history of the earth,*
- *the foreseeable climatic changes will lead to important modifications of the alpine environments, with in particular a significant evolution of the main glaciers and rock faces, the appearance of new environments currently covered by glaciers, the evolution of the permafrost, changes that it will be fundamental to observe, to study and to characterize within the perimeter of the protected sector*
- *the large glaciers in the protection zone will, due to their unique topographical situation in the Alps and under any greenhouse gas emission scenario, be among the last large masses in the entire Alpine chain to survive at the end of the 21st century*
- *the sectors abandoned by the glaciers (lakes or terrestrial environments) will be actively colonized by animal and plant species, whose dynamics will have to be studied".*

26. Article 2 of this document then provides a list of prohibited activities intended to *"prevent the destruction and physical alteration of natural habitats, to conserve the landscape quality and the quietness of the site"*. These prohibitions concern the use of certain means of transport, and the use of certain trails, while article 3 provides for measures to avoid any form of pollution of the area.

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<sup>7</sup> Read the text: <https://www.actu-environnement.com/media/pdf/news-36227-arrete-creation-zone-protection-mont-blanc.pdf>

27. This new tool resulting from Decree No. 2018-1180, issued on December 19, 2018 on the protection of biotopes and natural habitats should ensure the protection of glaciers, listed among the natural habitats worthy of interest and protected under the "Habitats" Directive and the list of habitats for Natura 2000. Consequently, glaciers can be protected by the protection and prohibition procedure provided for in 3° I of Article L.411-1 of the Environmental Code, which prohibits "the destruction, alteration or deterioration of these natural habitats."
28. Although this prefectural decree did not include the Mer de Glace in its scope, the Tribunal will refer to it for reasons of ecological and political consistency.
29. The Tribunal recalls that Article 191 of the Treaty on the Functioning of the European Union (formerly Article 174) provides that Community policy on the environment is to contribute to the pursuit of the objectives of preserving, protecting and improving the quality of the environment and making prudent and rational use of natural resources, and is to be based on the precautionary principle and on the principle that preventive action should be taken, and that environmental damage should, as a priority, be rectified at source, as well as on the polluter pays principle.

## **VII. Considerations of the European Tribunal in Defense of Aquatic Ecosystems in relation to the facts presented**

30. The European Tribunal in Defense of Aquatic Ecosystems rules on the existence of the violation of the Rights of Nature.
31. These facts show that the identity of the Mer de Glace is changing. Less snow is accumulating on its surface due to global warming, and its mass balance has almost always been negative since the end of the Little Ice Age<sup>8</sup>. More and more sediment is accumulating on its surface, and its natural regeneration cycles are being disrupted. The Mer de Glace can no longer fulfill its ecological function, in particular that of guaranteeing water resources and regulating the climate. The figures presented by the interveners during the hearing prove this point beyond any possible doubt. It is also relevant to note that since glaciers store important information about the history of Mother Earth for millions of years

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<sup>8</sup> The Little Ice Age (LIA) is a cold climatic period mainly concentrated on the North Atlantic and occurring approximately between the beginning of the 14th and the end of the 19th century. It is characterized by a series of long, cold winters.



(for example the air trapped in the ice can be analysed to determine the composition of the atmosphere in the past) and these “libraries” of irreplaceable information are now being destroyed.

32. The damage to the Mer de Glace from current and past greenhouse gas emissions will contribute to global warming for many years, causing further damage through feedback loops.
33. Moreover, Article 2 of the Universal Declaration of the Rights of Mother Earth states, among other things, that: *"Mother Earth and all her component beings have (...) the right to continue her vital cycles and processes free from human disturbance, "the right to life and existence"*
34. Therefore, the Tribunal finds that the facts constitute a violation of the rights of the glacier to exist, to persist and to regenerate its life cycles without human disturbance .
35. In addition, little is known about the biodiversity associated with glacial habitats, but glaciers are now considered a biome in their own right<sup>9</sup>. Knowledge of biota living in cryoconite holes <sup>10</sup>is therefore also very limited, and studies of cryophilic animals have attracted very little scientific interest to date.
36. Nonetheless, it is recognized that glaciers are unique habitats that harbor unique and metabolically active organisms that form communities and facilitate key connections with adjacent ecosystems. These ecosystems can be severely impacted or reduced during deglaciation<sup>11</sup>. In this regard, animals (including microinvertebrates) and cryophilic flora (including algae), which are microorganisms, play an important role in the functioning of glacial habitats. It is thus recognized that the presence of these microorganisms influences the size of cryoconite holes and, consequently, the rate of glacier melt<sup>12</sup>.
37. While the glacial Mer de Glace habitat does not support specific animal or plant species, other than the microorganisms mentioned above, it does provide critical waterways for humans and non-humans further downstream. The Mer de Glace feeds high altitude streams, glacial rivers with numerous and very different water sources, which provide heterogeneity, especially in taxonomy, at the watershed scale. Downstream, these rivers join to form water masses directly in front of the glacier, as well as the Arveyron which feeds the Arve further down, the Rhône and then the Mediterranean Sea. The snow melt waters released especially during the low water period on a regional scale, as well as their mineral

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<sup>9</sup> Cauvy-Fraunie, S. & Dangles, O. A *global synthesis of biodiversity responses to glacier retreat*. Nat. Ecol. Evol. 3, 1675-1685 (2019).

<sup>10</sup> Cryoconite is a layer of dark-colored mineral particles that accumulates on the surface of snow and glaciers.

<sup>11</sup> Stibal et al, Glacial ecosystems are key to understanding biodiversity responses to glacier retreat. Nature Ecology & Evolution, 2019.

<sup>12</sup> Zawierucha et al, *What animals can live in cryoconite holes? A review of the fauna*. Journal of zoology, October 9, 2014

and organic content, are of great importance, including for human activities and make ecosystems and humans more resistant and resilient to climate and global changes.

38. As it stands, greenhouse gas emissions and climate disruption caused by human activities could therefore affect the entire glacier biome, composed of the multiple entities that depend on its integrity.

39. The Declaration of the Rights of Mother Earth states in Article 2 that Mother Earth and all of her component beings have the right to maintain their identity and integrity as distinct, self-regulating and interrelated beings. This means preserving the good ecological state of the ecosystem and the entities that compose it and that together form a living and interdependent community.

40. Consequently, the melting of the Sea of Ice caused by climate disruption has undermined the rights of the entities comprising this biome to maintain their identity and integrity as distinct, self-regulating and interrelated beings, as recognized by Article 2 of the Declaration.

41. Furthermore, the Tribunal finds that the right to prompt restoration of Nature provided for in Article 2 of the Declaration but also in Article 4 of the Charter of the Environment has not been respected. In fact, it appears from national, European and international policies that no text mentions the means allocated to the restoration of glaciers, limited to mitigation measures aimed at curbing global warming.

42. In this case, the Mer de glace only benefits from an indirect and insufficient protection with regard to the measures taken to fight against global warming. The French decree N° DDT-2020-1132 creating the Mont Blanc natural habitat protection zone does not aim to slow down the melting of the glacier but to avoid future degradation in terms of urbanism, waste, transport, etc. around the glacier... As the law stands, the applicable texts and plans are therefore limited to trying to limit future degradation from an anthropocentric point of view, but do not mention restoration measures.

43. The Tribunal points out that the current texts are almost entirely anthropocentric, aiming at economic and social adaptation to global warming and the disappearance of glaciers, and providing for transitional measures to guarantee, in particular, the renewal of tourist and agricultural practices.

44. The Tribunal therefore considers this to be a failure to apply Nature's right to prompt restoration.

## **VIII. Considerations of the Tribunal on the conduct of the State in relation to the facts presented**

45. The Tribunal notes that France does not provide for any specific measures for the protection of mountain

glaciers.

46. At the international level, the Alpine Convention<sup>13</sup> - which brings together France, Germany, Austria, Italy, the Principality of Liechtenstein and Monaco, Slovenia, Switzerland and the European Union - recognizes "that the Alps are an essential habitat and refuge for many threatened animal and plant species," and specifies that "the glaciers, Alpine meadows, mountain forests and water ecosystems in the Alpine region are of exceptional importance as habitats for a variety of flora and fauna" in its protocol "Nature Protection and Landscape Maintenance"<sup>14</sup>, but there is no provision for the protection of their special interests.
47. In European Union law, the Tribunal notes that, despite the clear link between the health of glaciers and the quantity and quality of surface and groundwater, the Water Framework Directive does not mention the protection of the cryosphere.
48. On the other hand, the SDAGE Rhône Méditerranée (french regional plan for water development and management), a document for the application of European policy at the level of the Rhône Méditerranée hydrological basin, mentions the role of glaciers and the impact of climate change. A programming document has also been developed, the basin plan for adaptation to climate change<sup>15</sup> in order to face and implement measures to adapt to climate change. But this document does not provide measures to protect glaciers, only for adaptation measures in an anthropocentric conception : reconversion of snow-covered areas for other activities, among others.
49. In the same way, the planning documents, the Regional plan for spatial planning, sustainable development and equality of territories (Schéma régional d'aménagement, de développement durable et d'égalité des territoires SRADDET) Auvergne Rhone Alpes<sup>16</sup> and the Regional Climate Air Energy Plan Provence Alpes Côte d'Azur (Schéma Régional Climat Air Energie)<sup>17</sup> \* mention the impact of the melting of glaciers and the decrease in snow cover, measuring the impact on human activities and the issues

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<sup>13</sup> Read the framework agreement: <https://www.alpconv.org/fr/home/>

<sup>14</sup> Read the protocol:

[https://www.alpconv.org/fileadmin/user\\_upload/Convention/FR/Protocol\\_Conservation\\_of\\_Nature\\_FR.pdf](https://www.alpconv.org/fileadmin/user_upload/Convention/FR/Protocol_Conservation_of_Nature_FR.pdf)

<sup>15</sup> Read the document: <https://www.eaurmc.fr/upload/docs/application/pdf/2017-05/2014-plan-bassin-changement-climatique.pdf>

<sup>16</sup> Find the documents: <https://jeparticipe.auvergnerhonealpes.fr/sraddet/sraddet-projet-definitif>

<sup>17</sup> Read the documents: <http://www.paca.developpement-durable.gouv.fr/le-schema-regional-climat-air-energie-a5380.html>

related to the decrease in tourist attractiveness and the conflict between water needs (private individuals, agriculture, industry, energy, in particular nuclear energy). Mainly anthropocentric considerations, which struggle to make the link between climate disruption and degradation of Alpine glaciers. Measures for the preservation of water resources and adaptation to water stress caused by climate change do not integrate the fight for climate protection.

50. According to Article 1 of the Mountain Law of January 9, 1985, the mountain is, by law, *"a geographical, economic and social entity whose topography, climate, and natural and cultural heritage require the definition and implementation of a specific development, planning and protection policy"*. The Tribunal notes that the term "glacier" is not even mentioned in the 1985 Mountain Law<sup>18</sup>, but that glaciers were integrated later by the Mountain Law II<sup>19</sup>.
51. Thus, the Urban Planning Code has integrated a certain number of provisions related to the particularity of mountain territories, including a provision that places glaciers in the list of remarkable spaces, landscapes and territories whose preservation requirements are to be specified (article L.122-26 of the Urban Planning Code). In concrete terms, this means that their characteristics must be taken into account in Local Urban Plans and other local development plans (Schéma de Cohérence Territoriale (SCOT), communal boundaries...).
52. It is clear from the reading of these texts that the legislator currently maintains a purely utilitarian reading of the relationship with mountain glaciers, framing the activities of tourism, providing for the needs of the agricultural sector, etc...
53. Therefore, it is incumbent upon the state to recognize that the Mer de Glace entity is a remarkable natural environment whose preservation requirements must be specified by the community in its various land use plans. Despite the urgency of enhancing the protection of the glacier, this has not yet been done.
54. Also in the context of territorial planning, a new tool from Decree No. 2018-1180, issued on December 19, 2018 on the protection of biotopes and natural habitats specifies the regulatory instruments that prefects can use to protect species and habitats. It includes the possibility of issuing prefectural orders for the protection of natural habitats (APHN - arrêté de protection des habitats naturels).

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<sup>18</sup> Read the 1985 Mountain Law: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000317293/>

<sup>19</sup> Read the 2016 Mountain Law II: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033717812>

55. Glaciers are listed among the natural habitats of interest and protected under the "Habitats" directive and the list of habitats for Natura 2000. As a result, glaciers can be protected by the protection and prohibition procedure provided for in 3° I of Article L.411-1 of the Environmental Code, which prohibits *"the destruction, alteration or deterioration of these natural habitats."*
56. Specifically, regarding the Mer de Glace, a first prefectural order for the protection of natural habitats was signed on October 1, 2020, in the vicinity of this glacier, following the visit of French President Emmanuel Macron on February 13, 2020, in order to limit authorized activities on Mont Blanc.
57. However, this prefectural decree does not change the status of the Mer de Glace since it does not include this glacier in its perimeter. The Tribunal considers that this political choice has no ecological or scientific basis and thus contravenes the very objective of the Mountain Law II.
58. Nevertheless, other territorial protection measures exist in French law to preserve glaciers.
59. Indeed, the objective of the regulations applicable to protected areas is to contribute directly to the protection of wildlife and natural habitats, the maintenance of natural processes, ecosystems and their functions. Protected areas therefore also indirectly contribute to climate change mitigation and adaptation.
60. Among the different types of protected areas are Natura 2000 sites, resulting from the 2008 Habitat Directive, nature reserves, national parks, regional parks and marine parks.
61. Within these different categories, nature reserves enjoy the highest level of protection, since legislation allows for the prohibition, or at least the severe restriction, of human activities in nature reserves. National parks may contain a core area to which access may be prohibited, as do nature reserves, in order to preserve biodiversity in that area.
62. In addition, in application of the Convention on Biological Diversity, which imposes a general obligation on Member States to conserve biodiversity, a strategy of protection through the use of protected areas is recommended, among other means of protection. Thus, France is committed to achieving a quota of 30% of protected areas on its territory by 2030, including 10% with strong protection mechanisms (this quota representing its strategic objectives 2021-2023)
63. The Mer de Glace does not currently have protected area status. In light of this national strategy, and considering its advanced state of degradation and the serious consequences it entails, the Tribunal considers that the French State has the legal means to create a protected area around the Mer de Glace,

with strong protection prohibiting all human activity around the glacier, with the exception of hikes with mountain guides, in order to best preserve the glacier and its rights as protected by the Declaration. However, even establishing a protected area around the Mer de Glace will not protect it from harm from climate change caused by human activities that may occur far beyond the boundaries of a protected area.

64. The violation of the rights recognized in Article 2 of the Universal Declaration of the Rights of Mother Earth implies, on the part of the French State, an effective action for the protection of the Mer de Glace. The Declaration also refers to the duties of human beings, all States, and all public and private institutions : to “establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles” (Declaration, article 3(2)(i)); and to “promote economic systems that are in harmony with Mother Earth, now and in the future” (article 3(2)(l)). The evidence presented to the Tribunal clearly shows that the Mer de Glace is being harmed by climate change which is driven by extractivist economic systems and that there are inadequate precautionary and restrictive measures in place to prevent the disruption of the climate system.
65. It is therefore incumbent on the State to formulate a new legal paradigm in which the relationship between humans and glaciers, rivers, meadows and animals is no longer defined according to their anthropocentric utility. It is a question of leaving the cost-benefit calculation of their protection and entering into a legal model that guarantees a principle of coexistence and solidarity between human and non-human entities.
66. The Tribunal argues that this new legal paradigm is not a quirk. Recognition of the Rights of Nature has already been achieved in several states around the world, including India, where the Uttarakhand High Tribunal has recognized the legal personality of the Gangotri and Yamunotri glaciers.
67. On the other hand, movements for glacier rights are carried by citizens to demand an improvement in national law. The Tribunal will cite the case of Switzerland, where the popular initiative for glaciers (filed by the Green group on December 15, 2017) collected over 112,000 signatures<sup>20</sup> . More tragically, in 2019, a funeral was held for a disappeared Icelandic glacier, the Okjökull. Personifying the glacier, a plaque commemorating its location was placed in the name of the disappeared ecosystem. This event

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<sup>20</sup> See the initiative: <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?Affai - rId=20174312>

shows the close connection between human and non-human inhabitants who depend on the integrity of glaciers. It also illustrates that in Europe, the recognition of the Rights of Nature is not a cultural barrier. On the contrary, it represents an evolution demanded by many movements, collectives and associations in Europe.

68. Furthermore, if the deterioration of climatic conditions is global, the French State cannot shirk its responsibilities and must be held accountable in this case.

69. The plaintiffs raise the issue of its failure to combat climate change and its inability to implement measures to contain this ecological crisis.

70. Indeed, the French government is aware of the destruction of the cryosphere's ecosystems since numerous reports have been published on this subject by the Ministry of Ecological Transition itself. It cannot deny that it benefits from all the knowledge necessary to understand the phenomenon of the melting of the cryosphere.

71. Knowing the stakes and the risks that the melting of the Mer de Glace and the glaciers under its responsibility represent, it is up to the State to fight actively to contain the upheavals linked to climate change and to put in place adequate logistical and human means to overcome this situation.

72. However, the Tribunal emphasized that the applicant association, Notre affaire à tous, recalled that *"it must be noted that despite multiple declarations of ambitious long-term obligations and in contradiction with international commitments, European regulations and French law, France does not respect its short-term objectives in terms of greenhouse gas reduction due to the lack of implementation of measures that are nevertheless considered essential in the fight against climate change."* In the "Case of the Century", a legal action that opposes the State, the public rapporteur has already rendered her conclusions and recognized the unlawful failure of France and also recognized the ecological damage resulting from it.

73. According to the doctrine of the Rights of Nature and in the case before the Tribunal, it is therefore a matter of protecting the integrity of glacier ecosystems, not only for their own sake, but also for the benefit of all living organisms in the area, not just human beings. The functioning of the water cycle implies that the preservation of the glaciers is guaranteed because of the direct repercussions of their melting on all the terrestrial and aquatic environments that depend on them.

74. The Tribunal wishes to make it clear that the State not only has an obligation to respect the Rights of Nature, but also has an obligation to act in such a way as to prevent violations by third parties. This

obligation to prevent environmental damage ensures the application of the principle of prevention, against environmentally damaging activities. These obligations include the obligation to (i) regulate; (ii) supervise and control; (iii) require and approve environmental impact assessments; (iv) establish contingency plans; and, (v) mitigate in cases where environmental damage has been realized. As mentioned above, the Declaration also imposes a positive duty on the State to promote economic systems that are in harmony with Mother Earth and to establish precautionary and restrictive measures to prevent human activities from causing the destruction of ecosystems or the disruption of ecological cycles.

75. However, the ineffectiveness of current measures to respond to the climate emergency has been highlighted. The IPCC report released on August 9, 2021, points out that the concentration of CO<sub>2</sub> (carbon dioxide) in the atmosphere has reached more than 410 ppm - a level that the planet has not experienced for two million years. This transformation due to human activity is reflected in effects that are already clearly observable, writes the IPCC: glaciers are retreating around the world, Arctic ice is decreasing sharply, the ice cover of Greenland has begun to melt, ocean acidification is underway, sea levels are rising steadily (3.6 mm per year since 2006). The report speaks of an "unprecedented" global climate change, with "irreversible" consequences<sup>21</sup>.

76. It is noteworthy for the Tribunal that the French government still had the opportunity recently to include strong measures in the Climate Law to achieve the objectives of the Paris Agreement. France could have adopted a more restrictive framework in order to push for a change in the activities of industries and companies responsible for a large part of climate change, as the members of the Citizen's Climate Convention were demanding. But the government knowingly scaled back the demands made by civil society and opposition parliamentarians, at the request of the Ministry of the Economy and representatives of business organizations concerned about the economic repercussions of such provisions. The Tribunal considers that this missed opportunity can only be attributed to the current government, which bears full responsibility.

77. The Tribunal points to several failings attributable to the French state: the weakness of the current texts, the lack of real political will to reach the commitments of the Paris Agreement and to take into account the warnings formulated by the members of the High Council for the Climate, who nevertheless point

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<sup>21</sup> Read the synthesis of the report: [https://reporterre.net/IMG/pdf/re\\_sume\\_pour\\_les\\_de\\_cideurs-ar6\\_wg1\\_embargo.pdf](https://reporterre.net/IMG/pdf/re_sume_pour_les_de_cideurs-ar6_wg1_embargo.pdf)



out that the Climate Law, still recently adopted by the members of the presidential majority, is not at all up to the challenge. The French government has deliberately undermined the efforts of the Citizens' Climate Convention, the 150 citizens chosen by lot to participate in an unprecedented process that is supposed to empower the people in the fight against climate change. The strategy adopted, that of "small steps" as former minister Nicolas Hulot used to say, is a losing strategy in the race to preserve life.

78. Faced with this observation, it is therefore undeniable that the means should have been and must now be reinforced to deal with the damage caused by global warming to entities in the cryosphere, such as the Mer de Glace. The French state is thus culpable for its inaction.

## **IX. Considerations of the Tribunal on the conduct of the TOTAL company in relation to the facts presented**

79. The TOTAL Group is the leading French company, accounting for 0.9% of global greenhouse gas emissions (458 million tons CO<sub>2</sub>eq), which is more than France's territorial emissions (445 million tons CO<sub>2</sub>eq). According to the Carbon Major report published in 2017, Total is, as a result, one of the 20 companies contributing most to climate change worldwide<sup>22</sup>.

80. As a result of its extensive oil and gas extraction activities, TOTAL is in violation of the Universal Declaration of the Rights of Mother Earth, as well as the Environmental Duty of Care Act.

81. Indeed, the Universal Declaration of the Rights of Mother Earth recognizes the right to clean air and integral health (Article 2) and the obligation to respect and live in harmony with Mother Earth (Article 3). Article 3 states that private institutions must: act in accordance with the rights and obligations recognized in the Declaration; ensure that the pursuit of human wellbeing contributes to the wellbeing of Mother Earth, now and in the future; respect, protect, conserve and where necessary, restore the integrity, of the vital ecological cycles, processes and balances of Mother Earth; and guarantee that the damages caused by human violations of the inherent rights recognized in this Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth.

82. TOTAL's polluting and destructive activities for the living community contribute significantly to global

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<sup>22</sup> Carbon Disclosure Project, Richard HEEDE, "The Carbon Majors Database, CDP Carbon Majors Report 2017."

greenhouse gas emissions, do not respect Mother Earth and have direct consequences on the melting of the Mer de Glace.

83. In addition, the Tribunal notes, at the request of the applicants, that the duty of environmental vigilance arising from the Environmental Charter could also be violated by the activities of the TOTAL company.

84. As the law stands, Article 1 of the Charter of the Environment stipulates that "everyone has the right to live in a balanced environment that respects health" and Article 2 goes on to stipulate that: "*Everyone has the duty to take part in the preservation and improvement of the environment*".

85. On the basis of these two articles, the French Constitutional Council deduced the existence of a duty of care in environmental matters. It recalled: "*that respect for the rights and duties set out in general terms by these articles is imposed not only on public persons and administrative authorities in their respective fields of competence, but also on any person; that it follows from these provisions that any person has the obligation to ensure that no damage to the environment results from his actions.*" (Decision n°2011-116 QPC " Michel z. ").

86. In view of the foreseeability of the worsening of global warming and the resulting risks, such as the disappearance of the Mer de Glace, the TOTAL company is therefore fully obliged to reduce its impact on global warming. Its behavior is therefore wrongful and can be characterized as a violation of Articles 1 and 2 of the Charter of the Environment.

87. In addition, the duty of care, resulting from the law of March 27, 2017 on the duty of care of parent companies and contracting companies, is now codified in Article L225-102-4 of the Commercial Code. This law requires large French companies to draft, publish and implement adequate measures to identify and prevent risks to human rights and fundamental freedoms, the health and safety of individuals, and the environment.

88. As explained above, the activities of the TOTAL Group, which is one of the main producers of greenhouse gas emissions, therefore contribute significantly to climate change, which in turn entails serious risks of harm to the interests protected by the duty of care.

89. Accordingly, TOTAL is required to comply with legal requirements and to establish, publish and effectively implement a compliance plan.

90. The Tribunal would like to point out that the role of fossil fuel companies is now attracting growing interest from the Tribunals. The Tribunal is sometimes seized with requests to strengthen climate and

social justice.

91. In this case, the Tribunal wanted to point out the procedure introduced by Saúl Luciano Lliuya, a Peruvian farmer and high mountain guide, who asked before the German jurisdiction a compensation to the energy conglomerate RWE for the damages caused by the global warming in his municipality of Huaraz. Indeed, the melting of the glaciers and in particular of the glacier located upstream of his village, constitutes a direct threat for the houses. In 2015, he decided to turn against the company RWE, one of the main emitters of greenhouse gases on the planet, to claim its fair contribution to the urban planning work needed to secure his village. This request, a first in Europe, had been rejected by the Tribunal of Essen on December 15, 2016, but the Tribunal of Appeal of Hamm, in 2017 had on the contrary considered that it was admissible and had ordered a more thorough expertise.
92. Companies can no longer avoid their responsibility towards the climate, especially when their activities have a heavy carbon footprint. The TOTAL company can therefore be held responsible for its massive participation in global warming for the impact that this participation has had on the Mer de Glace as well as on the rest of the cryosphere.

## **X. DECISION**

93. The Mer de Glace glacier is part of an indivisible, self-regulating community, Mother Earth, and has intrinsic rights that should be protected without distinction based solely on its utility to humans.
94. The European Tribunal in Defence of Aquatic Ecosystems Tribunal states that, in the Mer de Glace vs. the French State and TOTAL case demonstrates that there is a clear violation of the Rights of Nature.
95. The Tribunal, guided by the concern to preserve the interdependent relationships of the community of life that is the Mer de Glace, but also those of the communities of life that depend on it, is committed to defending the recognition of the rights of Mother Earth and not only of human beings, but of all the beings that compose it in order to restore a legal, social and ecological balance.
96. Through the testimonies and expert reports presented before the Tribunal, the Tribunal was able to characterize how the attack on the integrity of the Mer de glace glacier is an attack on the fundamental source of all life: Water.
97. Considering:
- The Universal Declaration of the Rights of Mother Earth, and also

- The Charter of the Environment
- The Paris Agreement,

98. The European Tribunal rules in the name of all the animate beings who have no voice, the inhabitants of the Mer de Glace, human, but also non-human forming the living community of the glacier, whose existence is intrinsically linked.

99. In this case, the Tribunal makes the following decision:

The Tribunal concludes that the French State is responsible for its failure to combat climate change (including its failure to promote economic systems that are in harmony with Mother Earth, to establish and apply effective norms and laws for the defence, protection and conservation of the rights of Mother Earth, and to hold those responsible for violating the inherent rights recognized in the Declaration are held accountable for restoring the integrity and health of Mother Earth) and recognizes the violation of the right of the Mer de Glace to exist, to regenerate, to maintain its vital cycles without human disturbance, to maintain its identity and integrity as distinct, self-regulating and interrelated beings, to have access to water as a source of life, to enjoy full health, as well as the right to its full and prompt restoration.

TOTAL is also found responsible for violating the rights of the Mer de Glace, for its deliberate and massive participation in climate change and therefore in the violation of the above-mentioned rights.

100. The Tribunal therefore directs that all appropriate measures be taken to ensure compliance with the Mer de Glace, including:

1. Recognition of the legal personality and rights of the Mer de Glace, in particular the right to exist, to the regeneration of its vital cycles and to respect for its integrity.
2. The development and promotion of practices respectful of the Mer de Glace, especially with regard to the establishment of new economic systems in harmony with the functioning of the glacier and compatible with the rights recognized in the Universal Declaration of the Rights of Mother Earth
3. The implementation of a voluntary climate policy to ensure compliance with the commitments of the Paris Agreement and the objective of containing the rise in global temperatures below 1.5°C compared to pre-industrial levels, in order to preserve the Mer de Glace. To do this, the State and major companies must take the necessary precautions to limit greenhouse gas emissions on French territory.

4. Improving the protection of the Sea Ice and other cryospheric entities through the development and implementation of effective standards to defend, protect and preserve the rights of Mother Earth, including:
  - o For the French State :
    - i. To improve the provisions of the Alpine Convention, in consultation with the other States Parties, in order to add specific provisions for the protection of glacial entities, such as the Mer de Glace.
    - ii. To take the necessary measures to preserve the balance of this environment by reinforcing the provisions applicable in the Mountain Law
    - iii. To elaborate territorial plans and programs adapted to the climatic and ecological objectives, in order to include the protection of the Mer de Glace and all the glaciers in a transversal way in all the concerned programmatic documents: Local Urbanism Plans, Territorial Coherence Scheme, Regional Scheme of Development, Sustainable Development and Equality of Territories SRADDET Auvergne Rhone Alpes and the Regional Climate Air Energy Scheme Provence Alpes Côte d'Azur (PACA), basin plan of adaptation to the climatic change, etc.
    - iv. To extend the application of the decree N° DDT-2020-1132 creating the Mont Blanc natural habitat protection area - Site d'exception to the Mer de glace
    - v. According to the national strategy 2021-2023 for protected areas, and considering its advanced state of degradation and the strong consequences it entails, the French State must create a protected area around the Mer de Glace, with a strong protection prohibiting any human activity, except for hikes with high mountain guides and for scientific purposes in order to preserve the glacier as well as possible and to avoid any new disturbance of its life cycles.
  - o For TOTAL: publish a new duty of care plan that includes concrete measures that the company will have to implement in order to limit greenhouse gas emissions from its activities and to take appropriate measures to fully and promptly rectify the harm it

has caused to Mother Earth and to contribute to restoring the integrity and health of Mother Earth.; This new strategy should be applied immediately to all of the company's activities so that they are compatible with the protection of the Mer de Glace.

This decision is certified by:

Co-secretariat of the European Tribunal in Defense of Aquatic Ecosystems

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