

OPINION ON ACCESS TO RIGHTS AND THE NON-TAKE-UP

24 MARCH 2022



The *Opinion on access to rights and the non-take-up* was adopted unanimously at the plenary session of 24 March 2022.

SUMMARY.

While several reports and institutions highlight the difficulty for many citizens to access their rights and ensure they are respected, in this opinion, the National Consultative Commission on Human Rights (CNCDH) notes the irrelevance of creating rights without effective implementation. In order to guarantee the full effectiveness of rights, it recommends firstly rethinking the construction of public policies: by combatting the prejudices and discrimination that encourage non-take-up, evaluating both the measures and access to the rights itself, and involving the beneficiaries of the rights. Secondly, it calls for a rethink on the accessibility of rights by simplifying procedures, developing training for reception staff to provide more human support, ensuring that files are followed up and, finally, developing digital tools adapted to people's situations.

TABLE OF CONTENTS

Summary.	2
Introduction.	4
1. The construction of public policies	8
1.1. Avoid making citizens responsible for non-take-up.	8
1.2. Building differently.	11
1.3. Assessing non-take-up : evaluating and reporting.	12
2. The implementation of public policies.	15
2.1. Rethinking access to rights.	15
2.2. Rethinking the expected proceedings.	20
2.3. Rethinking the follow-up of claims.	26
Summary of recommendations.	29
List of people heard or who contributed to the opinion.	31

INTRODUCTION.

1. The National Consultative Commission on Human Rights (CNCDH), as the independent institution for the protection and promotion of human rights, reminds public authorities that their responsibility is to develop and implement public policies that ensure the effectiveness of human rights. However, this is not the case while the Covid-19 crisis has only amplified the difficulties of accessing rights (health, education, housing, culture and leisure, etc.¹), exacerbating precarious situations in France².

2. Public policies that do not enable everyone to fully access their rights encourage what is now called, for want of more appropriate terminology, non-take-up. A concept that appeared in French public debate in the 1990s, non-take-up fuels political and institutional agendas. From the 1998 framework legislation against exclusion³ to the national strategy to prevent and combat poverty twenty years later⁴, access to rights was to be given a central place. However, many reports and studies from institutions, high courts or associations are regularly published which highlight the difficulty for citizens to ensure their rights are respected due to an organisation of administrations subject to “*government by numbers*”⁵, neglecting the requirement for quality relationships in favour of seeking performance. For example, in a report published in January 2022, the Audit Office noted that “*the [active solidarity income] does not sufficiently benefit the people for whom it is intended, with coverage rates of around 70% for the benefit component and 40% for the support component*”⁶.

3. Although many studies have made it possible to objectify this non-take-up in the specific field of welfare benefits⁷, all rights are called into question: the right to

1 Report of the CNLE (Conseil national des politiques de lutte contre la pauvreté et l'exclusion sociale [National Council for Policies to Combat Poverty and Social Exclusion]), « *La pauvreté démultipliée - Dimensions, processus et réponses* (printemps 2020/ printemps 2021) » [Poverty increasing - Dimensions, processes and responses (spring 2020/spring 2021)].

2 CNCDH, *Avis pour un enseignement supérieur respectueux des droits fondamentaux : se doter des moyens de cette ambition* [Opinion on higher education respecting fundamental rights: providing the means for this ambition], Plenary session of 27 May 2021, JORF no.0130 of 6 June 2021, text no. 47; CNCDH: letters from the observatory on the State of the Health Emergency; *Avis sur les inégalités sociales de santé* [Opinion on social inequalities in health], Plenary session of 17 February 2022, JORF no. 0055 of 6 March 2022, text no. 83.

3 Law no. 98-657 of 29 July 1998 *against exclusion*.

4 National strategy to prevent and combat poverty launched in 2018.

5 A. Supiot, *Le gouvernement par les nombres*, Fayard, 2015.

6 Audit Office, « Le revenu de solidarité active » [active solidarity income], Thematic public report, January 2022. <https://www.ccomptes.fr/system/files/2022-01/20220113-rapport-RSA.pdf>

7 June 2020 report by DRESS: le non-recours aux prestations sociales [non-take-up of welfare benefits]; Christine CLOAREC-LE NABOUR and Julien DAMON: report to the Prime Minister: *La juste prestation* [The right benefit]; https://www.gouvernement.fr/sites/default/files/document/document/2018/09/rapport_de_christine_cloarec-le_nabour_et_julien_damon_sur_la_juste_prestation.pdf; ROUBAN Luc, *Les raisons de la défiance*, Presses de Sciences-Po, 6 January 2022.

housing⁸, health, education, vocational training⁹, etc. Moreover, these obstacles concern both the administrative procedures for accessing rights and the litigation procedures for exercising one's rights before the courts. The CNCDH does not intend to draw up an exhaustive list of situations of non-take-up in this opinion, or evaluate all the existing systems, but to analyse the state of access to rights and the problem of non-take-up in the light of the requirement to respect human rights, beyond the sole issue of accessibility. In this opinion, it deals mainly with administrative non-take-up, bearing in mind that a future opinion may focus on litigious non-take-up.

4. Following on from its previous opinion on the human rights-based approach¹⁰, the CNCDH intends to alert the public authorities to the urgent need to prevent non-take-up, not only to respect the rights of every citizen but also to ensure the effectiveness of public policies and social cohesion. It is necessary to put an end to the stigmatisation of rights holders who are criticised for so-called social assistance at the same time as they feel abandoned by the State, at the risk of leading to a social breakdown and an “*abandonment of their citizenship*”¹¹. This requires a rethink of the access to rights and how it is implemented by institutions, particularly with regard to people in vulnerable situations.

5. Furthermore, the CNCDH wishes to point out that rights cannot be conditional on the prior respect of duties, according to its constant position¹².

6. Non-take-up marks the failure of public policy implementation and accentuates the deterioration of public services. The supposed objective rationality of the economic assessment cannot be cited to justify an organisation that violates human rights. Moreover, economists themselves emphasise how delicate the calculation is, as the social and financial cost of non-take-up should not be underestimated. The more people are helped, the more autonomous and capable they become, so that even

8 27ème Rapport sur l'état du mal logement en France 2022 [27th Report on the state of poor housing in France 2022], Fondation Abbé Pierre.

9 On health: see Observatory on access to rights and care 2020 (Médecins du Monde), <https://www.medecinsdumonde.org/fr/actualites/publications/2020/10/14/observatoire-de-lacces-aux-droits-et-aux-soins-2019>; CNCDH, *Avis sur l'effectivité des droits fondamentaux en prison : du constat aux remèdes pour réduire la surpopulation carcérale et le recours à l'enfermement* [Opinion on the effectiveness of fundamental rights in prison: from observations to remedies to reduce prison overcrowding and the use of confinement], Plenary session of 24 March 2022.

On access to education: Report by Sandrine Mörch, Member of the National Assembly, Schooling and extreme poverty: access to education for all: <https://sandrinemorch.fr/wp-content/uploads/2022/01/Rapport-Scolarisation-et-grande-precarite-lacces-a-leducation-pour-tous.pdf> ; On vocational training : <https://www.inegalites.fr/Les-inegalites-d-acces-a-la-formation-professionnelle>

10 CNCDH, *Avis pour une approche fondée sur les droits de l'Homme* [Opinion for a human rights-based approach], Plenary session of 3 July 2018, JORF no. 0161 of 14 July 2018, text no. 104.

11 Ph. Warin, *Le non-recours aux politiques sociales* [Non-take-up in social policies], Éd. [Presses universitaires de Grenoble](https://www.presses.univ-grenoble.fr/), 2017.

12 CNCDH, *Avis sur la création du revenu universel d'activité* (RUA) [Opinion on the creation of a universal activity income], Plenary session of 23 June 2020, JORF no. 0159 of 28 June 2020, text no. 78.

a purely economic calculation should lead to reducing non-take-up. For example, a patient who is cared for in good time and under good conditions will, in the long term, incur fewer health costs¹³. A person in extreme poverty who is guaranteed minimum security through the implementation of their fundamental rights will regain decent living conditions that will enable them to face their responsibilities, make plans and be autonomous, as the Nobel Prize winners in economics Esther Duflou, Michael Kremer and Abhijit Banerjee have demonstrated¹⁴. This is why a consideration should be given to the need to ensure that all people have adequate means to lead a decent life and exercise their rights¹⁵.

7. The CNCDH notes the now established use of the term non-take-up, even if it regrets that the term seems to suggest that it is the rights holder who is responsible for not taking the necessary steps. It considers that it is the responsibility of authorities to organise themselves in such a way as to avoid this. It notes that non-take-up, according to the definition given by the observatory of non-take-up of rights and services (ODENORE), “*refers to any person who – in any case – does not benefit from a public offer of rights and services which they could claim*”¹⁶. Researchers have highlighted the variety of types of non-take-up that it is important to understand in order to better fight against the causes.

8. A distinction must therefore be made between **involuntary non-take-up** and **voluntary non-take-up** even if we must be careful about this second term¹⁷. Although the rights holder sometimes voluntarily waives a right, this does not however delegitimise the need for it¹⁸. Voluntary non-take-up can be explained by the fear of receiving an undue payment that would have to be reimbursed when the calculation rules are not clear, or by the fear of being stigmatised, which is the case of some parents who fear being reported for the custody of their children if they apply for assistance. There are other reasons for this, such as lack of interest, failure to accept the principle of the offer, cognitive or physical inability to access the information due to a lack of measures

13 Eurofound report « *Accès aux prestations sociales : réduire l'absence de couverture* » [Access to welfare benefits: reducing the lack of cover], 2015, Ph. Warin, *Agir contre le non-recours aux droits sociaux, Scènes et enjeux politiques* [Preventing the non-take-up of social rights, political issues and stages], Éd. Presses universitaires de Grenoble, 2019.

14 Esther Duflou, Michael Kremer and Abhijit Banerjee, *Repenser la pauvreté* [Rethinking Poverty], Le Seuil, 2012 and Esther Duflou, « Plus on aide les gens, plus ils sont aptes à sortir de la trappe à pauvreté » [The more people are helped, the more likely they are to escape the poverty trap], *Le Monde*, 3 January 2020.

15 CNCDH, *Avis sur la création du revenu universel d'activité* (RUA) [Opinion on the creation of a universal activity income], Plenary session of 23 June 2020, JORF no. 0159 of 28 June 2020, text no. 78.

16 Ph. Warin, *Le non-recours : définition et typologies* [Non-take-up: definition and typologies], working paper, ODENORE, June 2010.

17 ODENORE members therefore recognise non-take-up as lack of awareness (when the entitlement is not known), no claim (when the entitlement is known but not claimed), non-receipt (when the entitlement is claimed but not obtained) and as non-proposal (when the service providers do not offer the entitlement, whether it is known about or not).

18 Wim van Oorschot, Antoine Math, « La question du non-recours aux prestations sociales » [The issue of non-take-up of welfare benefits], *Revue des politiques sociales et familiales* Year 1996, no.43 pp. 5-17

to make it accessible, etc.

9. A further distinction must be made between **primary non-take-up** which consists of not claiming a right, which is the most obvious, and **secondary non-take-up**. The latter concerns cases where the citizen has claimed but has not been able to obtain their entitlement because of, for example, the complexity of the procedures. A distinction is also made between **complete non-take-up** where nothing is obtained, and **partial non-take-up** where the individual receives less than what is due. In addition, **permanent non-take-up** concerns cases where the right is never obtained, whereas there may be **temporary non-take-up** when there is a time lag between the date on which the right is actually obtained and the date on which it should have been received, which leads to **non-take-up described as “frictional”** which results from “*the [administrative] time needed to apply for a benefit*”¹⁹.

10. The CNCDH warns that there are cases of **cumulative non-take-up**. A person may in fact accumulate the non-take-up of several rights while full compensation for the infringements is not guaranteed. It is regrettable that preventing non-take-up is not a priority when sophisticated means are deployed to combat fraud (tax, social)²⁰.

11. The CNCDH highlights that discrimination may be at the root of non-take-up, just as prejudice against certain citizens may also fuel it²¹, creating additional obstacles to respecting rights. Moreover, it is clear that the obstacles encountered in asserting rights affect more people in vulnerable situations, who are also more exposed to discrimination.

Thus, migrants in the Calais area who are notified of evictions from their homes on legal grounds or according to incorrect procedures are unable to appeal because of their extremely precarious situation²². The same is true for Travellers, with the issue of the ineffectiveness of their right to housing being a recurring problem to which particular attention is paid²³. Detained foreign nationals who

¹⁹ P. Warin, *op. cit.*

²⁰ V. Dubois, *Contrôler les assistés, Genèse et usage d'un mot d'ordre, Raisons d'agir*, 2021 : Study of the CNAF's control policies and practices since the 1990s, where we have seen not an escalation in fraud but rather the growth and institutionalisation of its control. Just as crime figures are more reflective of police activity, fraud figures are more reflective of changing administrative practices. However, in public debates, the increase in inspection results – their effectiveness – is often equated with an increase in fraud itself.

²¹ Sacha Leduc, « Le non-recours et les logiques discriminatoires dans l'accès aux soins: Le rôle des agents de l'Assurance maladie en question » [Non-take-up and discriminatory logic in access to health care: the role of the health insurance agents concerned], *Vie sociale* 2008/1 (No. 1), pages 69 to 93.

²² CNCDH, *Avis sur la situation des personnes exilées à Calais et Grande-Synthe* [Opinion on the situation of exiles in Calais and Grande-Synthe], Plenary session of 11 February 2021, JORF no. 0045 of 21 February 2021, text no. 44; Human Rights Watch, “*Enforced Misery. The Degrading Treatment of Migrant Children and Adults in Northern France*”, 7 October 2021

²³ CNCDH, *Avis sur le suivi des recommandations du comité des Nations Unies sur les DESC à l'attention de la France* [Opinion on the follow-up to the recommendations of the UN Committee on ESC rights for France], 6 July 2017, p. 33

are notified of an obligation to leave France (OQTF) while in detention also face obstacles in asserting their rights due to their situation. They only have 48 hours to refer a file to the administrative judge to invalidate the OQTF, who will make a decision within 72 hours of the referral²⁴. However, these short time limits and the constraints inherent in detention make it impossible in practice to exercise the right of appeal²⁵.

12. With this opinion, the CNCDH wishes to contribute to the effective respect of rights by preventing the non-take-up of rights and non-use of the law. To this end, it wishes to draw attention to the way in which public policies are constructed (I) and their implementation in order to make them effective (II).

1. THE CONSTRUCTION OF PUBLIC POLICIES.

13. It is the construction of policies that must be rethought in order to develop a culture of rights in France for the benefit of all individuals in the country. Based on respect for fundamental rights, it must first avoid placing the responsibility for non-take-up on citizens (1.), then involve them in the development of measures (2.) and, finally, enable the evaluation of public policies to report on their effectiveness in a transparent manner (3.).

1.1. Avoid making citizens responsible for non-take-up.

14. Although the causes of non-take-up seem to be well known and identified (lack of information, complexity of access conditions and administration rules, social stigma²⁶), the hearings conducted by the CNCDH revealed that, all too often, policies aimed at preventing non-take-up are based on the assumption that the beneficiary of the rights is at fault. The latter might suffer from a lack of knowledge, willingness, understanding of the system or of computer tools, etc. This analysis indicates the moral view of social policies, which implies that, in order to obtain a right, one must apply for it and deserve it.

24 Articles L 614-1 et seq. and L 614-14 and 614-15 of the *Ceseda*

25 CNCDH, *Avis sur le projet de loi « pour une immigration maîtrisée et un droit d'asile effectif » tel qu'adopté par le Conseil des ministres le 21 février 2018* [Opinion on the draft law "for controlled immigration and an effective right of asylum" as adopted by the Council of Ministers on 21 February 2018], Plenary session of 2 May 2018, JORF no. 0105 of 6 May 2018, text no. 28

26 Audit Office, « Le revenu de solidarité active » [active solidarity income], Thematic public report, January 2022: "The General Secretariat for the Modernisation of Public Action has identified eight causes: poor image of the benefit; lack of information; lack of proactivity by the user; unknown eligibility; lack of mediation and support; complexity of the benefit; disruption of the instruction process; and finally low interest in the benefit or its competition with others"; CNCDH, *Avis sur le suivi des recommandations du comité des Nations Unies sur les DESC à l'attention de la France* [Opinion on the follow-up to the recommendations of the UN Committee on ESC rights for France], 6 July 2017, p. 19

15. The term “non-take-up” itself supports this tendency. It is an Anglo-Saxon concept²⁷, which implies that it is the citizens who must act to obtain their right. It may give the impression that the individual who does not exercise their rights would refrain from using them, thus placing the responsibility for this non-take-up on them²⁸. The notions of purpose and motivation appear to be key, and it is therefore up to the citizen to initiate the process. If the term non-take-up is now accepted, it is important that public authorities take this situation into account, which can be a source of the beneficiary’s lack of understanding, and rethink the way in which rights are developed.

16. Firstly, the CNCDH notes that the failure of the systems should not be attributed to their beneficiaries, but that the responsibility of the systems, procedures and institutions themselves responsible for implementing access to rights (poor targeting of the target populations, lack of resources to manage applications, etc.), should be accepted²⁹. Social policies must therefore not only be designed to compensate for disabilities or deficiencies but also to put an end to citizenship breakdowns through implementing government support³⁰.

For example, unaccompanied minors face many obstacles in accessing their rights, starting with an age assessment carried out in conditions that do not comply with fundamental rights. These violations then have consequences for access to other rights: accommodation, access to health care, education, etc. In addition, they regularly encounter difficulties related to the lack of official documents allowing them to be identified³¹.

27 Deville, Clara, « Réflexions à propos de la notion de « non-recours » aux politiques sociales » [Reflections on the notion of non-take-up in social policies], *Sciences & Actions Sociales*, vol. 7, no. 2, 2017, pp. 78-89.

28 There are many complex forms of appeal that citizens may encounter. Thus, in administrative law, the mandatory preliminary administrative appeal [recours administratif préalable obligatoire] (RAPO) introduced in the fields of foreign nationals’ rights, driving licences, civil service and prison service, adds an additional step which may be a source of complexity for the litigant.

29 Audit Office, « Le revenu de solidarité active » [active solidarity income], Thematic public report, January 2022. <https://www.ccomptes.fr/system/files/2022-01/20220113-rapport-RSA.pdf> Ph. Warin and P. Mazet, *La lutte contre le non-recours: des enjeux pour la production des politiques sociales* [Preventing non-take-up: issues in producing welfare policies], *Revue Regards* 2014/2 no. 46: An observation of non-take-up shows that the more targeted the welfare benefits are, the more they lead to non-take-up, resulting in the recipients’ distrust and rejection and officers’ poor understanding of the system due to its excessive complexity.

30 Warin Ph., 2008, « Le non-recours par désintérêt: la possibilité d’un « vivre hors droits » » [non-take-up due to disinterest: the possibility of “living beyond rights”], *Vie sociale*, no. 1, p. 9-19.

31 CNCDH, *Avis sur les 30 ans de la Convention internationale relative aux droits de l’enfant La convention au regard de la construction de l’enfant* [Opinion on the 30th anniversary of the International Convention on the Rights of the Child The Convention with regard to the construction of the child], Plenary session of 21 November 2019, JORF no. 0279 of 1 December 2019, text no. 54. *Avis sur la situation des personnes migrantes à la frontière franco-italienne missions dans les Hautes-Alpes et les Alpes-Maritimes - mars-avril 2018* [Opinion on the situation of migrants at the French-Italian border - missions in the Hautes-Alpes and Alpes-Maritimes - March-April 2018], Plenary session of 19 June 2018, JORF no. 0150 of 1 July 2018, text no 24; *Avis sur la situation des mineurs isolés étrangers présents sur le territoire national (...)* [Opinion on the situation of foreign unaccompanied minors present on national territory (...)], 26 June 2014, JORF no. 0156 of 8 July 2014, text no. 92. Défenseur des droits, *Rapport Les mineurs non accompagnés au regard du droit* [Report on Unaccompanied Minors under the Law], February 2022.

With regard to children with disabilities, the CNCDH also notes that access to education is far from guaranteed for all these children. Too many children with disabilities are still unsupported³²: more than 104,000 pupils, out of 183,619 young people with disabilities enrolled in secondary education, do not have access to this system. Furthermore, support is inadequate when it exists: appointments for unplanned tasks, without individualised training time, lack of coordination between the child's various times of support (in class, in the canteen, in the extra-curricular activities, etc.). Finally, some associations report that in some Inclusive Localized Support Centres [Pôles inclusifs d'accompagnement localisés (PIAL)], the employee arrives in the morning and discovers their timetable, their place of work and the number of pupils to be monitored during the day.

17. Building policies for a *rational homo economicus* leads to the dehumanisation of the process that should instead enhance the dignity of rights holders. ODENORE's work has thus largely documented the link between lack of social recognition and non-take-up. Rights holders are made invisible, and this trend is reinforced by dematerialisation. However, the public concerned should not be considered only as "users" but as individuals with fundamental rights³³. These rights must be respected in their entirety; for example, the processing of a claim must not lead to infringing the right to privacy. The hearings conducted at the CNCDH highlighted practices consisting of asking the same questions several times, or even inappropriate questions, which harm the right to privacy.

18. Secondly, the CNCDH stresses the importance of bringing an end to the misconceptions and prejudices that encourage non-take-up and discrimination in access to rights. It points to misinformation questioning certain rights as a source of disincentive to the activity, which promotes a punitive dimension of social measures³⁴. Disinformation also consists of systematically highlighting the extent of welfare benefit fraud, without relating it to other types of fraud that are corrosive to society, such as tax fraud or fraud involving employer contributions, and without

32 In secondary education, in 2020/2021, only 4,958 pupils were receiving full-time support, 16,760 part-time support and 57,816 shared support within a class. *Repères et références statistiques*, Ed. 2021, Directorate for Evaluation, Forecasting and Performance (DEPP).

33 ATD Quart Monde, *L'accès aux droits : Freins & propositions. Contribution du Groupe de suivi de la Stratégie de prévention et de lutte contre la Pauvreté* [Contribution of the Monitoring Group of the Strategy to prevent and combat poverty]; CNCDH, « *Connaître, définir, sensibiliser et combattre les stéréotypes et les préjugés à l'égard des personnes handicapées* » [Knowing, defining, raising awareness and combatting stereotypes and prejudices towards people with disabilities], Preliminary report, July 2021.

34 Esther Duflo, Michael Kremer and Abhijit Banerjee, *Repenser la pauvreté* [Rethinking Poverty], Le Seuil, 2012 and Esther Duflo, « Plus on aide les gens, plus ils sont aptes à sortir de la trappe à pauvreté » [The more people are helped, the more likely they are to escape the poverty trap], *Le Monde*, 3 January 2020. https://www.lemonde.fr/idees/article/2020/01/03/esther-duflo-il-faut-cesser-de-se-mefier-des-pauvres_6024720_3232.html.

putting it into perspective or explaining it while many reports objectify this reality³⁵. The work on welfare benefits and fraud is sometimes lumped together, so that some authorities are tempted to put more resources into preventing fraud than into preventing non-take-up. Such misinformation leads to the stigmatisation of individuals with social rights, who are considered as “assisted”, without taking into account the vulnerability of some of these people who are particularly exposed to the risk of non-take-up.

Thus, migrants are often suspected of fraud or of being in a situation of “taking advantage of the system”, so that the aid granted to them is often increasingly restricted³⁶.

19. Consequently, the CNCNDH recommends that the resources allocated to preventing non-take-up be at least at the level of those dedicated to preventing fraud. It draws attention to the temptation, even if unintentional, to make budgetary savings or avoid overloading overburdened public services by refraining from adequately addressing non-take-up. It is necessary to combat certain discourse that presents preventing non-take-up as “*political nonsense*” that would require additional spending and the abandonment of savings made³⁷, while it is obvious that the cost to society is much higher when there is no access to rights (impact on public health, education, social cohesion, etc.). The CNCNDH insists on the need for all welfare policies and access to rights to be considered from the perspective of citizenship and dignity.

1.2. Building differently.

20. While there is a temptation to place the responsibility for non-take-up on those eligible, the CNCNDH believes that the design failures of the systems, largely denied by policymakers, are the main cause. This is why it seems necessary to conceive and build the systems differently. In line with its opinion on the rights-based approach³⁸, the CNCNDH notes that the effectiveness of public policies depends on the involvement of beneficiaries and citizens in their design, provided that they respect the principles grouped together by UN bodies under the acronym PANEL - Participation, Accountability, Non-discrimination, Empowerment, and Legality. In order

35 E.g. Audit Office, « le revenu de solidarité active » [active solidarity income], Thematic public report, January 2022: “The majority of this fraud actually relates far more to the sums paid rather than the actual eligibility of people for the RSA scheme. Hence 70% of detected fraud cases relate to omissions or errors in declarations of means.”, p. 16.

36 CNCNDH, *Déclaration relative à la nouvelle carte de paiement de l'allocation pour demandeur d'asile (carte ADA)* [Declaration on the new payment card for the asylum seeker's allowance (ADA card)], Plenary session of 28 January 2020, JORF no. 0028 of 2 February 2020, text no. 60; see CNCNDH letter to the Prime Minister on the questioning of state medical aid, 2 October 2019.

37 Warin and P. Mazet, La lutte contre le non-recours: des enjeux pour la production des politiques sociales [Preventing non-take-up: issues in producing welfare policies], *Revue Regards* 2014/2 no. 46.

38 CNCNDH, *Avis pour une approche fondée sur les droits de l'Homme* [Opinion for a human rights-based approach], Plenary session of 3 July 2018, JORF no. 0161 of 14 July 2018, Text no. 104.

to ensure effective participation, the CNCDH recommends “*combining knowledge and practices*”³⁹ between the persons concerned, experts, scientific knowledge and professionals. This approach makes it possible to change practices by changing the way we look at each other. The National Charter on Access to Rights of 21 February 2017⁴⁰ which incorporates the consultation of the persons concerned, is an example. Rethinking the user as a rights holder will not only improve the systems but also their acceptability.

Recommendation No. 1: The CNCDH recommends that public policies be built on a rights-based approach. It points out the urgent need to build them by involving the people concerned so that the organisation put in place serves them and does not create unnecessary and unanticipated obstacles, which lead to non-take-up.

21. This new way of building policies requires a simplification of the systems. The CNCDH does not wish to call for a new reform that would add to the existing multiple administrative and textual layers, but to warn of the need to reflect on their implementation⁴¹. It is only in specific cases that a well thought-out simplification with the beneficiaries can be conceived⁴².

1.3. Assessing non-take-up : evaluating and reporting.

22. While the evaluation of public policies plays a central role in restoring citizens’ confidence in political decisions⁴³, the CNCDH considers that evaluations of non-take-up are insufficient or insufficiently used. In addition, they tend to focus on the non-take-up of welfare benefits. However, the CNCDH is analysing the evaluation that should apply to all cases of non-take-up. The phenomenon of non-take-up was measured

39 The approach of “Combining knowledge and practices with people experiencing poverty” [“Croisement des savoirs et des pratiques avec des personnes en situation de pauvreté”] was developed by ATD Quart Monde.

40 National Charter on Access to Rights, signed on 21 February 2017, by the Minister of Justice and seven associations and federations (Droits d’urgence, Restaurants du cœur, Secours catholique, Fondation Abbé Pierre, ATD quart monde, Cimade and RENADEM).

41 Audit Office, « le revenu de solidarité active » [active solidarity income], Thematic public report, January 2022. <https://www.ccomptes.fr/system/files/2022-01/20220113-rapport-RSA.pdf> and Report to the Prime Minister: La juste prestation : pour des prestations et un accompagnement ajustés [The right service: for appropriate benefits and support] – 2018 https://www.gouvernement.fr/sites/default/files/document/document/2018/09/rapport_de_christine_cloarec-le_nabour_et_julien_damon_sur_la_juste_prestation.pdf.

42 See chapter X – “Social” by Elise Langellier, of the GIP Mission de recherche Droit et justice report, Administrative sanctions in the technical sectors (dir. M.Deguerge, G.Marcou and C.Teitgen-Colly): “Thus, while the breach appears to be relatively well defined by legislation (in particular with regard to the omission in the declaration), its scope is not always clear. This is the case for means-tested welfare benefits. Not all types of means have to be declared (e.g. some bank products have to be declared, others do not). The scope of what must be declared or not according to the welfare benefits sometimes varies according to the organisation; insured individuals sometimes make errors because of a lack of knowledge of the social legislation itself and not because of a lack of clarity in the legislation determining the offence”.

43 Conseil d’État, *Étude annuelle 2020, Conduire et partager l’évaluation des politiques publiques*, [Annual 2020 study, Conducting and sharing the public policy evaluation] July 2020

when the national family allowance funds (*caisses nationales d'allocations familiales*) sought to find out whether their recipients were receiving the amounts due to them. The results of the evaluations carried out were therefore used to address non-take-up. The hearings conducted by the CNCNDH confirmed that some authorities are developing proactive policies aimed at evaluating the effectiveness of the social measures they are responsible for implementing, but also revealed the difficulties of carrying out detailed and individualised evaluations. The Commission wonders about the scope of these evaluations in the face of successive measures, with no real improvement in access to rights⁴⁴. In the light of what has just been said about the need to rethink the design of social policies, the CNCNDH believes that it is appropriate to consider what should be evaluated, and with whom. As the Audit Office recently pointed out in relation to the active solidarity income⁴⁵, the evaluation can concern both the system and the access to rights itself, which applies to all rights.

23. The CNCNDH considers it important to distinguish between independent evaluation, carried out on the basis of research, and evaluation carried out by the authority itself. It is imperative that public authorities as a whole take ownership of this independent and transparent evaluation, so that a public debate can be organised on this basis and the conclusions drawn from it⁴⁶. This evaluation should cover the “blind spots” of the studies conducted so far concerning welfare benefits and services that have been little studied but also access to justice, by integrating the issue of discrimination⁴⁷. It could also lead to an estimate of the amounts not spent by the State and local authorities as a result of non-take-up, considered as a “social debt”. The amounts thus saved should, as far as possible, be deployed to fund policies to reduce non-take-up⁴⁸. However, the CNCNDH is aware that a quantified assessment can have limitations, with unreliable data and changeable statistics. There is room for improvement in the figures, the duration of non-take-up situations and cumulative situations. The cost of the evaluation in terms of gains in access to rights must also be taken into account.

44 The National health insurance fund [Caisse nationale assurance maladie] has indicated that it has set up a national plan to reduce non-take-up, including work on monitoring health. However, the CNCNDH wonders whether this plan takes into account the failings of the mechanisms previously in place.

45 *Ibid.* “Although the RSA is designed to be a temporary safety net facilitating access to activity, it only plays this role on a long-term basis for about a third of its beneficiaries, which raises the question of its suitability for those who are the most distant from employment in the long term. Contrary to the idea of a stepping stone to employment put forward when it was created, the RSA is seen first and foremost, and increasingly so, by its beneficiaries and those who support them as a minimum income. It is in view of this reality that the effectiveness of rights and obligations must be evaluated”.

46 Council of State, *Étude annuelle 2020, Conduire et partager l'évaluation des politiques publiques*, [Annual 2020 study, Conducting and sharing the public policy evaluation] July 2020.

47 For example, each year in its report on combatting racism, antisemitism and xenophobia, the CNCNDH recommends the creation of an observatory for education in order to provide information on the phenomenon (quantitatively and in order to identify the specific difficulties in certain territories) and to respond better to it.

48 Secours catholique, Caritas France, ODEMORE, *Une dette sociale qui nous oblige* [social debt responsibility], April 2021.

24. The evaluations should, in particular, lead to the assessment of undue payments as a result of administrative errors or the unsuitability of the systems, which destabilise households forced to repay amounts paid to them when they were not entitled to them⁴⁹. The claims system, which places a large part of the file management on the beneficiaries, does not look favourably on recognising the right to make an error. For example, the files of the Departmental Homes for Disabled Persons [*maisons départementales des personnes handicapées (MDPH)*], which are often difficult to fill in online without guidance, are the source of many errors⁵⁰. In this respect, consideration should be given to the total or partial remissions that can be granted in case of an error by the authorities. An evaluation should lead to the recording of all non-take-up and undue payments as well as the assessment of discontinued rights⁵¹.

25. This is why the CNC DH recommends that the public authorities present transparently the results of the measures taken. These should be discussed, particularly in Parliament, as part of the finance bills, beyond the indicators currently included in the budgetary documents submitted to national representatives⁵². Pilot schemes aimed at reducing non-take-up should be evaluated in order to measure their effectiveness. This discussion is the necessary step in an effort to report on the effectiveness of social policies⁵³.

Recommendation No. 2: The CNC DH recommends conducting evaluations of public policies that target both the system and the access to rights itself. It points out that these evaluations must be transparent, cross-cutting, qualitative and quantitative.

49 Report to the Prime Minister: La juste prestation : pour des prestations et un accompagnement ajustés – [The right service: for appropriate benefits and support] 2018 https://www.gouvernement.fr/sites/default/files/document/document/2018/09/rapport_de_christine_cloarec-le_nabour_et_julien_damon_sur_la_juste_prestation.pdf; each year, 27% of CAF recipients receive a payment in error. This is the case for half of those receiving the RSA.

50 CNC DH, *Connaître, définir, sensibiliser et combattre les stéréotypes et les préjugés à l'égard des personnes handicapées* [Knowing, defining, raising awareness and combatting stereotypes and prejudices towards people with disabilities], Preliminary report, July 2021

51 Secours catholique, *ibid*.

52 See, in particular, the cross-cutting policy documents (DPT, « orange budgétaire »). For 2022, acceptance of “Preventing difficulties and disruptions - Reducing non-take-up, securing aid and promoting access to rights and justice” (since the 2014 finance bill, this acceptance of the “social inclusion” DPT is the first section of the “preventing difficulties and disruptions” area). <https://www.vie-publique.fr/fiches/21874-les-documents-annexes-au-projet-de-loi-de-finances-plf>.

53 This monitoring could be inspired by the Supervisory Board of the Supplementary Health Insurance Fund [Conseil de surveillance du fond de la Complémentaire Santé Solidaire], abolished on 31 December 2020, made up of members of parliament and representatives of civil society and mutual societies. As part of its tasks, the fund was to propose, among other things, follow-up measures and an analysis of the functioning of the schemes and formulate proposals for improvement. The results of the research were presented at half-yearly plenary sessions during which members were invited to react, give feedback from the field and formulate proposals to improve the system.

2. THE IMPLEMENTATION OF PUBLIC POLICIES.

26. The reasons for non-take-up lead the CNCDH to stress the importance of rethinking the accessibility of rights (1), the proceedings expected (2.) but also the follow-up of claims (3.).

2.1. Rethinking access to rights.

27. **Informing people and staff about rights.** The CNCDH regrets that the issue of non-take-up is sometimes perceived solely in terms of people's lack of information and their inability to claim their rights. While there is always room for improvement in this area⁵⁴, it is the responsibility of the public authorities to ensure that the rights of every citizen are respected. To achieve this, the implementation of the systems must be designed to ensure an access to rights that takes into account the need "to reach out".

28. In this respect, information is a necessary prerequisite. The CNCDH points out that it should not only be developed to benefit citizens but also administrative staff. Due to the complexity of the systems, the administrative staff themselves often struggle to understand them and, consequently, promote them⁵⁵. The entitlement to social rights requires a thorough analysis of the situation, the documents, and all the systems. However, the increasing complexity sometimes makes this analysis complicated. As the Audit Office points out in relation to the active solidarity income, *"The quality of referral is more difficult to assess, but there are notable inconsistencies at both national and departmental level. In other words, depending on their department of residence, the same beneficiary is likely to be supported by Pôle emploi or by organisations with a different core focus. This situation raises the issue of the appropriate balance between individual needs and the responses provided. In fact, Pôle emploi confirms that a significant proportion of the people referred to its agencies are not actually prepared for employment and would rather warrant social support"* [unofficial translation]⁵⁶.

29. The information deficit is largely due to the authority's excessive specialisation. During the hearings conducted by the CNCDH, the impossibility, for example, for social workers to resolve technical barriers or share expertise between authorities, due to a lack of knowledge of what people are entitled to, was highlighted. The increasing number of circulars, sometimes unpublished, and the lack of harmonisation of practices

54 Ph. Warin, Mieux informer les publics vulnérables pour éviter les non-recours [Better inform vulnerable populations to avoid non-take-up], Informations sociales, 2003, no. 178.

55 CNCDH, *Avis sur le suivi des recommandations du comité des Nations Unies sur les DESC à l'attention de la France* [Opinion on the follow-up to the recommendations of the UN Committee on ESC rights for France], 6 July 2017, p. 20 and 21: *"Another possibility, given the particular technical nature of existing systems, which makes it difficult to challenge decisions or even to assess them, could be to train professionals in these rights so that beneficiaries are supported as far as possible."*

56 Audit Office, « le revenu de solidarité active » [active solidarity income], Thematic public report, January 2022.

in France, complicate the analysis of situations and access to rights⁵⁷. In the field of foreign nationals' litigation, this complexity has led the Council of State to recommend the drastic simplification of litigation procedures by reducing them from twelve to three depending on their urgency⁵⁸.

30. Furthermore, in order to receive full information about their rights, they should be adequately notified or implemented. However, as the CNCDH observed during its visit to the north of France, some expulsion procedures, particularly against migrants living in the Calais area, are based on wrong procedures, which do not even allow for an appeal⁵⁹.

Recommendation No. 3: The CNCDH recommends implementing clear and intelligible information systems for both beneficiaries and administrative staff. Their development should be based on the situation of the person concerned in order to facilitate access to rights. The use of clear language and the use of legal design⁶⁰ should be encouraged.

31. **Information on the organisation of rights.** Faced with this administrative complexity, the CNCDH endorses the recommendations of several associations campaigning for a single entry point⁶¹ or, at least, the allocation of a single contact person enabling the individual to be referred and followed up, thanks to work adapted to their particular situation and needs, at least by category of rights (welfare benefits, justice⁶², health). This would avoid the need for beneficiaries to re-explain their situation several times to different contact persons and reproduce the number of documents to be presented⁶³.

57 For example, with regard to the right of residence of vulnerable European citizens, the hearings conducted by the CNCDH revealed various interpretations depending on the establishment. The CNAM circular was made public in 2021 after many requests from supporting associations. With regard to unaccompanied minors, the lack of harmonisation throughout France creates unequal situations between departments in terms of access to rights.

58 Council of State, Twenty proposals to simplify litigation for foreign nationals in the interest of all, 2020.

59 CNCDH, *Avis sur la situation des personnes exilées à Calais et Grande-Synthe* [Opinion on the situation of exiles in Calais and Grande-Synthe], Plenary session of 11 February 2021, JORF no. 0045 of 21 February 2021, text no. 44; Human Rights Watch, "Enforced Misery: The Degrading Treatment of Migrant Children and Adults in Northern France" 7 October 2021.

60 Legal design is a way of designing legal documents and tools in such a way that legal information is clear and understandable (e.g. use of diagrams to explain court decisions).

61 See Recommendation 11 of the ATD quart monde report on the RSA: "Having a single contact person chosen by the individual who follows up with them and helps them until they start training or find a professional activity. At any time, the beneficiary can ask to change the contact person based on the principle of the free choice of doctor to avoid having to re-explain their situation each time." See also Recommendation 10, Secours Catholique report on non-take-up, p. 53.

62 See *Et si on parlait du justiciable du 21ème siècle*, S. Amrani Mekki Dir, Dalloz Coll. Themes and comments, 2018: consideration of a contact person within the courts to coordinate the action of various judges: judge for protection cases, children's judge, family affairs judge, etc.

63 Some hearings reported that documents were requested five times due to a lack of organisation and coordination of services or that files required around 50 or more photocopies.

32. The France Services areas could be an improvement, as they offer access to a cluster of services and digital mediators, accessible by public transport within a 30-minute journey. The way in which the service is sometimes designed, for example by reserving a space for children to wait during the parents' appointment, is a very good example to follow. However, at this stage, there are still not enough people participating (the aim of 2,000 spaces by 2022 has not yet been reached) to be a real point of contact for users. Moreover, they do not seem to receive sufficient training on the various situations of vulnerability that may be encountered⁶⁴. Regional disparities have been noted. The CNCDH recommends that their implementation be continued and insists that they remain a public service mission that should not be privatised.

Recommendation No. 4: The CNCDH recommends putting in place a single entry point or single contact person adapted to the needs and situation of each individual, which would enable a qualitative articulation of aids. By applying an “outreach” policy, the contact person should be able to inform the individual of their rights and the procedures to be followed without having to repeat the process.

33. **Welcoming beneficiaries.** Reception staff should, as a priority, be trained in appropriate reception. In this respect, the CNCDH welcomes the setting up, in some courts, of offices for CAF (family allowance funds [*caisses d'allocations familiales*]) representatives or lawyers during hearings that may involve particularly vulnerable groups (e.g. unpaid rent, evictions, over-indebtedness). Effective reception involves tailoring reception methods to sometimes vulnerable populations and designing them according to individuals' actual situations, their living conditions and their relationship to time. It is therefore necessary to (re)think the reception hours for the public, which are sometimes incompatible with work or family commitments, but also to think about the way in which they are welcomed. Therefore, special attention should be paid to people who find it more difficult to express their rights due to the language barrier, but also due to a lack of knowledge of their needs, stress linked to their precarious situation or post-traumatic stress. Increased vigilance is needed with regard to victims of human trafficking, including minors, for whom special training is required⁶⁵. The CNCDH recommends that consideration should be given to the practice

⁶⁴ Secours Catholique report, spec. p. 52: “we recommend that a users' advisory council be systematically set up to check that it is working properly and to make proposals. It would also be necessary to develop the offices for local representatives of the Defender of Rights.”

⁶⁵ CNCDH, *Avis sur la prévention et la lutte contre la prostitution des mineurs et la traite à des fins d'exploitation sexuelle* [Opinion on preventing and combatting child prostitution and trafficking for sexual exploitation], Plenary session of 15 April 2021, JORF no. 0092 of 18 April 2021, text no. 66.

of an “emotional referent” or “silent third party”⁶⁶ who can support an individual and help them to restore their word. The CNCDH also notes what it has repeatedly stressed in other opinions, namely that digital technology must serve rights but not enslave them⁶⁷. It is important to still maintain an actual physical reception for people⁶⁸, in addition to online processes.

Recommendation No. 5: The CNCDH recommends piloting the practice of the “emotional referent”, otherwise known as a “silent third party”, who can support an individual and help them to restore their word.

34. It is essential that staff welcoming the public are trained to understand their needs and have sufficient and appropriate time for listening, the duration of which should not be strictly limited⁶⁹. The quality of the relationship established at this stage depends on the quality of the access to rights. The CNCDH warns of the burdens that currently weigh on these staff, who are under pressure regarding the time available per person seen, and who are forced, by software that may no longer allow access to the file, to refuse those who are judged to be excessively late, with no regard for the reality of the situation⁷⁰. This can lead to non-take-up due to benefits not being offered, as the pressure on staff prevents them from processing applications correctly and thus

66 See the Brasilia Regulations regarding Access to Justice for Vulnerable People, §2. Assistance (65), p. 16: “When the specific situation of vulnerability makes it advisable, the statement and other procedural acts will be carried out in the presence of a professional, whose function will be to guarantee the rights of the vulnerable person. It may also be convenient to have a person present at the act to provide emotional support for the vulnerable person”. ATD Quart-Monde defines a silent third party as follows: “a person without official status, who acts as an intermediary between institutions and marginalised or vulnerable people”. ATD Quart Monde, “Micheline ADOBATI, là pour faire valoir ce que de droit” [Micheline ADOBATI, there for all legal intents and purposes], published on 26 March 2017, Assa Diarra, Citizen Reporter. Online: <https://www.atd-quartmonde.fr/micheline-adobati-la-pour-faire-valoir-ce-que-de-droit>. The practice of the silent third party has been piloted at the Rouen CDAD as part of a departmental charter for access to the law: “The CDAD would like to encourage the presence of “silent third parties” during appointments for accessing the law and at hearings concerning rental disputes at the Rouen tribunal judiciaire [ordinary court]. This third party, who does not intervene during the appointments or hearing, is neither a mediator or a lawyer but a volunteer who has the trust of the individual attending. They accompany the individual and are there to reassure them. The objectives are to reduce failures to appear, facilitate speaking out and assist in understanding the decision afterwards” <https://www.cdad-seinemaritime.fr/index.php/14-actualites/114-signature-charte-departementale-d-acces-au-droit>.

67 CNCDH, *Avis pour un enseignement supérieur respectueux des droits fondamentaux : se doter des moyens de cette ambition* [Opinion on higher education respecting fundamental rights: providing the means for this ambition], Plenary session of 27 May 2021, JORF no. 0130 of 6 June 2021, text no. 47; See Defender of Rights, *Rapport Dématérialisation et inégalités d'accès aux services publics* [Dematerialisation and unequal access to public services] 16 February 2022; *Annual reports of the CNCDH on combatting racism, antisemitism and xenophobia*.

68 It should be noted that this reception must be designed to be accessible for people with disabilities.

69 Clara Deville, « Les chemins du droit, Ethnographie des parcours d'accès au RSA en milieu rural » [Legal avenues, Ethnography of routes to access the RSA in rural areas], *Gouvernement et action publique* 2018/3 (VOL. 7), pages 83 to 112.

70 Clara Deville, « Réflexions à propos de la notion de « non-recours » aux politiques sociales » [Reflections on the notion of non-take-up in social policies], *Sciences & Actions Sociales*, vol. 7, no. 2, 2017.

offering the appropriate entitlements⁷¹. Benefits may also not be offered due to the employee considering that access to rights will be counterproductive with regard to the beneficiary's situation. For example, given the complexity of the eligibility criteria for the DALO (*Droit au logement opposable* [enforceable right to housing]), some of the people interviewed indicated that the DALO was sometimes not even proposed to certain families, on the grounds that the system would be too complex to be successful, or even too costly.

35. The CNCNDH wishes to emphasise that the current situation results not only in no access to rights but also suffering at work among administrative staff, who sometimes lose the meaning of their public service missions and also suffer a form of “*institutional abuse*”⁷². Staff are faced with contradictory instructions, asking them to carry out a detailed examination of applications, while under time pressure and pressure to meet targets⁷³. In order to better involve them, the Commission recommends developing criteria for a qualitative assessment of the relationship.

Recommendation No. 6: The CNCNDH recommends developing training for reception staff in supporting people and ensuring their welcome is appropriate. This is a condition for understanding people's needs in order to improve the effectiveness of rights.

36. **Reaching out to beneficiaries.** The quality of information is not enough because there are always people living outside the official channels. It is therefore essential to develop an “outreach” policy targeting these other beneficiaries of rights and offer solutions to those who do not ask for anything. This requires a realistic view of beneficiaries' living conditions. The example of the energy voucher is, in this respect, a perfect illustration of what can be done (identification by taxable income

71 For example, the CNCNDH has warned on many occasions of the shortcomings of the asylum application procedure in the one-stop shops for asylum seekers (GUDA): CNCNDH, *Avis sur le projet de loi « pour une immigration maîtrisée et un droit d'asile effectif »* tel qu'adopté par le Conseil des ministres le 21 février 2018 [*Opinion on the draft law “for controlled immigration and an effective right of asylum” as adopted by the Council of Ministers on 21 February 2018*], Plenary session of 2 May 2018, JORF no. 0105 of 6 May 2018, text no. 28.

72 Évaluation participative du revenu de solidarité active (RSA) [Participatory assessment of the active solidarity income (RSA)], ATQ quart monde report to the Audit Office, January 2021, p. 20: “*Activists regularly mention institutional abuse which places them in an unbalanced confrontation between the recipient and the social worker who represents the institution. In this way, interpersonal relations are top-down, which can result in the recipient withdrawing. Furthermore, the procedures implemented in some regions appear to be inquisitorial. Some experienced very hurtful moments of humiliation or suspicion during the process. As regards the support given to recipients by the staff in charge of this task, it was reported that the appointments do not allow recipients to plan ahead, due to a lack of advice and contact persons who are not sufficiently mobilised to take effective action to reintegrate recipients. In our view, the expression of the legitimacy and authority of institutions in the face of people living in extreme poverty should not exempt public service staff from making recipients actors and partners in the plans that concern them*”.

73 Ph. Warin and P. Mazet, *La lutte contre le non-recours: des enjeux pour la production des politiques sociales* [Preventing non-take-up: issues in producing welfare policies], *Revue Regards* 2014/2 no. 46.

and automatic sending). When possible, the automatic nature⁷⁴ of the grant should be reflected on in order to consider the issue of respecting the wishes of the beneficiary, who must always be able to refuse aid⁷⁵.

37. The CNCNDH notes that the cross-referencing of files (data mining⁷⁶) is generally only used to identify cases of fraud. Although some family allowance funds have developed an “outreach” policy using these techniques to identify beneficiaries of rights without them having to come forward⁷⁷, the Commission is however reserved about the use of data mining, which could potentially infringe fundamental rights. While we can hope for a targeted use, strictly limited to the information necessary to grant rights, the dangers remain, which call for serious consideration in addition to an evaluation of experiments.

2.2. Rethinking the expected proceedings.

38. **Reducing the unnecessary proceedings.** Although citizens know that they have rights, it is clear that non-take-up of services remains, whether voluntary or not. The CNCNDH would like to warn of the need to reduce this “frictional” non-take-up linked to administrative difficulties. The work and hearings it has conducted show that the often unnecessary complexity of the procedures, which are sometimes repetitive or even illegal, complicated or impossible access, and stigmatising proposals, are an identified cause of non-take-up.

For example, unaccompanied minors are facing new difficulties since the creation of a support system for assessing their age⁷⁸. Departments must now use this file, except where minority is evident, adding a further step to the age-

74 CNCNDH, *Avis sur la création du revenu universel d'activité (RUA)* [Opinion on the creation of a universal activity income], Plenary session of 23 June 2020, JORF no. 0159 of 28 June 2020, text no. 78. It should be noted that the plan to standardise and simplify the benefits system, which had been the subject of numerous public and institutional consultations, has been suspended due to the health crisis. Work resumed in spring 2021, and according to the first version of a prefiguration report, not yet made public, submitted to the Prime Minister at the beginning of 2022, the objective would be to standardise the system of benefits, rather than merge them. The CNCNDH will carefully monitor the reform, if any.

75 Secours Catholique report, spec. p. 50.

76 Data mining is a set of statistical and computer methods dedicated to large-scale data exploration and analysis (Big data). Using data segmentation and probability distribution, the algorithms are designed to identify relationships and associations from the various variables present in the database. The main methods include: the identification of recurring patterns, classification (creation of sub-groups) and regression (prediction of probable events).

77 See the article published in the periodical, Espace social européen « 12% des allocataires de droits ne les sollicitent pas » [12% of those entitled to benefits do not apply for them], 10 January 2018 <https://www.espace-social.com/non-recours-droits/>. The Gironde family allowance fund is using the tools created to detect benefit fraud to search for beneficiaries. See also the Territoire Zéro Non-recours [Zero non-take-up area] project, Centre d'action sociale de la Ville de Paris (CASVP); the social innovation project of “le Centsept”, Lyon, and the prevention plan to improve access to rights in Haute-Corse.

78 Law no. 2022-140 of 7 February 2022 on child protection.

assessment process.

39. First of all, it should be noted that the administrative burden is a cost for the government which could usefully save it. It appears that people are required to compile voluminous files, often containing useless documents that have to be produced each time they apply for a new benefit or to renew it. Dematerialisation has in fact transferred the burden on to citizens⁷⁹.

This is the case, for example, for the disabled adults allowance ([allocation adulte handicapée] AAH), for which a renewal application must be made and the application form filled out again⁸⁰. However, the CNCDH notes with satisfaction the end, since 2019, of the obligation to have one's disability recognised several times when it is not likely to change.

40. The recent thinking in the Council of State's report⁸¹, which aims to simplify the mechanisms, attests to this. Simplification should first of all lead to limiting the number of documents strictly necessary for compiling files. As the Defender of Rights has pointed out, applicants for and recipients of welfare benefits are “*largely overwhelmed by the large body of rules applicable in this area*” [unofficial translation], with errors often made due to the differences in assessing the concept of means, which varies from one benefit scheme to another. The CNCDH endorses the recommendation to simplify and standardise the content of obligations to declare information⁸². The CNCDH also recommends that a common information base for the various proceedings be established to avoid the beneficiary having to provide identical documents, according to the “tell us once” approach.⁸³

Recommendation No. 7: The CNCDH recommends that a common information base for the various proceedings be established to avoid people having to repeat the procedures, according to the “tell us once” approach.

41. **Constant recourse to fundamental rights.** The CNCDH recommends that authorities and institutions should be responsible, when they find that a person is eligible for a right, for automatically citing the correct legal basis or ensuring a link to

⁷⁹ CNCDH, *Avis pour un enseignement supérieur respectueux des droits fondamentaux : se doter des moyens de cette ambition* [Opinion on higher education respecting fundamental rights: providing the means for this ambition], Plenary session of 27 May 2021, JORF no. 0130 of 6 June 2021, text no. 47.

⁸⁰ See the service-public.fr website and the cerfa form to be filled in and <https://informationshandicap.fr/a-droits-acquis-vie-handicap-11452.php>.

⁸¹ Council of State, Study carried out at the Prime Minister's request, « Les conditions de ressources dans les politiques sociales : plus de simplicité, plus de cohérence » [Means testing in social policies: more simplicity, more coherence], Study adopted at the General Assembly on 8 July 2021.

⁸² Defender of Rights, *Rapport Lutte contre la fraude aux prestations sociales : à quel prix pour les usagers ?* [Report on preventing benefit fraud: at what price for users?], September 2017.

⁸³ <https://www.numerique.gouv.fr/services/guichet-dites-le-nous-une-fois/>.

the appropriate procedure or the institution competent to decide on it, as the Council of State has emphasised with regard to litigation involving foreign nationals⁸⁴.

42. Thus, in the case of educational support, a report of inadequate housing should lead the judge to directly request the competent services to resolve the situation and not simply place the child on this basis. As the CNCDH has stated on numerous occasions, the participation of parents in the decision-making process, by providing appropriate support, should be particularly encouraged, in strict compliance with the right to privacy and family life⁸⁵.

Recommendation No. 8: The CNCDH recommends that, before rejecting a claim, authorities and institutions should be responsible for checking whether another basis or procedure is more appropriate for the situation. In such a case, it recommends that, when they have the necessary information, they should be required either to automatically cite the correct legal basis or ensure a link to the appropriate procedure or, finally, refer people to the competent authority or institution.

43. More worrying is the situation, already criticised by the CNCDH with regard to the right to education⁸⁶, where some authorities or administrative officials did not respect the law by demanding documents that were not legally required for granting rights, until the publication of a decree in June 2020 which set a limited list to end this type of abuse⁸⁷. This administrative zeal, whether due to ignorance of the law or not, and a source of injustice, is an unnecessary hindrance and sometimes an obstacle to accessing the right to education. More broadly, the CNCDH recommends adapting the list of required documents to the situation of people who may not have a home or bank account, which should not disqualify them from claiming their rights. A possible postal

84 Council of State, Twenty proposals to simplify litigation for foreign nationals in the interest of all, 2020.

85 CNCDH, *Avis sur le respect de la vie privée et familiale en protection de l'enfance : un droit fondamental difficilement assuré dans un dispositif en souffrance* [Opinion on respect for privacy and family life in child protection: a fundamental right that is difficult to guarantee in a system that is in trouble], Plenary session of 26 May 2020, JORF no. 0132 of 31 May 2020, text no. 99.

86 See CNCDH, *2019 Report on combatting racism, antisemitism and xenophobia*, in which the Commission called for a list of documents to be drawn up to avoid unfounded requests and then the adoption of Decree no. 2020-811 of 29 June 2020 specifying the documents that may be requested in support of an enrolment application from the list provided for in Article L. 131-6 of the French Education Code.

87 In the *2021 Report on combatting racism, antisemitism and xenophobia*, the CNCDH welcomed the publication of the Decree of 29 June 2020 setting out the list of supporting documents required for school enrolment, limiting it to three documents, respectively proving the identity of the child, the identity of the persons responsible for the child and the address for service of the family concerned in the commune. However, there are still cases of schooling being refused, as highlighted in Decision 2021-001 of the Defender of Rights of 21 January 2021 on schooling refused by a town hall for a family living in a shanty town.

and bank address should systematically be provided⁸⁸.

For example, the hearings conducted by the CNCDH reported an infringement of access to a domiciliation for people with no stable address: some municipal social action centres refuse to grant addresses for service on erroneous grounds, hence the risk of discouraging the associations that have to oppose such refusals on a case-by-case basis. As these refusals are often verbal, contrary to the instruction of 10 June 2016⁸⁹, appeals are impossible.

With regard to children living in shanty towns or hotels used for social housing, although a recent reform facilitates the registration process through providing a statement of truth⁹⁰, it is clear that it is not always known or applied.⁹¹ These practices, which result in a “legal non-existence” of the persons concerned, should therefore be strongly condemned⁹².

Recommendation No. 9: The CNCDH recommends simplifying and standardising, as far as possible, the content of declarative obligations, which should be written in clear and accessible language.

Recommendation No. 10: The CNCDH recommends that the authorities implement effective measures to avoid demanding documents not required by law. It should ensure both quality controls and the effectiveness of hierarchical appeals.

44. **Preventing the stress of undue payments.** Simplifying procedures and assessing user satisfaction with public services, which have been at the heart of the government’s modernisation policies for several years, should also concern rights holders and lead, in particular, to simplifying their procedures. As explained above, the problem of a declarative system that places much of its management on the recipients themselves, who find themselves victims of their own errors and often stigmatised as fraudsters⁹³,

88 CNCDH, *Avis sur le suivi des recommandations du comité des Nations Unies sur les DESC à l’attention de la France* [Opinion on the follow-up to the recommendations of the UN Committee on ESC rights for France], 6 July 2017, p. 32. An address for service allows people with no fixed or stable address to receive mail, to exercise certain rights such as obtaining identity papers or registering on electoral rolls or for legal aid, and to receive welfare benefits. These people can give an address for service at the municipal social action centres (CCAS), or at an association approved by the prefect.

89 Instruction no. DGCS/SD1B/2016/188 of 10 June 2016 on the address for service of persons without a stable address.

90 Decree no. 2020-811 of 29 June 2020 specifying the documents that may be requested in support of an enrolment application from the list provided for in Article L. 131-6 of the Education Code.

91 See note 87 above.

92 CNCDH, *Avis sur le suivi des recommandations du comité des Nations Unies sur les DESC à l’attention de la France* [Opinion on the follow-up to the recommendations of the UN Committee on ESC rights for France], 6 July 2017, p. 33.

93 Christine Cloarec-Le Nabour and Julien Damon, *La juste prestation. Pour des prestations et un accompagnement ajustés* [The right service: for appropriate benefits and support], Report to the Prime Minister, September 2018.

is at the heart of the matter. A recent report⁹⁴ by the Council of State shows how the calculation of means testing is sometimes difficult to understand, not transparent and variable depending on the benefit. This system leads rights holders to make errors and to suffer the resulting recovery of undue payments by the authorities. This report shows that 27% of CAF recipients received an undue payment each year. This is also the case for half of those receiving the RSA⁹⁵. The recovery of undue payments often leaves recipients drained, as “*victims of undue payments*”, insecure and generates a great deal of mistrust towards the authorities and, no doubt, institutions more generally.

45. In this context, consideration of a right to make an error is required. This right, granted by the Law of 10 August 2018 for a State at the service of a trusted society⁹⁶ (making an error in good faith and then declaring it without being penalised), leads in principle to a clear distinction between fraud and an error made in good faith⁹⁷. However, the authorities still need to develop its practices considerably⁹⁸. This new right should be an “*opportunity to renew organisations’ position towards more advice for beneficiaries on obligations to declare information, in order to prevent errors*”⁹⁹, firstly by giving the beneficiary time before initiating any recovery action and by respecting the rights of defence, and secondly by the obligation to state even more clearly the means of appeal when notifying a non-entitlement or undue payment. The CNCDH recommends that consideration be given to the compensation (reimbursements) and its conditions (establishment of a schedule, transactions, time frame/duration, etc.) that may result, where appropriate, in the recognition of an administrative error.

Recommendation No. 11: The CNCDH recommends that the right to make an error be

94 Council of State, Study carried out at the Prime Minister’s request, « Les conditions de ressources dans les politiques sociales : plus de simplicité, plus de cohérence » [Means testing in social policies: more simplicity, more coherence], Study adopted at the General Assembly on 8 July 2021.

95 CNCDH, *Avis sur la création du revenu universel d’activité (RUA)* [Opinion on the creation of a universal activity income], Plenary session of 23 June 2020 JORF no. 0159 of 28 June 2020, text no. 78.

96 Law no. 2018-727 of 10 August 2018 for a State at the service of a trusted society.

97 Art. L. 123-1 CRPA: “*a person who has misunderstood for the first time a rule applicable to their situation or who has made a material error when providing information on their situation may not be penalised by the authority, whether financially or by withdrawing all or part of a benefit due, if they have remedied their situation on their own initiative or after having been asked to do so by the authority within the time limit indicated. However, the penalty may be imposed without the person concerned being asked to remedy their situation in the event of bad faith or fraud*”. Art. L. 114-17 CSS: “*the following may be subject to a warning or a penalty imposed by the director of the body responsible for administering family benefits or old-age insurance benefits, in respect of any benefit provided by the body concerned: 1. the inaccuracy or incompleteness of the declarations made for the provision of benefits, except in cases of good faith by the person concerned; 2. the failure to declare a change in the situation justifying the provision of benefits, except in cases of good faith by the person concerned [...]*”.

98 Defender of Rights, *Le droit à l’erreur et après ?* [The right to make an error and after], *Bilan du rapport sur la Lutte contre la fraude aux prestations sociales : à quel prix pour les droits des usagers?* [Assessment of the report on preventing benefit fraud: at what price for users’ rights?], 2019, <https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rapport-fraudassoc-apres-num-v4-27-02-19.pdf>, spec. p. 6.

99 Report to the Prime Minister: *La juste prestation : pour des prestations et un accompagnement ajustés – [The right service: for appropriate services and support]* 2018 [https://www.gouvernement.fr/sites/default/files/document/document/2018/09/rapport_de_christine_cloarec-le_nabour_et_julien_damon_sur_la_juste_prestation.pdf]

respected and that the consequences of this be moderated with regard to the obligation to reimburse undue payments, in particular by proposing a timetable adapted to the ability to repay. When the error is made by the authorities, it recommends prompt and full compensation for the prejudice suffered.

46. **Developing platforms to serve people.** The increased use of digital technology is often based on the assumption that everyone has at least a mobile phone that they know how to use and already have experience of filing their tax returns online. The recent report of the Defender of Rights shows that this assumption is wrong¹⁰⁰. However, the CNCDH wishes to note that the tax return is already pre-filled on a platform whose ergonomics and efficiency are linked to simplification for the taxpayer and preventing tax fraud. In contrast, the various platforms for other areas are often less intuitive to use. Unfortunately, they have not been thought through with users or created from the beginning for use on mobile phones. Some platforms are not accessible to blind people as they cannot be read by a voice synthesiser. Moreover, the number of platforms does not make them easy to use, as shown by the sometimes large number of logins and passwords that have to be memorised to login to the various tools. Far from facilitating access to rights for all, they sometimes exclude the most vulnerable by preventing a quality, face-to-face human relationship that allows people to express what cannot be solved by a FAQ. Automatic messages can discourage many from claiming their rights.

For example, the implementation in certain administrative offices of completely paperless procedures for residence permit applications by foreign nationals has been plagued by many problems: there are not enough appointments, the failures of the platforms lead to major disruptions in economic and social rights, thus depriving these people of access to public services and making their living conditions even more fragile. The proliferation of these situations of exclusion has been the subject of much questioning¹⁰¹ and the difficulties, or even impossibility, for foreign nationals to access the prefectures have led to many legal appeals within the framework of “necessary urgent measures” in order to obtain orders from the administrative court to issue appointments. In June 2020, the Council of State recognised that foreign nationals were entitled to bring a case before the administrative judge when they could prove that it

100 Defender of Rights, *Rapport de suivi Dématérialisation des services publics : trois ans après, où en est-on ?* [Follow-up Report Dematerialisation of public services: three years after, where do we stand?], February 2022.

101 Defender of Rights, *Rapport Dématérialisation et inégalités d'accès aux services publics* [Report on Dematerialisation and unequal access to public services], January 2019; La Cimade, *Rapport A guichets fermés* [Sold right out], 2016: on the implementation of a robot documenting available appointment slots: <https://aguichetsfermes.lacimade.org>.

*was impossible to obtain an appointment solely via the Internet*¹⁰².

Recommendation No. 12: The CNCDH recommends simplifying the operation of the platforms by allowing, as far as possible, a single entry point with an ergonomic design developed with users. It stresses the need to design the platform for mobile phone use with gateways allowing a face-to-face appointment to be made at each stage. It notes the essential need to always maintain a physical reception for people ensuring their proximity, accessibility, particularly in terms of transport, and appropriate opening hours.

2.3. Rethinking the follow-up of claims.

47. **Follow-up on the processing of files.** “Frictional” non-take-up is largely due to a lack of information given on the processing of files. In areas as varied as welfare benefits or the granting of a residence permit¹⁰³, there is sometimes a total lack of feedback, even if only on the proper receipt of the file. The result is that there is then no administrative decision that can be challenged. Although in administrative law, the authorities’ lack of response is equivalent to acceptance after two months from receipt of the application, there are many exceptions to this principle¹⁰⁴ (particularly the right of foreigners), so that no response often constitutes an implicit decision to reject. The CNCDH therefore recommends extending the principle that no response constitutes acceptance to compel authorities to give a timely response. While this poses organisational difficulties, these are understandable but disproportionate to the necessary respect for rights.

48. In addition, the quality of the information given on the possibility of lodging an appeal must be ensured. It must not only be written in plain language but also be accompanied by an explanation of the decision in the presence of the person concerned. The means of appeal and the identification of the competent court, in case

102 CE, 10 June 2020, no. 435594: “When the appointment can only be obtained by connecting to the prefecture’s website, it follows from what was said in point 3 that, if the foreign national establishes that they have not been able to obtain an appointment date, despite several attempts not having been made in the same week, they may ask the urgent applications judge, referred to on the basis of Article L 521-3 of the French Code of Administrative Justice, to order the prefect to communicate an appointment date to them, within a time period that the judge shall set. If the situation of the foreign national so warrants, the judge may specify the maximum period within which this appointment must take place. The judge shall set a short deadline in case of particular urgency”.

103 Council of State, Study: Twenty proposals to simplify litigation for foreign nationals in the interest of all, 2020.

104 Article L 231-4 to L 231-6 of the French Code of Relations between the Public and the Authorities: 1. When the application is not for the adoption of a decision having the nature of an individual decision; 2. When the application is not part of a procedure provided for by legislation or regulations or has the nature of a complaint or administrative appeal; 3. If the application is of a financial nature, except, in matters of social security, in the cases provided for by decree; 4. In cases, specified by Decree in the Council of State, where implicit acceptance would not be compatible with the respect of France’s international and European commitments, the protection of national security, the protection of freedoms and principles of constitutional value and the safeguarding of public policy; 5. In relations between the authorities and its staff.

of litigation, as well as the possible costs, must be clearly indicated. A survey¹⁰⁵ showed that more than a quarter of respondents do not even know that it is possible to contest an administrative decision.

Recommendation No. 13: The CNCDH recommends that systematic information be provided on the follow-up of files (notice of receipt and status of the case). To ensure a timely response, it recommends extending the principle according to which no response constitutes acceptance, with limited exceptions.

49. **Renewal of entitlements.** Particular attention should be paid to the renewal of entitlements. The lack of information on the status of files sometimes leads to entitlements ending. However, as these meet vital needs, people are put in difficulty without any relief solutions, even temporary ones, being put in place to ensure decent living conditions in the meantime.

Recommendation No. 14: The CNCDH recommends that, in order to prevent entitlements ending, systems should be revised so that only the documents strictly necessary for renewal are requested in good time and a receipt issued. In the event of an end to entitlements, it recommends that an emergency solidarity scheme be put in place.

50. **All-digital procedures.** The CNCDH recommends that thought be given to the tendency to liken efficiency and accessibility to the dematerialisation of systems, even if it is aware that the latter is obviously necessary¹⁰⁶. While some all-digital procedures work, the hearings conducted by the Commission showed that others are increasingly difficult to carry out on the Internet because citizens are not sufficiently trained to use all the digital tools. This is particularly true of the dematerialisation of certain administrative procedures for accessing welfare benefits. While the tool has undeniable advantages, it has the disadvantage of further excluding vulnerable populations who do not have access to the necessary equipment and subscriptions, the costs being sometimes too high or the regional coverage insufficient. Since the path is open for the generalisation of digital administrative procedures, the government and its agencies have a social responsibility to reach out to those who are victims of the digital divide¹⁰⁷.

51. This responsibility is particularly visible in terms of access to education. Although the health crisis has exacerbated this difficulty, it was already present, particularly in overseas territories. This is why the CNCDH recommended to strengthen

105 Defender of Rights, *Enquête sur l'accès aux droits*, [Survey on the access to rights], 2017.

106 CNCDH, *Avis pour un enseignement supérieur respectueux des droits fondamentaux : se doter des moyens de cette ambition* [Opinion on higher education respecting fundamental rights: providing the means for this ambition], Plenary session of 27 May 2021, JORF no. 0130 of 6 June 2021, text no. 47.

107 CNCDH, *Avis sur le suivi des recommandations du comité des Nations Unies sur les DESC à l'attention de la France* [Opinion on the follow-up to the recommendations of the UN Committee on ESC rights for France], 6 July 2017, p. 20.

efforts to connect to high-speed Internet and to equip schools with the necessary equipment, which are sometimes for many pupils overseas the only place of access to the Internet¹⁰⁸.

52. The lack of a response when a specific point is researched or the lack of a physical reception when an obstacle occurs has led many people to give up on their entitlements. Instead of being a new tool, dematerialisation has been synonymous for some with the closure of public services. Here again, the tools must be there to serve users, looking at it from their perspective.

Recommendation No. 15: The CNCDH states its recommendations for a reasonable and reasoned use of digital technology. It recommends that tools be put in place that are developed with people, adapted to their situation (e.g. accessibility for people with disabilities).

¹⁰⁸ CNCDH, *Avis sur l'effectivité du droit à l'éducation dans les outre-mer : regard particulier sur la Guyane et Mayotte* [Opinion on the effectiveness of the right to education in the overseas territories: a special look at French Guiana and Mayotte], Plenary session of 6 July 2017, JORF no. 0269 of 18 November 2017, text no. 77.

SUMMARY OF RECOMMANDATIONS

Recommendation No. 1: The CNCDH recommends that public policies be built on a rights-based approach. It points out the urgent need to build them by involving the people concerned so that the organisation put in place serves them and does not create unnecessary and unanticipated obstacles, which lead to non-take-up.

Recommendation No. 2: The CNCDH recommends conducting evaluations of public policies that target both the system and the access to rights itself. It points out that these evaluations must be transparent, cross-cutting, qualitative and quantitative.

Recommendation No. 3: The CNCDH recommends implementing clear and intelligible information systems for both beneficiaries and administrative staff. Their development should be based on the situation of the person concerned in order to facilitate access to rights. The use of clear language and the use of legal design¹⁰⁹ should be encouraged.

Recommendation No. 4: The CNCDH recommends putting in place a single entry point or single contact person adapted to the needs and situation of each individual, which would enable a qualitative articulation of aids. By applying an “outreach” policy, the contact person should be able to inform the individual of their rights and the procedures to be followed without having to repeat the process.

Recommendation No. 5: The CNCDH recommends piloting the practice of the “emotional referent”, otherwise known as a “silent third party”, who can support an individual and help them to give back their word.

Recommendation No. 6: The CNCDH recommends developing training for reception staff in supporting people and ensuring their welcome is appropriate. This is a condition for understanding people’s needs in order to improve the effectiveness of rights.

Recommendation No. 7: The CNCDH recommends that a common information base for the various proceedings be established to avoid people having to repeat the procedures, according to the “tell us once” approach.

Recommendation No. 8: The CNCDH recommends that, before rejecting a claim, authorities and institutions should be responsible for checking whether another basis or procedure is more appropriate for the situation. In such a case, it recommends that, when they have the necessary information, they should be required either to automatically cite the correct legal basis or ensure a link to the appropriate procedure or, finally, refer people to the competent authority or institution.

¹⁰⁹ Legal design is a way of designing legal documents and tools in such a way that legal information is clear and understandable (e.g. use of diagrams to explain court decisions).

Recommendation No. 9: The CNCDH recommends simplifying and standardising, as far as possible, the content of declarative obligations, which should be written in clear and accessible language.

Recommendation No. 10: The CNCDH recommends that the authorities implement effective measures to avoid demanding documents not required by law. It should ensure both quality controls and the effectiveness of hierarchical appeals.

Recommendation No. 11: The CNCDH recommends that the right to make an error be respected and that the consequences of this be moderated with regard to the obligation to reimburse undue payments, in particular by proposing a timetable adapted to the ability to repay. When the error is made by the authorities, it recommends prompt and full compensation for the prejudice suffered.

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Recommendation No. 15: The CNCDH states its recommendations for a reasonable and reasoned use of digital technology. It recommends that tools be put in place that are developed with people, adapted to their situation (e.g. accessibility for people with disabilities).

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CONSULTATIVE
DES DROITS DE L'HOMME

RÉPUBLIQUE FRANÇAISE

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