Fédération internationale de l'Action des chrétiens pour l'abolition de la Torture
International Federation of Action by Christians for the Abolition of Torture
Federación Internacional de la Acción de los Cristianos para la Abolición de la Tortura

ACAT- France and FIACAT alternative report on torture and other cruel, inhuman or degrading treatment or punishment in France

Presented to the Committee Against Torture for examination

of the fourth, fifth and sixth periodic reports on France

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Introductory note

ACAT-France, a human rights organisation set up in 1974 to combat torture and the death penalty and to promote the right to asylum[1], and FIACAT, an international association which has consultative status with ECOSOC and of which ACAT-France is a member, are honoured to bring to your attention their concerns about France's implementation of the Convention Against Torture (hereinafter referred to as "the Convention").

This report is presented in connection with the 44th session of the Committee Against Torture (hereinafter referred to as the CAT) to be held in Geneva from 26 April to 14 May 2010, at which the fourth, fifth and sixth periodic reports on France will be examined.

Since 1978, ACAT-France, a member of FIACAT, has been monitoring the actions of institutions such as the national police force, the gendarmerie, the justice system and the prison service. It is concerned to ensure absolute respect for rights such as the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and to watch out for any abuse of power which might lead to torture.

Its activities are concerned with providing information and raising awareness, campaigns taken up by its members and sympathisers, and helping with legal assistance for victims of ill-treatment on arrest, at the border, on the premises of law enforcement agencies, when they are in administrative detention, in prison, or in some other way deprived of their freedom.

ACAT-France also lobbies for the right to asylum. Since 1998 it has provided legal assistance for asylum-seekers at all stages of the asylum procedure and worked with other groups to ensure respect for this fundamental freedom.

Our work on torture and capital punishment throughout the world enables us to provide documented support for those seeking asylum in France, many of whom have been tortured.
In 2009, ACAT-France welcomed 582 people, most of them not covered by the national system for receiving asylum-seekers, the majority of them from Guinea, the Democratic Republic of Congo and the Islamic Republic of Afghanistan.

The information in this report is recent and reliable. The examples quoted may refer to individual cases, but they also draw attention to a more widespread situation.

This study is divided into two parts:

The first analyses, article by article, how the Convention is being implemented, referring to the CAT recommendations and questions put to France.[2]
The second part details our recommendations.

[1] ACAT France, an "association reconnue d'utilité publique", has 9 500 members and 40 000 sympathizers.
[2] List of issues to be taken up, CAT/C/FRA/4-6

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List of abbreviations

ANAFE Association nationale d'assistance aux frontières pour les étrangers (National association for assistance to foreign nationals at borders)

CAT Committee Against Torture

ECHR European Convention on Human Rights

CESEDA Code de l'entrée et du séjour des étrangers et du droit d'asile (Code governing the entry and stay of foreign nationals and the right to asylum)

CNDA Cour nationale du droit d'asile (National Court of Asylum)

CNDS Commission nationale de déontologie de la sécurité (National Commission on Security Ethics)

CPT European Committee for the Prevention of Torture

CRA Centre de rétention administrative (administrative detention centre for foreign nationals who do not have the right to stay in France)

DPS Détenus particulièrement signalés (high-security prisoners)

ERIS Équipe régionale d'intervention de sécurité (regional rapid intervention teams working in French prisons)

PAF Police aux frontières (French border police)

OFPRA Office français de protection des réfugiés et apatrides (French Office for the Protection of Refugees and Stateless Persons)

1st PART

ANALYSIS BY ARTICLE

ARTICLE 2

1. **Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.**
2. **No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.**
3. **An order from a superior officer or a public authority may not be invoked as a justification of torture.**

2.1 Police violence and the impossibility of lodging a complaint

CAT question 4: "*In its last concluding observations (CCPR/FRA/CO/4, para. 19), the Human Rights Committee had recommended that the State party should have no tolerance for acts of ill-treatment perpetrated by law enforcement officials against foreign nationals, including asylum-seekers, who are detained in prisons and administrative detention centres; that it should establish adequate systems for monitoring and deterring abuses, and that it should develop further training opportunities for law enforcement officials. Please indicate what action has been taken on this recommendation. Please indicate also whether a medical report is automatically issued for a detainee who has been injured either during or after arrest. Please also provide information on measures taken to ensure that immediate, impartial and effective inquiries are conducted concerning allegations of ill-treatment by officials responsible for implementing the law and that the perpetrators are prosecuted and appropriately punished.*" (our underlining).

French law allows anyone to lodge a complaint against police violence, as set out in France's periodic report, which details at length the right and the checks provided for (§23 to §64).

Violence against foreign nationals who are locked up

But the reality is very different for foreign nationals who are locked up and who allege that they have been ill-treated. They find it extremely difficult to lodge a complaint. Victims have to deal with the inertia of the authorities, both to obtain a medical certificate testifying to their injuries when they are deprived of their freedom and to lodge a complaint or obtain protection.

Foreign nationals placed in a CRA may ask for help from a doctor (Art. L551-2 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (Code governing the entry and stay of foreign nationals and the right to asylum, the CESEDA). But this in itself does not mean that a report or medical certificate will be given them if they allege that they have been subjected to violence on the part of the police.

Violence during removal

The problem is even more serious for foreign nationals held in a transit zone (translator's note: a "zone d'attente" may also be referred to in English as a "holding area" or "waiting area") who are being refused entry or removed. If there is any violence on the part of the police while they are being removed, the fact that they are removed rapidly, cannot contact advisers or associations and are put on a plane immediately prevents any check on allegations of ill-treatment.

Thus **police violence at borders may go unpunished**.

On 9 March 2008, D, a Guinean national who had been refused entry to Luxembourg and removed under escort, was in transit through Roissy-Charles de Gaulle airport, where two uniformed French policemen were waiting to put him on an Air France plane to Conakry.

When he asked for the documents he had handed over to be returned to him, all he was given was his passport. He refused to leave and was twice knocked to the ground.
"*I saw a uniformed officer come up to me and kick me right in the face.*" Despite asking for a French doctor, he never saw one.[3]

Border violence
From 2007 to 2009, the *Association nationale d'assistance aux frontières des étrangers* (*National association for assistance to foreign nationals at borders,* the ANAFE), of which ACAT-France is a member, monitored what happened to those who had been refused entry to France and were being held in the transit zone at Roissy-Charles de Gaulle, where the vast majority of foreign nationals are placed (86.5% in the first half of 2009) or Orly.[4] The conditions under which they were being removed, the means used and the impact of those means were documented.

Several serious cases were listed of police violence at borders into which no enquiry was possible.

Thus Mr A., originally from Chad, arrived from Cairo on 25 September 2009.
He was taken to the airport police station, where, he states, force was used to get him to have his fingerprints taken. As a vulnerable asylum-seeker, who did not know whether he was going to be allowed into France for protection, he didn't understand why he was supposed to have his prints taken, and refused.

A policeman is then alleged to have put his arm round Mr A.'s neck, squeezing his throat, and to have hit him on the head, more than once. While another policeman held his arm behind his back, a third is said to have grabbed his hand and forced him to have his prints taken. M.A. reported to ANAFE that the border police (PAF) refused to let him see a doctor.

For fear of reprisals, Mr A. explained that he did not want to report what had happened at the airport. He was finally allowed to enter French territory for asylum after five days in the transit zone.

[3] Source ACAT-France and ACAT-Luxembourg
[4] ANAFE, *Rapport sur le suivi des personnes refoulées aux frontières françaises*, April 2010, in preparation

The limited number of criminal proceedings against those accused of violence should not be allowed to draw a veil over the actual experience of those who regularly collect the testimonies of people claiming to have been the victims of ill-treatment during their removal.

Thus the CAT's 11th recommendation[5] is still valid.

Recommendations:

In order to prevent treatment contrary to the Convention:

As part of their training, bring the content of CNDS opinions to the attention of officials escorting persons refused admission or in charge of their boarding;

Make a medical examination compulsory if there is any allegation of violence, more particularly if the person concerned refuses to board a plane, and issue the medical certificate immediately;

Inform persons concerned of their right to lodge a complaint and enable them to exercise that right effectively;

Until they board the plane, allow the persons concerned to talk to any person or association they choose, with free access to a telephone if necessary;

Allow the persons concerned to talk to any person or association they choose before they board, in a place where confidentiality can be guaranteed;

Allow any independent association with clearance to operate in the transit zone access at any time to persons who are going to be refused entry and authorise it to go to the room where they are being held during the removal phase.

2.2 Restrictions on the fundamental rights of persons suspected of terrorism

Where terrorism is concerned, the definition of the offence of *criminal association for the purposes of terrorist activity* is sufficiently broad to cover many activities before any crime is committed, even when no specific act of terrorism has been planned, let alone carried out.

Media interest in the "Tarnac affair", when nine young people were placed under judicial investigation suspected of *criminal association for the purposes of terrorist activity* following damage to SNCF equipment, highlighted a number of shortcomings in the treatment of those suspected of terrorism and worrying restrictions on their basic rights, in particular the right to talk to a lawyer as soon as they are placed in custody, when their provisional detention is extended and when they are under special surveillance in detention.

[5] *The State party should also authorize the presence of human rights observers or independent doctors during all forcible removals by air. It should also systematically allow medical examinations to be conducted before such removals and after any failed removal attempt.*

Persons suspected of links with terrorism in connection with criminal activities may be placed in provisional detention without any evidence being adduced for up to 4 years and 4 months.

2.2.1 Delayed access to a lawyer while in custody

CAT question 5: "*Since the adoption of Act No 2006-64 of 23 January 2006, in terrorism cases police custody may last up to six days (the present 96 hours, plus a possible extension of 24 hours, renewable once) where there is a serious risk of an imminent terrorist act or where the requirements of international cooperation make it mandatory. Please indicate how many times this procedure has been followed. Please also give information on measures taken by the State party to provide suspects with fundamental legal guarantees, including the right to talk to a lawyer.*"

In the "Tarnac affair", the fact of having a certain text, a lifestyle which the district prosecutor (*Procureur de la République*), termed "dissolute" and not owning a mobile telephone, together with testimony for the prosecution, were the basis for the charge of *criminal association for the purposes of terrorist activity* which allowed those concerned to be held in custody for 96 hours, with a lawyer present only from the 72nd hour onwards[6].

France's reply (§72) indicates that it does not intend to amend its legislation.

However, the European Court of Human Rights case law should persuade France to revise its position.
In two recent judgments against Turkey[7], the European Court considered that "in order for the right to a fair trial to remain sufficiently 'practical and effective'[...] Article 6 §1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. [...] The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction."(§55, Salduz v. Turkey judgment).

Article 63-4 of the Code of Criminal Procedure restricts the assistance of a lawyer when the offences in question are those referred to in 3°, 4°, 6°, 7°, 8°, 11° and 15° of Article 706-73 of the Code (organised crime, delinquency and terrorism). It does not enable the right to a fair trial within the meaning of Article 6 of the European Convention on Human Rights to be implemented effectively.

These provisions are also contrary to the Convention against Torture, the International Covenant on Civil and Political Rights and the recommendations of the CPT which, as long ago as 1996, recommended access to a lawyer from the first hour of custody.

[6] According to the Chairman/Managing Director of the SNCF, the destruction of equipment, in this case overhead contact lines, may stop a train but cannot derail it.
[7] Salduz v. Turkey judgment, 27 November 2008, Application no 36391/02 and Dayanan v. Turkey judgment, 13 October 2009, Application no 7377/03

This delayed access to a lawyer when a person is in custody tends to encourage interrogation practices contrary to the Convention, especially since notification of the right to remain silent was repealed in French law.
According to the testimonies of persons held in custody, the more robust interrogation practices (sleep deprivation, disorientation, psychological pressure) are common occurrences[8]. These methods of interrogation are liable to be repeated to the extent that the audiovisual recording of interrogations of persons in custody on suspicion of crime is specifically ruled out for offences linked to organised criminality and terrorism[9].

2.2.2 Special surveillance in detention contrary to human dignity

According to the testimony of the family of Julien Coupat, one of the nine persons implicated in the "Tarnac affair", arrested and placed on remand, he was body-searched several times every time his lawyer visited him or he went to court, and stripped "in front of policemen who thought it very funny".

The special surveillance to which some detainees are subjected also involves officers doing the rounds, especially at night.
While she was on remand, Yldune Levy, also involved in the "Tarnac affair", was woken every two hours when the ceiling light was put on in her cell, where she was alone.

The prison service justifies this latter method by saying that it is to prevent suicides, although the risks have not been assessed according to precise criteria and a report produced for the Ministry of Justice by Doctor Louis Albrand states that, in certain situations, this method may result in more anxiety than protection.

ACAT-France considers that systematic body searches and sleep deprivation which are repeated and prolonged come under the heading of degrading treatment and are incompatible with human dignity.

2.2.3 Evidence obtained under torture in third countries

Leaving aside the "Tarnac affair", it would seem that in terrorism cases the courts have authorised as evidence statements obtained under torture in third countries.

Thus in 2005, Mr Djamel Beghal, an Algerian national, was found guilty on the basis of statements obtained under torture in the United Arab Emirates in September 2001.[10]

[8] *La justice court-circuitée. Les lois et procédures antiterroristes en France,* Human Rights Watch, July 2008
[9] Art 64-1 of the Code of Criminal Procedure
[10] Ibid p. 44

Recommendations:

Allow access to a lawyer from the first hour of custody, whatever the offence involved.

Draw up a clear legal definition of "*association de malfaiteurs en relation avec une entreprise terroriste*" (criminal association for the purposes of terrorist activity*)* with a non-exhaustive list of behaviour which might be penalised.

During detention, ban all interrogation and special surveillance practices which constitute cruel, inhuman or degrading treatment.

Rule that any evidence obtained under torture is inadmissible.

2.3 Risks of attacks on personal integrity linked to the use of conducted energy devices (tasers or stun guns) and Flash-Balls

The CAT questioned France on the use of stun guns, on the law enforcement officers authorised to use them, their training, studies conducted on the consequences of such use and the consequences of the repeal by the *Conseil d'Etat* (Council of State) of the decree authorising the use of such guns by municipal law enforcement agents.[11]

Despite several serious accidents when Flash-Balls were being used and despite the lobbying of civil society to get tasers withdrawn, France has chosen to give its security forces (police and gendarmerie) these weapons and is planning to equip municipal police forces as well.

2.3.1 Use of conducted energy devices is a form of torture

The main argument put forward in favour of tasers is that they are non-lethal weapons, by definition less dangerous than firearms. However, in its reply (§94 et seq.), France failed to question the violence of the shock and the risk of the widespread, common use of this weapon, or to question the danger to physical integrity, especially during demonstrations.

[11] CAT Question 7 on the steps taken by France for the use of conducted energy devices:

"Please:

(a) provide detailed, up-to-date information on the use of conducted energy devices (Tasers) in the State party, including the legislative or regulatory framework for their use;

(b) specify which security forces are authorized to use them and in what circumstances;

(c) indicate whether training in the use of tasers is provided for security forces authorized to use them and, if so, supply details;

(d) indicate whether studies have been carried out in France to determine the consequences of using tasers on individuals and, if so, provide information on the results obtained;

(e) indicate whether a similar system to that adopted by the national gendarmerie for collecting information on each case of taser use has been introduced for the national police. In that connection, please provide details of the ruling of 2 September 2009 by the Council of State concerning the repeal of the decree authorizing the use of tasers by municipal police officials and on measures taken to follow up that ruling."

In September 2008, France amended Decree n° 2000-276 of 24 March 2000 laying down ways in which Article L. 412-51 of the *Code des communes* should be applied and dealing with the arming of municipal police officers[12], to allow 17 000 officers to use stun guns. Certain municipalities had, however, chosen not to provide their police with such weapons.[13]

Thanks to the efforts of the Réseau d'Alerte et d'Intervention pour les Droits de l'Homme (*Human Rights Alarm and Intervention Network)* (RAIDH), which referred the matter to the highest administrative jurisdiction in France, the Conseil d'Etat, the clause providing for municipal police officers to be equipped with stun guns was repealed in September 2009, owing to insufficient supervision of use of the weapons.

The decision of 2 September 2009 does not call into question the principle of the use of such a weapon but considers that its particular characteristics, of a novel type, mean that its use, which entails specific risks, must be closely supervised and controlled. The Conseil d'Etat based its ruling essentially on failure to observe Article 2 of the European Convention on Human Rights and Fundamental Freedoms which protects the right to life.

There are several cases of law enforcement officers using tasers in places of detention.

In particular, a taser was used for the first time in a detention centre for foreign nationals (CRA), in Vincennes, during a violent struggle on the night of 11 to 12 February 2008.

In an opinion dated 14 December 2009 on this intervention by the police, the National Commission on Security Ethics (CNDS) refers to the misuse of tasers and points out that it is impossible to monitor the circumstances in which they are used owing to the mediocre quality of video recordings.[14]

As regards its prison establishments, France stated at the time of the Universal Periodic Review in May 2008 that it had equipped its prison staff with electroshock weapons in four establishments.[15] Previously, prison staff had not been armed.
These weapons are also available to regional intervention and security teams (ERIS), which may be brought in to intervene in serious crises in prisons.

France's response (§105) simply refers to its response to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following the Committee's visit to Guyana, without giving any detailed information on the use of these weapons in places of detention or in situations where foreign nationals are being removed.

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[12] Article L412-51 specified that municipal police officers may be authorised to bear the following arms:
1º 4th category: [...]
d) conducted energy devices. (1)
N.B. (1) By Decisions no 318584 and 321715, the Council of State repealed this paragraph.

[13] Including the cities of Lille, Dole, Bordeaux, Tours and Nantes

[14] CNDS References 2008-25 and 2008-29.

[15] Report of the Working Group on the Universal Periodic Review: France - Addendum - Response of France to the recommendations made during the Universal Periodic Review on 14 May 2008, A/HRC/8/47/Add.1, 25 August 2008, §45. Similarly, the response of the Government of the French Republic to the CPT Report of 10 December 2007, page 66, states that the use of tasers has also been tried out in three penal establishments, in particular in the Fresnes remand centre.

However, the CAT's position is categorical: the use of non-lethal electric weapons administering a discharge of 50 000 volts and two milliamperes "*causes severe pain constituting a form of torture*" in violation of Articles 1 and 16 of the Convention.[16]

The non-lethal character of the weapon should not disguise the violence of the pain administered, which is a form of torture. The risks of widespread use based on the claim that electroshock weapons are not lethal, and the very real risks to the health of persons affected should receive serious consideration.

2.3.2 The use of Flash-Balls constitutes a form of torture or of cruel, inhuman or degrading treatment

The press has highlighted serious accidents occurring when Flash-Balls are used during demonstrations, in particular in July 2009 in Montreuil, where the victim lost the sight of one eye.
"*In Les Mureaux, in July 2005, a 14-year- old lost an eye. The same thing happened in October 2006 in Clichy-sous-Bois to a 16-year-old. And again in November 2007 in Nantes, during a student demonstration, when a 17-year-old also had his eye put out by a Flash-Ball. This year, similar accidents have occurred, to a 25-year-old student in Toulouse in March and a young man in May*". (our translation)[17]

In an opinion dated 15 February 2010, the Commission on Security Ethics stated, with regard to use of the Flash-Ball at the demonstration in Montreuil in July 2009:
"*In view of both the lack of precision of flash-ball trajectories, which makes any theoretical advice to users useless, and the seriousness and irreversibility of the collateral damage they cause, which is clearly inevitable, the Commission strongly recommends that this weapon not be used during demonstrations on the public highway, other than in extremely exceptional cases which should be precisely defined.*"[18] *(*our translation*)*

Recommendation:
Ban the use of tasers and Flash-Balls.

[16] Recommendations to Portugal, CAT/C/PRT/CO/4 dated 22 November 2007, paragraph 14
[17] Le Monde, *Flash-scandale 13/07/09*
[18] CNDS reference no 2009-133

ARTICLE 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

3.1 Dangerous removals, despite the principle of non-refoulement

CAT question 8: "*Please indicate the measures taken by the State party during the period covered by its periodic report to guarantee that no person is expelled who is in danger of being subjected to torture if returned to a third State.[...]*"

In its response, France refers to the principles of the right to asylum and those linked to non-refoulement, i.e. not returning a person to a country where he or she risks torture or persecution (§118 et seq.).

However, this reply does nothing to clarify the lack, **in practice,** of safeguards for asylum-seekers in a transit zone (3.1.1), those on the territory of France whose applications are being fast-tracked (Cf questions 10 and 3.3.2) or those who have been rejected, who have been refused the right to asylum or who have not applied for it but who risk being tortured if they are returned (3.1.3 and 3.3).

In addition, the French authorities' practice when returning those who have been refused the right to asylum puts them at serious risk.

3.1.1 In the transit zone: extremely weak safeguards against the risk of return when that return might be dangerous

a) Arbitrariness of the "jour franc"

When held in transit, foreign nationals who are refused entry to French territory are "asked to indicate on the notification whether they wish to benefit from the *jour franc (one clear day's protection from removal)*" (our translation).[19] It is thus up to them clearly to express their wish to refuse to be returned [refoulés] immediately, even before they have been able to contact their consulate, a member of their family or an adviser.

If they do not do this, they will immediately be sent back to their country of provenance or origin.

[19] Art. L 213-2 of the CESEDA

In its report on *Inhumanité en zone d'attente, Bilan 2008,*[20] the ANAFE emphasises that, of the foreign nationals encountered, several indicated that they did not understand what this "jour franc" meant and had been put under pressure so that they could be returned.

Thus the CAT's eighth recommendation that "*the State party should take the necessary measures to ensure that persons who have been returned (refused admission) are automatically entitled to a clear day and are informed of this right in a language they understand*" is either not applied at all or is not properly applied**.**

b) The asylum-seeker at risk of being returned (*refoulé*)

Asylum-seekers in the transit zone are confronted with a whole series of obstacles, some of them virtually insuperable, when they are frequently in a state of post-traumatic stress, are in any case disadvantaged and have lost all confidence in the authorities.

1st obstacle: getting applications for asylum recorded

Foreign nationals seeking asylum at the border have to apply to the PAF as soon as they arrive, or at any time while they are being kept in the transit zone (in principle, 20 days maximum)[21]

It may happen that the application for protection may not be considered, thus exposing the applicant to the risk of being returned. If the application is considered, the PAF drafts a report.

2nd obstacle: confronting abuse of the term "*manifestly unfounded*"

Asylum-seekers are then interviewed by an officer of the Border Asylum Division of OFPRA at Roissy-Charles de Gaulle and Orly, the two main transit zones. If the interpreter is available, he will be telephoned. This interview is intended to provide information on the reasons for the application, to make sure that it is not "*manifestly unfounded*".[22]

Until the summer of 2009, asylum-seekers were interviewed remotely, by telephone, at Orly, in a rest room at the premises of the border police. There was no privacy.

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[20] http://www.anafe.org/download/rapports/BilanANAFE-roissy-inhumanite-2008-.pdf Observations et interventions de l'ANAFE en zone d'attente de Roissy

[21] In two cases, they may be kept there for more than 20 days, according to Article L 222-2 of the CESEDA, paragraphs 2 and 3: "*However, when a foreign national who has been refused entry to French territory lodges an application for asylum during the last six days of this new period in the transit zone, this period is automatically extended by six days from the date of the application [...].*
*When, during the last four days of the period in the transit zone fixed by the latest holding decision, a foreign national who has been refused entry to French territory for asylum lodges an appeal against that refusal decision on the basis of Article L. 213-9, that period is automatically extended by four days from the date on which the appeal was lodged [...]" (*our translation*).*
In 2008, foreign nationals were being held in transit in Orly on average 55 hours per person as against 32-33 hours in 2007 (meeting with the Orly PAF management on 15 January 2009).

[22] For this term, see: *Guide théorique et pratique, La procédure en zone d'attente*, March 2008, downloadable from http://www.anafe.org/download/rapports/Anaf_351%20guide-mars2008.pdf

In theory, this interview does not involve a detailed assessment of the reasons for the application for protection. In fact, the OFPRA conducts an extremely thorough interview for which the interviewee has not had time to prepare, or, of course, to collect together papers in support of his asylum application. In addition, because he is not free, he has not had time to ask people to speak for him.

If his application is considered to be "*manifestly unfounded*", the PAF issues an entry refusal notice, which means that the foreign national will be returned to the country from which he came.

3rd obstacle: lack of any effective remedy

A reasoned appeal against this refusal decision is possible at the Administrative Court in Paris within forty-eight hours. This remedy has, admittedly, suspensive effect, but the **short deadline for lodging an appeal, the obligation to provide grounds, interpretation problems and the fact that legal assistance is available only at the court** mean that its effectiveness cannot be guaranteed.

Moreover, a further appeal – following rejection of the remedy against the refusal of entry for asylum purposes – does not have suspensive effect.[23]

The extreme weakness of these safeguards thus leads to the return of people who may be at risk.

The ANAFE has thus documented several serious attacks on the physical integrity of persons arriving in the country in question, pointing out "*that several people who had come to seek asylum in France and whose application for protection had been refused had, after their return to their country of origin, to confront the very dangers that had led them to seek protection in France*" (our translation).[24]

Mr K. an asylum-seeker from Chad[25]
In March 2007, the case of Issa K., a **Chadian** who had arrived at Roissy airport on 24 February 2007, was brought to the ANAFE's attention. His application to enter France to seek asylum for political reasons was rejected, even though it had been backed up by a detailed report. Having twice refused to board a plane, Issa K. was returned ("refoulé") under police escort on 6 March 2007 to N'Djamena, Chad.

Upon arrival at N'Djamena airport, Issa K. was arrested by the Chadian police, who held him for 5 hours, subjecting him to a "rigorous" interrogation relating mainly to his application for asylum in France, before transferring him to police headquarters.

[23] On the ineffectiveness of remedies available to asylum-seekers, see *Le droit à un recours effectif aux frontières françaises: l'arrêt Gebremedhin et ses suites en France,* 16 June 2008, downloadable from http://anafe.org/download/rapports/anafe-note-suites-gebremedhin-16-06-08.pdf.
[24] ANAFE, *Rapport sur le suivi des personnes refoulées,* April 2010, in preparation
[25] Ibid.

The Chadian Human Rights League and ACAT-Chad were contacted and were able to visit him. They discovered that he was in an advanced state of dehydration and that he had had no food since his arrival. After a meeting with the Commissaire they finally obtained his release. Mr K. was thus held for 20 days at police headquarters in N'Djamena without being notified of any procedure, despite the fact that under Chadian law he could be held in custody for a maximum of 48 hours.

The extremely worrying situations which run contrary to Article 3 of the Convention show how ineffective the safeguards of French border procedures are, despite what France says in its reply (§145 et seq.) and despite CAT recommendation 7.[26]

Moreover, there is no procedure for monitoring persons who are sent back.

This total lack of protection against a removal which may be dangerous is all the more disquieting in that France plans to extend transit zones to include all French borders when foreign nationals arrive at the border outside a border crossing point.[27] Thus it is the much less protective transit zone regime which would apply.

With this preliminary draft, a further step has been taken which runs counter to the basic principal of non-refoulement.

It behoves France not to cease to be a country which accepts those who have fled persecution and torture in their own countries.

c) Unaccompanied migrant children refused entry

CAT question 12 "*Please indicate what measures the State party has taken to make sure that no unaccompanied minor held in an airport holding area is expelled to a country of origin or to a transit country where the minor is in danger of being subjected to torture or cruel, inhuman or degrading treatment, including trafficking.*"

In its response (§166 et seq.), France refers to the current law applying to asylum applications but gives no details as to what happens to minors who are refused entry.

Unaccompanied minor foreign nationals arriving in a transit zone may be refused entry and returned to either their country of origin or the country from which they came.

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[26] "*The Committee reiterates its recommendation (A/53/44, para. 145) that a refoulement decision (refusal of admission) that entails a removal order should be open to a suspensive appeal that takes effect the moment the appeal is filed. The Committee also recommends that the State party should take the necessary measures to ensure that individuals subject to a removal order have access to all existing remedies, including referral of their case to the Committee against Torture under article 22 of the Convention."*

[27] The 31 March 2010 version of the preliminary bill relating to immigration, integration and nationality states: "*When it is evident ta group of foreign nationals have just arrived at the border outside a border crossing point, the transit zone shall be extended from the place where the persons concerned are discovered to the nearest border crossing point."* Article L 221-2 amended of the CESEDA (our translation).
The bill also provides for delaying the moment when the person is informed of his or her rights (the right to see a doctor, to communicate with an adviser or any other person, the assistance of an interpreter during the procedure). The notification and exercise of these rights are simply provided for: "*as soon as possible having regard to the time required"* (Article L 221-4 amended of the CESEDA, our translation).

Extract from the ANAFE report on the monitoring of persons refused entry between 2007 and 2009 (our translation):[28]

"*In **2007**, 20% of unaccompanied minors whom the ANAFE met were refused entry and returned to a country other than their own, where they had little chance of finding their family or relatives.*
***In 2008**, this figure was 36%, and in 2009, 7%.*

In 2008, most of the minors whom the ANAFE met were originally from China. Although most of them were sent to Hong-Kong, the ANAFE noted that they did not come from there. China being such a huge country, their fate remains particularly worrying.
In 2007 and 2008, 20% and 36% respectively of the unaccompanied minors met by the ANAFE were rapidly returned to the country from which they had come, which was not, of course, necessarily their country of origin, without the border police taking any steps to safeguard them.

Several witness statements have confirmed that there was no family present or any children's service awaiting these unaccompanied minors in the country to which they were returned, even when it was their own country."

According to the PAF, it would seem that since October 2009, unaccompanied minors have systematically been returned under escort to the country of which they were nationals and handed over directly to local authorities, with the exception of minors in interrupted transit, who are not automatically entitled to the 24-hour protection, the "jour franc".

However, the ANAFE has been given no specific details. It has not been able to verify these data and considers it "*highly unlikely that the administration is in a position to obtain genuine safeguards as to who is looking after minors in view of the brevity of the average time spent in the transit zone (48 hours)*" [29] (our translation).

3.1.2 Endangering persons who are returned

On several occasions, ACAT-France has been informed by unsuccessful asylum-seekers that, when they were sent back, the French authorities had reported their asylum applications to the authorities' foreign counterparts, thus placing them at serious risk.

Up to now, ACAT-France has been unable to discover what exactly is in the file of foreign nationals who have been refused entry, to which authority their papers are handed over when they board the plane and when they arrive (to the escort, to the aircrew or to the returnees themselves), nor does it France know what information is divulged by the French authorities to the consulates concerned to enable a laissez-passer to be issued, nor whether there are specific instructions for unsuccessful asylum-seekers.

[28] ANAFE, *Rapport sur le suivi des personnes refoulées*, April 2010, in preparation
[29] According to the data which the *Direction centrale de la police aux frontières* gave the working party on minors at the meeting of 22 May 2009, the average stay in the transit zone of foreign nationals who are unaccompanied minors is 48 hours.

Neither France's report nor its reply make these points clear.

ACAT-France has learnt of the case of a **Congolese (DRC) national** whom France returned to Kinshasa on 23 September 2006 after his asylum application was rejected on 1 April 2003.
He told us when he returned to France that his French escort had handed him over to the Congolese immigration services (DGM) with his complete file (arrest in France, asylum application and its rejection).

As soon as he arrived in Kinshasa, he was interrogated as to why he had gone to France and applied for asylum.
After this first interrogation, he was taken to the headquarters of the Police d'Intervention Rapide (PIR) where a report was filed. On 24 September 2006, he was taken to the prison formerly known as the CirKo and now the IPK in Kinshasa, where he was held for a month and ten days and subjected to torture.

The ANAFE has encountered the same situation.

Mr D., a **Guinean** national who was placed in the transit zone of Roissy Charles de Gaulle on 26 August 2009, immediately sought entry in order to apply for asylum owing to fears arising from his membership of one of the opposition political parties.
He was refused entry for the purposes of asylum and, when his court appeal was rejected, he was sent back to Conakry.

On 29 October, the ANAFE heard from him that he had been returned under escort. On arrival he had been handed over to the Guinean authorities and heard a French member of the escort team say that he had made an asylum claim in France.

He spent the night in a cell in Conakry airport before being taken the next day to the notorious "Alpha Yaya Diallo" military camp on the outskirts of Conakry, where the Red Berets of the military junta were entrenched.
The soldiers told him he would stay there pending further orders. He was held with 15 others in inhuman and degrading conditions and severely beaten by the military for six weeks. "*Oh, they really enjoyed hitting us, but it's hard to talk about it*".[30]

3.1.3 Persons refused entry after sentencing for acts of terrorism, despite the absolute ban on torture

On several occasions, France has removed from French territory, or attempted to do so, foreign nationals who have been sentenced for acts of terrorism, more especially in France, even though they risked torture in the country to which they were returned.

Case 1, Mr Yassine Ferchichi, a Tunisian national. He risks being tortured if he is returned to Tunisia as he has been sentenced to 32 years and 6 months in prison under Tunisian anti-terrorist legislation. At the end of 2009, he lodged an urgent appeal to the European Court of Human Rights to seek to have his deportation to Tunisia suspended.

[30] ANAFE, *Rapport sur le suivi des personnes refoulées,* April 2010, in preparation

The Court delivered a preliminary decision asking France not to expel him to Tunisia. France then stated that he would be sent to Senegal, a country with which he had no links.

The European Court again asked France not to send him back until Senegal had given a written undertaking not to re-expel him to Tunisia. Without waiting for these safeguards, France expelled Mr Ferchichi on 24 December 2009, disregarding the request of the European Court and violating the absolute principle of the ban on torture.
The Senegalese press protested vigorously against the expulsion to Senegal of a Tunisian national, taking the view that Senegal was not in the business of accepting people who had been sentenced for acts of terrorism.

Case 2, Mr Tebourski, a Tunisian who was returned by France in August 2006 upon expiry of his 6-year term of imprisonment for criminal association for the purposes of terrorist activity, disregarding a request by the CAT which had been notified by ACAT-France. Since his forced return, Mr Tebourski has in fact been condemned by the Tunisian authorities to civil and social death. He has been unable to renew his passport, he has run into numerous problems trying to find a job despite his qualifications and his every move is still under surveillance. His present situation may be considered to be treatment running counter to the Convention.

Case 3, Mr Daoudi, an Algerian granted French nationality in 2001. For the preparation of terrorist acts, he was condemned to six years' imprisonment, banned from residing on French territory and stripped of his French nationality. France tried to return him to Algeria, despite the risks of torture there.
In December 2009, the European Court condemned France for violation of Article 3, considering that the possibility that the decision to return him to Algeria might be put into effect exposed the applicant to the risk of torture or inhuman or degrading treatment[31]

Case 4, Mr Houssine Tarkhani, a Tunisian national. Staying illegally in France, he was arrested on 5 May 2007 and submitted an asylum application from the CRA in Mesnil-Amelot. His application was fast-tracked and rejected on 25 May. He was sent back to Tunisia on 2 June. On arrival, on 3 June, he was arrested, held *incommunicado* and detained in custody in the Ministry of the Interior beyond the time legally allowed and tortured, in particular by electric shock. The examining magistrate consigned him to prison for offences under the 2003 anti-terrorist act and on 11 August 2008 he was condemned to five years' imprisonment.

These different cases highlight the attitude of France, which on occasion tries to circumvent the absolute principle of a ban on the torture of persons considered to be "undesirables" on French soil.
France should be reminded that, whatever the situation of the persons concerned, the ban on torture remains absolute.

Recommendations:

3.1 Dangerous removals, despite the principle of non-refoulement

Do not send any persons back to countries where they risk being subjected to acts of torture or cruel, inhuman or degrading treatment.

[31] Daoudi v. France Ruling of 3 December 2009, Application no 19576/08

Ensure that the authorities in the country to which persons are returned are not informed that they applied for asylum.

If an application for a laissez-passer is submitted at a foreign consulate in France, do not mention the asylum application or the grounds for its being refused.

Give regularly repeated instructions to staff responsible for escorting or boarding returnees.

Refuse entry to unaccompanied minors who are foreign nationals only when the decision is taken by a judge in the overriding interest of the child, after a social services enquiry and with monitoring of the child in his or her country.

3.2 Lack of any detailed risk-assessment when a person is removed

CAT question 9: "*Please indicate whether effective means of monitoring the fate of deported persons have been adopted. Please provide examples of cases in which the French authorities have refrained from extradition, refoulement or deportation for fear that the persons concerned might be tortured and indicate on the basis of what information such decisions have been taken.*"

When investigating the legality of removal measures, the administrative courts and administrative courts of appeal have to issue a ruling on the risks of torture or ill-treatment of foreign nationals returned to their country of origin.

In practice, this investigation is superficial, in many cases through lack of time or because the judges have insufficient documentation available to them.

Moreover, in its very general reply (§146), France gives no indication of numbers of cases where a removal measure has not been implemented specifically because of the risk of torture, with the exception of extraditions.

Also rare are court rulings which expressly quote documentary sources of information on human rights violations which might prevent removals in cases where there are risks in the country to which those who are removed are sent.

Legal theorists have analysed how the French administrative courts have applied Article 3 of the ECHR as regards litigation in the case of removals, covering the field to which the Convention applies.

They point out that annulment is rare, that firm proof is required that there is a risk of torture or of ill-treatment in the case in question, the court relying more often than not on the fact that refugee status has been refused. They add that the court's monitoring does not attach "*any particular importance to the special nature of Article 3*".[32]

[32] Study by Marie-Joëlle REDOR-FICHOT, Professor at the University of Caen, in the joint work entitled *La portée de l'article 3 de la Convention européenne des droits de l'Homme,* Bruylant 2006, page 69

The number of provisional measures handed down by the European Court requiring France not to return a foreign national owing to the risks of torture or inhuman or degrading treatment backs up this analysis of insufficient assessment by the French courts of the possible risks: 60 provisional measures in 2007, 101 in 2008, 92 in 2009 and 16 to mid-March 2010.

In May 2009, ACAT-France made a last-minute appeal to the European Court of Human Rights to avoid the removal of a Congolese asylum-seeker, Mr T, who had testified at the Brazzaville trial in 2005 relating to the case of the "Brazzaville Beach Disappeared" in 1999.
He had fled the civil war and taken refuge across the river in the Democratic Republic of Congo. At the time of the appeal for national reconciliation, he had returned to Brazzaville in May 1999. From these return convoys, over 350 people disappeared. He narrowly escaped death.

Following his testimony at the Brazzaville trial in 2005, he came under threat and fled to France, where his asylum application was rejected. He was placed in detention and threatened with removal, since the administrative court who had dealt with his case had not considered there was any risk if he was sent back.
Fortunately, the European Court suspended his removal.

He was finally granted recognition as a refugee in October 2009 on the grounds that "*owing to his testimony to a lawyer for the civil parties at the 2005 trial, attempts were made to apprehend him; that in such circumstances, he must be regarded as being in fear [...] of being persecuted if he returns to his own country as a result of the political opinions imputed to him*" (our translation).

If it had not been for the help of the European court, Mr T. would have been returned to face persecution.

In January 2010, ACAT-France again applied to the European Court to try to avoid the return of a Guinean national, Mr D., sentenced in his country for taking part in a demonstration in 2004 against power cuts. His asylum application, which had been fast-tracked, was pending at the National Court of Asylum.

The French administrative court considered that no clear evidence had been produced that he would risk torture if returned.

At the European Court, as before the national court, the arguments put forward included the situation in Guinea, a country where torture is widespread, and of the case of two Guinean nationals, unsuccessful asylum-seekers who had been returned to their country, arrested upon arrival, arbitrarily imprisoned and severely beaten and ill-treated by the Guinean authorities.

On 1 February 2010, the European Court asked France to suspend his removal. Since then, he has been able to continue his application for asylum in France.

This lack of any detailed risk assessment leads to people being returned even though they are in danger.

Recommendations:
3.2 Lack of any detailed risk-assessment when a person is returned

Train judges to be more aware of the risk of torture in the countries to which asylum-seekers may be returned.

Lighten the burden of proof on a person at risk of removal and give him or her the benefit of the doubt so that any risk upon return can be avoided.

3.3 The right to asylum: a fundamental freedom seriously endangered

Asylum-seekers faced with suspicion, especially from the authorities responsible for allowing them to stay while their applications are being processed, frequently encounter a series of road blocks which they have to go through before they can – possibly – reach their goal of protection.

3.3.1 Information which is incomplete, frequently incorrect or unavailable

CAT question 10a): "*Please provide up-to-date information on the measures taken by the State party to ensure: (a) that undocumented foreign nationals and asylum-seekers are properly informed of their rights, including their right to apply for asylum and to receive free legal aid.*"

From November 2008 to November 2009, several local organisations concerned with asylum[33] drew up a list of practices at the préfecture of the Ile de France, which deals with around 42% of all asylum applications registered in France (excluding cases re-examined).[34]

The préfectures are in fact the first point of contact for those on French territory who have fled violence and persecution in their own countries to seek protection in France. It is the préfectures which authorise them to remain while their asylum applications are being examined.

Often in a state of post-traumatic stress, having fled their own countries at short notice, perhaps not speaking French, such people will have to deal with a public service in the préfecture whose guiding logic is not so much to protect asylum-seekers as to **control the flow of migration**.

From observations of what happens on the ground, numerous testimonies gathered together and visits to asylum-seekers in prefectures in the Ile-de-France, deep-seated and illegal disparities have emerged in the way the law is applied by the prefectural departments, restricted access to the asylum procedure itself, **a lack of personal information** and

[33] ACAT-France, Amnesty International France, Cimade Ile de France, Comité d'aide aux réfugiés (CAAR), Dom'Asile, Groupe accueil solidarité (GAS), Secours Catholique Ile de France Réseau Caritas, http://www.acatfrance.fr/actualites/php#Violations-du-droit-asile

[34] According to the OFPRA 2008 Report:
*The share of the Ile-de-France region, which had declined over the past three years, rose again in 2008 to reach 47% of total demand." (*our translation).

restrictions on allowing asylum-seekers in precarious and vulnerable social situations to remain.

More specifically, **France does not respect its obligation to give asylum-seekers information.** In November 2009, after over a year of observation, the Guide for asylum-seekers (out of stock since 2005), translated and updated in July 2009, was still not being distributed in préfectures in the Ile de France and the administrative forms (information on identity, procedure to follow and rights of asylum-seekers, or allowing them to seek accommodation), although they exist in 18 languages, were still handed over most of the time only in French and, possibly, English.

On the date on which this alternative report was being drafted, the Guide for asylum-seekers was still not being handed to the persons concerned, although it can be downloaded from the Internet and the Committee has been privileged to receive a copy. France's reply (§153), which boldly asserts that the guide has been available since July 2009, is incorrect and out of touch with reality.

Faced with an increasingly complex asylum procedure full of pitfalls, information at the préfecture stage is either non-existent, incomplete or not translated, even though it is vital for persons who have fled persecution and are seeking protection. This lack of a public service is forcing civil society, whose associations are trying to help asylum-seekers, to fill in the gaps left by the French authorities.

Recommendations
3.3.1 Information which is incomplete, frequently incorrect or unavailable

Hand over information of a legal nature, reliably translated into the asylum-seekers' own language, in particular:
- hand out the Guide for asylum-seekers;
- distribute forms for "acceptance to stay" in all available languages;
- allow asylum-seekers access to an interpreter;
- tell them which associations are able to help them.

3.3.2 Asylum procedure undermined by excessive use of the fast-track (priority) procedure

CAT question 10 b): "*Please provide up-to-date information on the measures taken by the State party to ensure (b) that persons subject to deportation orders are allowed sufficient time to prepare an asylum application, access to the services of a translator and a right of appeal with suspensive effect.* […]".

This question leads us to query France's excessive use of the fast-track (priority) procedure for certain asylum applications. This procedure means an earlier examination of the application, no interpreting assistance and still no appeal with suspensive effect.

The fast-track procedure means, in fact, that such asylum-seekers are merely tolerated on French territory pending the OFPRA decision. They have no provisional residence permit.

The material conditions under which they are held on arrival are scarcely appropriate. They are not entitled to accommodation in a reception centre for asylum-seekers (CADA) and do not receive the temporary waiting allowance (ATA), currently €320 a month.

Asylum-seekers who are fast-tracked live on the street or in emergency accommodation which they have to leave regularly, maybe every day, even, or with third persons. They are dependent on humanitarian aid and certain public hospital medical services for food, transport, clothing and healthcare.

Finally, the OFPRA is obliged to examine their applications within 15 days, a deadline which is far too short for an in-depth examination when painstaking documentary searches may be necessary, or a second interview with the asylum-seeker may prove useful.

a) Use of the fast-track procedure clearly on the increase

In four cases provided for by Article L 741-4 of the CESEDA, an asylum application may be placed under the "priority" or fast-track procedure: when,

- the application is the responsibility of another country;
- the applicant is a national of a country considered to be a "safe country of origin";
- the applicant's presence in France constitutes a serious threat to public order;
- the application is considered as being deliberately fraudulent or designed to prevent implementation of a removal order already notified or imminent.

In practice, the préfectures are using this priority procedure increasingly systematically and unnecessarily.

The number of fast-tracked asylum-seekers is increasing steadily, up by 26% in 2008, including the percentage of first applications, from 34% in 2006 to 43% in 2008.[35]

France is planning to add a further case of asylum applications considered fraudulent and fast-tracked: where applicants provide false information or conceal information on their identity, nationality or method of entering France.[36]

The increase in fast-tracking is all the more disquieting in that the procedure for examining asylum applications does not provide sufficient safeguards and leaves asylum-seekers in an extremely vulnerable and precarious social situation.

b) No appeal with suspensive effect for fast-tracked asylum-seekers

If their applications are rejected, asylum-seekers may at any moment be arrested, subject to a removal procedure and consequently placed in administrative detention pending removal.

[35] OFPRA 2008 activity report

[36] Preliminary draft bill relating to immigration, integration and nationality dated 31 March 2010 (Art. L 741-1 amended of the CESEDA) (our translation)

Although they may lodge an appeal with the court specialising in asylum, the CNDA, that appeal is not suspensive. Thus asylum-seekers may be removed even before the Court has examined their appeal. The Court specifically refuses to examine the appeal of a person already returned to his or her country of origin.[37]

This is what could have happened to Mr T, a witness at the Brazzaville trial in 2005 concerned with the "Disappeared of the Beach", but for the intervention of the European Court of Human Rights, which asked France to suspend his removal (see 3.2 above).

This risk is by no means imaginary, since, according to the latest figures published by the OFPRA in 2008, over 30% of asylum applications - 10 527 out of a total of 34 258 – were fast-tracked, including applications for re-examination.

In 2008, the OFPRA approved only 16.2%. But following the CNDA's review of decisions, the overall approval rate rose to 36%. Thus the CNDA is responsible for over 55% of protection approvals in France, priority and normal procedures combined.

This demonstrates the **urgent need for an effective, i.e. suspensive, appeal to the courts**.

In the concluding observations of the United Nations Human Rights Committee meeting to consider the fourth periodic report of France, the Committee recommended[38]:

"*The State party should ensure that the return of foreign nationals, including asylum-seekers, is assessed through a fair process that effectively excludes the real risk that any person will face serious human rights violations upon his return. Undocumented foreign nationals and asylum-seekers must be properly informed and assured of their rights, including the right to apply for asylum, with access to free legal aid. The State party should also ensure that all individuals subject to deportation orders have an adequate period to prepare an asylum application, with guaranteed access to translators, and a right of appeal with suspensive effect.*" (§20, our underlining)

In his report on the effective respect for human rights in France[39], Mr Alvaro Gil-Robles, the Council of Europe's Commissioner for Human Rights, said of the priority procedure that it "*offers asylum-seekers only minimal chances: the appeals they can lodge with the Refugees' Appeal Board [*now the CNDA] *do not have a suspensive effect on the rejected applicants' expulsion*".

He concluded that "*France therefore has a two-track system of asylum applications,[ ] I consequently wish to point out that a priority procedure must absolutely not become a special procedure. While some formalities can indeed be speeded up in the light of the data in some*

[37] In this case, following a decision of the joint Sections of the CNDA of 1 June 2007 (Ferdi AYDIN ruling no 573.524) "*both the provisions of Article 1 A 2 of the Geneva Convention and the provisions of Article 2 of Directive no 2004/83/EC of 29 April 2004 imply that any asylum-seeker applying for these Articles to be implemented is necessarily outside his or her country of origin [..]."* Hence the consequence of the "*involuntary return to his or her country of origin of a claimant who has no intention of renouncing his or her application for protection is to interrupt provisionally the inquiry into his or her case; hence under these conditions the appeal is temporarily null and void"* (our underlining and translation).

[38] CCPR/C/FRA/CO/4

[39] Comm/DH(2006)2 – Report drawn up following his visit to France from 5 to 21 September 2005

applications, the priority procedure must not become a summary procedure and each application must be fully and carefully examined." (our underlining)

Similarly, the Executive Committee of the High Commission for Refugees[40] considered that "*an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory*".

According to the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg: "*Nor do applicants have an effective remedy available if their applications are rejected, since an appeal to the CNDA does not have suspensive effect. They may, however, challenge administrative removal measures in the administrative courts. The 2006 report having already raised these issues, the Commissioner reiterates his concerns and invites the French authorities to review as soon as possible the procedures and deadlines for the submission of asylum applications by persons in administrative detention*".[41] (our underlining)

The lack of suspensive appeal to the court specialising in asylum and the lack of a thorough examination of the risks during a removal measure are a serious infringement of the principle of non-refoulement.

By thus depriving fast-tracked asylum-seekers of an appeal with suspensive effect, **the French authorities accept the risk of removals which may be dangerous** for a potential refugee who may face the persecution or acts of torture from which he has fled.

Accepting such a risk is incompatible with absolute respect for the ban on torture and cruel, inhuman or degrading treatment.

The unanimous position of international bodies concerned with protecting human rights, which is in favour of an appeal with suspensive effect, should lead France to introduce an effective, i.e. suspensive, appeal.

c) The special case of the list of "safe countries of origin"

The 11 December 2003 act introduced the possibility of using the priority procedure for asylum-seekers who come from "safe countries of origin".[42]

This list is taken from Community law, even though the Member States of the European Union have not managed to agree on a common list of "safe countries of origin".

[40] Conclusion No 30 (XXXIV) on the problem of manifestly unfounded or abusive applications for refugee status or asylum, 20 October 1983

[41] §124 of the MEMORANDUM following his visit to France from 21 to 23 May 2008.

[42] Following the OFPRA Board's decision of 20 November 2009 revising the list of safe countries of origin, these are: the Republics of Benin, Bosnia-Herzegovina, Cape Verde, Croatia, Ghana, India, Mali, Mauritius, Mongolia, Senegal, Ukraine, the former Yugoslav Republic of Macedonia, the Republic of Madagascar, the United Republic of Tanzania, the Republics of Armenia, Serbia and Turkey. Georgia was withdrawn from the list.
In a Decision dated 13 February 2008, the Conseil d'Etat (Council of State) considered that Niger and Albania should not have been included on the previous list.

Under French law, the "safe countries of origin" are considered not to pose any threat to persons returned ("refoulés") to them, i.e. those which respect the principles of freedom, democracy and the rule of law together with human rights and fundamental freedoms.

The OFPRA considers such asylum applications to be unfounded.

However, in 2008 34.8% of persons whose country of origin was on the list were recognised by the OFPRA as refugees or granted subsidiary protection.[43]

In 2008, the OFPRA and the CNDA recognised as refugees or granted subsidiary protection to asylum-seekers originating in the listed countries for the following reasons:

- the persistence of open or unacknowledged civil wars (total approval rate for Bosnia Herzegovina 58.57%, Georgia 35.38%, Senegal 28.44%);
- persecution or serious threats linked to their Roma origins (total approval rate for the Former Yugoslav Republic of Macedonia 20.77%, Bosnia Herzegovina 58.57%), linked to criminal networks, honour crimes or human trafficking networks (Ukraine 29.23%), or based on the fact that they belonged to certain groups (Mali 47.41%);
- continued existence of the death penalty (Mongolia 26%).

At the last OFPRA board meeting in November 2009, three States were added to the list of safe countries of origin: **Turkey, Serbia and Armenia**, for which the overall percentages for the granting of refugee status or subsidiary protection were 26.71%, 33% and 26.72% respectively.

But these States do not fit the definition of "safe countries of origin". A country is considered safe if it ensures respect for the principles of freedom, democracy and the rule of law, human rights and fundamental freedoms.

However, in these countries numerous infringements of human rights have been noted: freedom of expression has been flouted, there have been arbitrary arrests and detentions, torture in prison, impunity, violence against women.

Other countries which **currently do not or no longer meet the definition of a "safe country of origin"** have also been **kept on the list,** such as Mali, where excision is practised, or Madagascar, where the March 2009 coup d'état rode roughshod over *respect for the principles of liberty, democracy and the rule of law,*[44]

Furthermore, there is no **transparent and precisely defined procedure** for drawing up this list, such as the need to cross-check sources, have available independent, varied and pertinent sources which are accurately quoted (NGOs, international human rights bodies, parliamentary missions, etc.).

[43] Source: 2008 OFPRA Report

[44] An appeal for deletion has been lodged with the Conseil d'Etat by ACAT-France, Amnesty International France, Association d'accueil aux Médecins et des Personnels de Santé Réfugiés, la Cimade, Dom'Asile, GISTI, Ligue des Droits de l'Homme, Association des avocats ELENA France. A further appeal has been lodged by the Forum Réfugiés and France Terre d'Asile.

At the last session of the OFPRA Administration Board, Forum Réfugiés, an association with observer status, protested vigorously against the method of adopting the list, in particular the lack of effective debate on the situation in the countries concerned, the lack of prior data and the fact that the reports published by the various NGOs were not taken into account.[45]

The lack of any clear, transparent procedure which would enable the list to be revised rapidly as the situation changed in the countries concerned makes it likely that diplomatic considerations will be taken into account to the detriment of asylum-seekers, despite CAT recommendation 9.[46]

The majority of the OFPRA Board members are, in fact, **ministry representatives** (Immigration, Foreign Affairs, Justice, Budget), and it is therefore under government authority.

Diplomatic telegrams from French consulates in the countries concerned referred to in the Board discussions speak volumes. In Turkey's case, it is explicitly stated that:

> "*Turkey's entry in the list of safe countries would be perceived as encouragement for the country to continue reforms on the road to democratisation.*
> *At bilateral level, the Turkish authorities would obviously appreciate this gesture on the part of France, which would be seen as a response to a recurrent demand made again recently to the ministry*" (our translation).

Moreover, the Turkish authorities had some time previously brought up the question with their French counterparts, surprised at being omitted from the list of countries considered safe.

The procedure followed is not reactive, either. Georgia, involved in armed conflict in the summer of 2008, was not finally withdrawn from the list until November 2009.

d) The illusion that asylum applications can be made while in a detention centre: custody

In 2008, 1894 applications that were fast-tracked had been submitted in custody.[47]

It remains extremely difficult, not to say illusory, to file an asylum application while in custody, since a tight five-day deadline is imposed, the application has to be written in French without any right to an interpreter and it is impossible to gather evidence to support the applicant's claim in such a short time.

Applicants have no right to the assistance of a lawyer in drawing up their applications.

Given the time, language and drafting constraints imposed, the right to apply for asylum cannot be exercised effectively, even though associations are present in detention centres to provide legal support to detained foreigners.

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[45] http://www.forumrefugies.org/fr/Actualites/Forum-refugies/URGENT-Olivier-Brachet-quitte-la-seance-du-Conseil-d-administration-de-l-OFPRA

[46] *The Committee recommends that the State party should take appropriate measures to ensure that applications for asylum by persons from States to which the concepts of "internal asylum" or "safe country of origin" apply are examined with due consideration for the applicant's personal situation and in full conformity with articles 3 and 22 of the Convention [...].*

[47] Source: 2008 OFPRA report

In its concluding observations in April 2006[48], the CAT stated that it was "*also concerned about the summary nature of the so-called priority procedure for consideration of applications filed in administrative holding centres or at borders, which does not enable the risks covered by article 3 of the Convention to be assessed*" (our underlining).

1st obstacle: too little time allowed to apply for asylum while in custody

According to French law as laid down in Article R553-15 of the CESEDA, "*a foreign national held in a detention centre who wishes to apply for asylum shall submit his application within five days from his being informed of this right* […]" (our translation). Otherwise, his application for protection will be regarded as inadmissible.

The fact that such a short time is allowed means that the asylum-seeker cannot compile his asylum application file. While in custody, he cannot gather supporting evidence, request testimony or documents from his country of origin or obtain help from third parties in seeking out proofs in any way or documenting the breach of human rights in his country and so confirming the risks arising if he should be returned.

In its Report to the Government of the French Republic on its visit to France from 27 September to 9 October 2006, the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) "*recommends that the French authorities increase the time allowed for submission of an asylum application by a person held in an administrative holding centre to at least ten days*" (§88), but without increasing the 32-day maximum period of detention.

2nd obstacle: no right to an interpreter

French law also requires the asylum application to be written in French on pain of inadmissibility but there is no provision for free assistance from an interpreter (Art. R553-11 CESEDA).

Effective access to the procedure for applying for asylum while in custody is thus made all the more difficult when the asylum-seeker is not French-speaking and does not have the financial means to pay for the services of an interpreter. Consideration of his application will thus depend on whether he happens to have a sufficient command of French to substantiate his claim.

By allowing financial circumstances to determine whether the right to asylum can be exercised while in custody, French law fails to comply with the requirements of the Convention.

3rd obstacle: the very brief consideration given to asylum applications submitted in custody

When the OFPRA receives an application, it has a very brief period of 96 hours in which to

[48] Conclusions and recommendations of the Committee against Torture: France. 03/04/2006. CAT/C/FRA/CO/3. (Concluding Observations/Comments)

consider it.

The applicant's claim has necessarily been drawn up in a rough and ready form given the time and language constraints to which he is subject and because it is impossible to assemble supporting evidence outside his place of custody.

The OFPRA thus has too little time to consider an application which in turn has been inadequately prepared and which it often describes as "*rudimentary*", "*inadequate*" or "*vague*". The OFPRA does not materially have time to carry out documentary searches or even to conduct several interviews with the applicant, irrespective of the nature of the application or its complexity, since it is required to reach a decision within 96 hours.

This summary procedure has been criticised both by the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, in his Memorandum following his visit to France from 21 to 23 May 2008 and by your Committee in its latest observations:
"*As well as imposing an extremely tight deadline for submitting asylum applications, the procedure requires the OFPRA to examine and rule on such applications within 96 hours. Thus the entire asylum procedure at holding centres is clearly so summary that the implicit presumption is that applications are unjustified.*[…]." (§124).

The current procedure for seeking asylum while held in custody does not avoid the risk of dangerous return to countries where the returnee is liable to be tortured.

The CAT recommendations, which were made in 2006, are all the more apposite since France is considering extending the period of custody from the current 32 days to 45 days[49], whereas it is still illusory to suppose that an asylum application can be drawn up in a detention centre.

Recommendation:

Introduce a suspensive appeal for fast-tracked asylum applications without increasing the period of custody.

3.3.3 Readmission of asylum-seekers to European countries which have no efficient asylum procedure

Under the terms of Council Regulation (EC) No 343/2003 of 18 February 2003 ("Dublin II"), the countries which are gateways to the European area, such as Greece or Malta, are in principle responsible for examining asylum applications submitted by foreign nationals who have crossed their borders.

This mechanism for determining the Member State responsible presupposes that all European states can offer an effective asylum system with comparable conditions of reception. In practice, this assumption has proved incorrect, since asylum systems vary from state to state,

[49] Bill relating to immigration, integration and nationality

with wide differences in the procedures for access to the right of asylum and recognition of refugee status.

However, the states party to the "Dublin II" Regulation, such as France, may resort to the Regulation's sovereignty clause (Article 3(2)) or the humanitarian clause (Article 15) and thus assume responsibility for examining an asylum application from a person present on their territory. In practice, however, little use is made of this option.

For many asylum-seekers from Afghanistan, Iraq, Iran or Pakistan, **Greece** is the first country of the European area that they enter and is responsible for their asylum application.

However, the Greek asylum system is wholly inadequate. The rate of admission to Greece remains well below that of European countries which receive a similar number of asylum applications, such as the United Kingdom, Sweden, Germany, Italy and France.[50]

In a first position paper dated 15 April 2008, the office of the UN High Commissioner for Refugees (UNHCR) notes the ineffectiveness of the right to asylum in Greece and draws attention to the disquietingly low success rate of asylum applications at first instance (only 0.02%) and on appeal (only 2.5%).

It concludes that "*asylum-seekers, including 'Dublin returnees', continue to face undue hardships in having their claims heard and adequately adjudicated. UNHCR is concerned that all these factors taken together may give rise to the risk of refoulement.*" (§24)[51]

As a result of structural shortcomings in the Greek asylum procedure, asylum-seekers continue to remain effectively in legal limbo, unable to exercise their rights, for prolonged periods of time.

The procedure does not guarantee a fair evaluation of asylum claims at either first or second instance. Essential procedural safeguards are not guaranteed throughout the refugee status determination process. There is no access to an interpreter or to legal aid (loc. cit., §17).

In July 2009, deterioration in the Greek asylum procedure was such that the UNHCR withdrew from the process. In December 2009, it again strongly advised that the States parties refrain from returning asylum-seekers to Greece,[52]

For its part, the European Committee for the Prevention of Torture has pointed out that "*the conditions of detention of the vast majority of irregular migrants deprived of their liberty in Greece remain unacceptable*" (our translation*).*[53]

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[50] Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 4 February 2009. UNHCR Observations on Greece as a country of asylum, December 2009, which for 2008 mentions a protection rate of 0.06% at first instance and 24% on appeal.

[51] It also notes the lack of access to an effective remedy as provided for by Article 13 of the European Convention on Human Rights (§9), the lack of interpretation services (§7) and the automatic detention of Dublin returnees (§7).

[52] UNHCR Observations on Greece as a country of asylum, December 2009. V) Conclusions

[53] On 30 June last, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe (CPT) published the report on its ad hoc visit to Greece in September 2008. In a judgment rendered on 11 June 2009 in the case *S.D. v. Greece* (application n° 53541/07), the European Court of Human Rights likewise found that the conditions of detention of an asylum seeker in Greece from May to July

Finally, an infringement procedure against Greece for failure to apply the European principles of non-refoulement, respect for the right to asylum and human dignity is in hand at the European Commission.

Various cases concerning the transfer of asylum-seekers from the Netherlands to Greece under the Dublin Regulation have been brought before the European Court of Human Rights. At the Court's invitation, the Council of Europe Commissioner for Human Rights submitted a third party intervention stating that asylum law and practice in Greece are not in compliance with international and European human rights standards.[54]

France continues to issue orders for readmission to Greece despite several requests from civil society for a moratorium.

Recommendations:

Do not permit the forced return of asylum-seekers to Greece.

Declare a moratorium on such forced returns until Greece has an asylum procedure in compliance with international and European standards for the consideration of asylum applications.

3.4 Collective arrests and risk of dangerous return

CAT questions 13 and 14: "*Please provide information on allegations received over the period covered by the periodic report of the State party concerning the collective arrest of persons with a view to placing them in administrative holding centres pending their return to a third State (CAT/C/FRA/CO/3, para. 10).*
Please provide detailed information on the operation to dismantle the camps for undocumented migrants near Calais. In particular, please indicate what measures were taken by the State party to ensure that no person at risk of being subjected to torture if returned to a third State would be deported."

On 22 September 2009, the Minister for Immigration launched a police operation to close down the Calais "jungles" housing migrants and asylum-seekers, especially Afghans. A first attempt to return the Afghan nationals arrested on that occasion was prevented by the French courts and the European Court of Human Rights.

However, there have been other collective arrest operations. About 50 Afghans were again taken into custody in late September / early October 2009.

On 20 October 2009, a charter flight jointly arranged with the United Kingdom started from Roissy-Charles de Gaulle airport for Kabul with 27 persons on board, including three Afghans arrested in France. Two of them, whose asylum applications had just been rejected, were

2007 had amounted to degrading treatment, that his detention was illegal and that he had not had any means of redress to contest the legality of his detention.

[54] http://www.coe.int/t/commissioner/default_en.asp

returned before being able to appeal to the CNDA. On 15 December 2009, nine more Afghan nationals were similarly returned to their country.

On 22 January 2010, over a hundred men, women and children of Kurdish origin from Syria, including infants, landed in Corsica. They were immediately arrested and held under the administrative holding regime in violation of their rights, in particular the right to apply for asylum in the normal way.

They were all freed by the courts. However, the French authorities' practice of giving priority to detaining exiles rather than protecting them is contrary to the fundamental right to asylum.

In its reply, France fails to mention that it intends to curtail severely the procedural safeguards hitherto available to foreigners who are arrested and taken into custody, by reducing the scope for the courts to free arrested persons.[55]

Nor does France mention that in the north of France, at Calais, a number of potential refugees fall foul of the "Dublin II Regulation" and are subject to readmission, in particular to Greece, which France refuses to suspend.

The lack of a suspensive appeal to the specialised asylum courts, even though the legality of the return decision may be tested before the administrative court, renders ineffective asylum applications by persons who are arrested and taken into custody with a view to their return.

Moreover, last February, Coordination française pour le droit d'asile, a coalition to which ACAT-France belongs, publicly challenged the French authorities[56] on their maltreatment of migrants in the Nord region and their interference with humanitarian action.

Recommendations:

Cease interference with the work of humanitarian organisations.

Put a stop to the repeated arrests, physical violence, police harassment, damage to property, systematic disturbance of migrants' sleep.

[55] Bill relating to immigration, integration and nationality as at 31 March 2010

[56] Open letter to the Minister for Immigration, Calais, maltreatment of migrants and interference with humanitarian action must cease immediately, 16 February 2010

ARTICLE 5
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.

5.1. Concerns over the bill adapting French legislation to bring it into line with the statute of the International Criminal Court

5.1.1 Failure by France to comply with the recommendations of the Committee against Torture

On 24 November 2005, when it adopted its conclusions and recommendations on scrutinising France's third periodic report (CAT/C/FRA/CO/3), the Committee against Torture expressed concerns about the provisions of a draft bill bringing French legislation into line with the statute of the International Criminal Court (ICC). At that time, the text restricted universal competence (paragraph 13 of the CAT conclusions and recommendations).
Since 2005, France has not complied with the Committee's recommendations. Moreover, the French government has made amendments to the bill[57] which are in breach of Article 5 of the Convention against Torture.

Ten years after ratification of the ICC statute, France has still not amended its legislation and seems unwilling to put in place a mechanism of universal competence for war crimes and crimes against humanity.

In 2006, the government proposed a new text excluding any such mechanism. Certain amendments proposed by ACAT-France and FIACAT, as part of a coalition of 44 associations, were adopted during the first reading by the Senate in June 2008. A provision concerning the competence of the courts was then inserted, but emptied of substance.

The text in fact lays down four cumulative restricting conditions which in practice prevent any prosecution and judgment in France of the presumed perpetrators of torture committed abroad in the course of crimes against humanity and war crimes.

5.1.2 Limitations placed by France on the universal competence mechanism

a) Right to prosecute reserved to the public prosecution service
The bill invests the public prosecution service with a monopoly of prosecution. The government has retained this provision despite the Committee's observations in 2005, when it expressly criticised this restriction on victims' right to an effective remedy. The Committee had recommended that France retain a process whereby the institution of a civil action could trigger public prosecution.

The French government had not addressed this point in its comments published in 2007 on the CAT's conclusions and recommendations (CAT/C/FRA/CO/3/Add.1). It has also failed to

[57] See Article 7 bis of Bill No 951 tabled before the National Assembly at the following address: http://www.assemblee-nationale.fr/13/dossiers/cour_penale_internationale_droit.asp

mention it in its replies in 2010 to the questions raised by the CAT with regard to France's reports 4 to 6.

b) The requirement that the alleged offender be habitually resident on French territory
Article 5(2) of the Convention requires each State Party to take such measures as may be necessary to establish its jurisdiction in cases where the alleged offender is present on its territory. The French bill provides that French courts shall be competent if the alleged offender is habitually resident on French territory. The French provision is much more restrictive than the Convention, allowing a torturer to stay in France for a longer or shorter time without being prosecuted or sentenced, provided he does not establish his habitual residence in France.

c) Double criminality
Departing from the very principle of universal competence, the bill requires the crime to be an offence under the criminal law of the country in which it was committed before the case can be tried in France.

d) Inversion of the principle of complementarity
Finally, the text makes it a prerequisite for any prosecution in France that the International Criminal Court should have expressly declined competence.

The bill was sent to the National Assembly on 11 June 2008, but its inscription on the agenda has been continually postponed. In July 2009, the Foreign Affairs Committee of the National Assembly voted unanimously in favour of removing the four barriers. On 4 February 2010, the National Consultative Commission on Human Rights urged the Prime Minister for the fourth time to ensure that France complies with its international obligations.

Recommendations:

Safeguard the right of victims to an effective remedy by creating a procedure by which they can file a complaint and institute a civil action.

Replace the condition of habitual residence of the alleged offender by a requirement for mere presence on French territory, in conformity with the Convention against Torture.

Remove from the bill the restrictive conditions of double criminality and inversion of the principle of complementarity.

ARTICLE 7:
The State Party, if it does not extradite the alleged perpetrator of an act of torture, shall submit the case to its competent authorities for the purpose of prosecution.
Any person prosecuted shall be guaranteed fair treatment at all stages of the proceedings.

7.1. Concerns with regard to France's lack of will to prosecute and judge perpetrators of torture

A. Ben Saïd case

On 15 December 2008, the Lower Rhine Assize Court sentenced a Tunisian diplomat, Khaled Ben Saïd, to eight years' imprisonment for complicity in acts of torture and cruelty. This is the second trial in France based on the universal competence instituted by the Convention against Torture.

ACAT-France welcomes the successful conclusion of this legal procedure but remains concerned by the many obstacles it encountered.

After the complaint against Mr Ben Saïd had been filed, the lawyer of the victim, Zoulaikha Gharbi, a Tunisian national, wrote to the chief prosecutor at the Colmar Appeal Court in June 2001 to draw attention to the obvious risk that the suspect would abscond. On being informed of the proceedings pending against him, the accused fled French territory. The public prosecution service clearly did not take the necessary steps to take the suspect into custody or ensure his presence, contrary to Article 6.

On 14 February 2002, the examining magistrate in charge of the judicial investigation issued an international arrest warrant against Khaled Ben Saïd. However, this warrant, like the international letters rogatory issued some time later, was never executed.

On 16 June 2006, the district prosecutor filed for non-suit. In the light of fresh evidence corroborating the complainant's allegations, a second notification of completion of the enquiry was issued by the examining magistrate, despite which the public prosecutor's office again filed for non-suit in January 2007. Nonetheless, the examining magistrate ordered that Khaled Ben Saïd be prosecuted.

At the trial, the prosecutor asked for the accused to be acquitted. Following the verdict, the prosecutor, who was clearly disinclined to see this representative of the Tunisian state condemned for torture, appealed against the decision. The public prosecutor's office is seldom so accommodating in cases of ordinary law.

B. Donald Rumsfeld case

On 25 October 2007, an action based on the UN Convention against Torture was brought against Donald Rumsfeld, the former US Secretary of Defense, when he made a private visit to Paris.

Two human rights organisations asked the district prosecutor at the Paris ordinary court of first instance to take the necessary measures under Article 6 against Donald Rumsfeld for having ordered and authorised torture and other inhuman and degrading treatment of persons detained at Guantanamo, Abu Ghraib and elsewhere.

On 16 November 2007, the prosecutor, without contesting the allegations of torture, decided to drop the case, on the basis of guidance from the Ministry of Foreign Affairs to the effect that Donald Rumsfeld enjoyed immunity.

When this decision was contested before the chief prosecutor at the Paris appeal court, the latter confirmed the decision to close the case, invoking immunity from criminal jurisdiction and referring to the judgment rendered by the International Court of Justice in 2002, which had held that a foreign minister visiting another country in the course of his duties enjoyed immunity. In June 2008, the Minister of Justice endorsed the chief prosecutor's interpretation.

ACAT-France is concerned by this decision, which appears to run counter to the Convention against Torture and shows that the government does not intend to prosecute alleged perpetrators of torture.

In the case in point, Donald Rumsfeld was visiting Paris in a private capacity. He had in any case resigned as US Secretary of Defense a year earlier. He thus did not enjoy immunity as a former Secretary of State or government official. Moreover, international law recognises no immunity, irrespective of official rank, as regards international crimes, including torture.

Recommendations:

Do not impede penal proceedings for the prosecution and judgment of an alleged perpetrator of torture or ill-treatment who is present on French territory, whatever his nationality.

Prosecute and judge alleged perpetrators of torture, without making any distinction on the basis of current or past official capacity and without regard for immunities.

ARTICLE 11
Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

11.1 Misuse of police custody

In 2008, nearly 580 000 persons were taken into police custody, an increase of 35% in five years. The large number of persons held in custody is the result of a misuse of custody which is regularly criticised.[58]

In 2009, almost 800 000 persons were taken into custody according to the Ministry of the Interior.

Indeed "*a judicial police officer may, where this is necessary for an inquiry, arrest and detain any person against whom there exist one or more plausible reasons to suspect that they have committed or attempted to commit an offence*", whether a felony (punishable by at least ten years' imprisonment), a misdemeanour (punishable by not more than ten years' imprisonment) or a petty offence (punishable by a fine).

"*In October 2009 around 8 p.m., I was taken into custody after a domestic dispute, my wife – who was mentally unstable – having reported me to the police. All my possessions were removed (spectacles, watch, wedding ring, shoe-laces). I was not questioned. I saw the lawyer for only 30 minutes. Then I was left alone in a draughty cell, where I spent the night with only a mattress laid directly on the floor and without any blankets.*

Next day I was coughing and shivering from head to foot, but I was not allowed to blow my nose, despite my requests for health reasons. The funniest thing is that there were posters on the H1N1 virus and the basic hygiene rules all over the police station, while I was refused handkerchiefs!

I was twice taken to hospital, with my hands handcuffed behind my back throughout the trip to the hospital and in front of the patients and staff.

I was never questioned and was freed 48 hours later.

In late January 2010, I was again summoned to be taken into custody, but this time the policemen seemed embarrassed (the press had written a lot about police custody in the preceding days) and I was finally freed on condition I underwent a health check, with no further criminal proceedings." [59]

[58] *Le régime de la garde à vue à la française est une exception en Europe,* Le Monde.fr , 6 January 2010
[59] Source ACAT-France

The use of police custody affects everyone. A member of parliament recently stated: "*In the last few months, a succession of persons taken into custody who depart from the norm, in that they are not ordinary delinquents but teachers, lawyers or housewives, have described how police custody places them in a position of inferiority, since they are alone and materially and psychologically isolated, facing investigating officers whose power is for the moment total and who may be more or less scrupulous*" (our translation).[60]

11.2 No lawyer during custody

In addition to physical conditions which are often unacceptable (as mentioned in France's reply), it may happen that the person concerned does not receive assistance from a lawyer at any time while in custody. Interviews are then conducted without the presence of a legal adviser, who does not have access to the transcripts.

11.3 Inadequate supervision

Deprivation of liberty requires strict supervision of the conditions of custody.

French criminal law requires the district prosecutor at each court to inspect the custody premises at least once a year and to record in a register the number and frequency of the inspections. He must submit to the chief prosecutor a report on the custodial measures and state of the premises, which is forwarded to the Minister of Justice.

In its question 21, the CAT asks France to "*provide information on the content of reports submitted to the Ministry of Justice on visits by district prosecutors to places where persons are held in custody. Does the State party intend to publish these reports? If not, please give reasons.*"

In its reply, France takes refuge behind the legislation, which does not expressly require publication of the annual overview by the Minister of Justice of the annual inspections of custody premises by district prosecutors, adding that anyone may apply to the Commission on Access to Administrative Documents for the annual reports on inspections by the district prosecutor.

However, ACAT-France has heard of one person whose request for access was refused despite endorsement by this Commission.

In his 2008 Activity Report, the Controller-General of Places of Detention drew attention to the need for fuller entries in the custody registers and for greater supervision.[61]

[60] Speech to the Senate by Mr René Vestri, Senator for the Alpes-Maritimes, Tuesday, 9 February 2010
[61] Contrôleur général des lieux de privation de liberté, Rapport annuel 2008, chapitre 3 : les registres de garde à vue http://www.cglp.fr/wp-content/uploads/2009/04/rapport-annuel.pdf

Recommendations:

Restrict the use of police custody.

Allow a lawyer to be present throughout custody, including during questioning.

Authorise publication of the annual overview by the Minister of Justice of the annual inspections of custody premises and strengthen supervision of these premises.

ARTICLE 16
Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

16.1 The French scourge of prison overcrowding

CAT question 31: "*Please provide disaggregated statistical data on the prison population. Please also give details of the measures currently taken to address the problem of prison overcrowding, which is reaching 'alarming levels' in some establishments (para. 156 of the report by the State party). Please also indicate whether the State party intends to increase the use of alternative or non-custodial punishments.*"

On 1 February 2010, the prison population was 61 363 and the excess population 9 574. [62]

Such overcrowding has a considerable impact on prison conditions, with unsuitable, decaying buildings, inadequate general hygiene, uncertain and limited access to medical care, leading to increasing tension between prison officers and prisoners and among prisoners.

It also makes the working conditions of the prison staff very difficult. It impedes the prison service's task of integration and reintegration, even though this prevents reoffending.

This overcrowding results from a penal policy choice, with repressive laws being piled one on top of the other even before the first have had any effect[63], as underlined by the Council of Europe Commissioner for Human Rights quoted in the CAT's question 37.[64]

Similarly, the United Nations Human Rights Committee, in its concluding observations dated July 2008[65], expressed concern "*about overcrowding and other poor conditions in prisons. The plan to increase custodial facilities to a total of 63 500 places by the year 2012 will nonetheless apparently fall far short of the increase of prison population*".

[62] Source: Arpenter le Champ Pénal N° 180, 1 March 2010, editor: Pierre V. Tournier
[63] Act 2007-297 of 5 March 2007 Prevention of delinquency; Act 2007-1198 Reoffending of adults and minors and introduction of minimum sentences (« peines planchers ») for offenders; Act 2008-174 Preventive detention and declaration of non-men rea on grounds of mental disorder allowing indefinite retention in custody of a person who has already served his sentence; Bill adoptéd on 25 February 2010 aimed at reducing risk of reoffending and enacting various criminal procedure provisions,
[64] « According to the memorandum by the Council of Europe Commissioner for Human Rights, the reasons for overcrwded prison conditions lie primarily in the harsher sentences handed down by criminal courts and the increasing resort to imprisonment. Moreover, this trend is likely to be exarcerbated by the new Act of 10 August 2007, which stipulates minimum sentences (« peines planchers ») for repeat offenders. Please comment on this information in the light of articles 11 and 16 of the Convention and indicate wether the State Party intends to amend the Act »,
[65] Concluding observations, Human Rights Committee 93rd session CCPR/C/FRA/CO/4, 22 July 2008

Although national and international organisations have been sounding the alarm for too many years[66], France's response falls far short of expectations (§276).

In view of the inhuman and degrading treatment suffered by prisoners as a result of this overcrowding in their daily life in prison, preference has to be given to other solutions.
It is not merely a matter of expanding prison capacity by creating 13 000 extra places by 2012 but of implementing the Recommendations of the Council of Europe,[67]As pointed out by the CPT "*the principles set out in the specific Recommendations of the Council of Europe Committee of Ministers concerning prison overcrowding and prison population inflation (R (99) 22), custody pending trial (R (80) 11), conditional release (parole) (R (2003) 22) and the new European Prison Rules (R (2006) 2)*"[68] must serve as guidelines for putting a stop to such prison conditions, which deny prisoners their dignity.

Pursuing a human rights compliant penal policy implies regarding imprisonment as the exception and raising awareness in civil society of the detained person's human rights.

In addition, modern new prisons are more concerned with security than with human relations.[69]

The long-awaited prisons act that was passed on 24 November 2009 does not tackle the French scourge of prison overcrowding, nor does it substantially reform prisoners' status, since although rights are formulated the discretion allowed to the prison service for security reasons makes it uncertain that they can be exercised in practice.

The National Consultative Commission on Human Rights has indeed pointed out that the text, within a reform leaving the established law substantively unchanged, enshrines the scope allowed to the prison service for discretionary curtailment of prisoners' rights.[70]

In practice, prison conditions often continue to be an affront to human dignity. Several legal actions have been brought, especially in Rouen, where at the beginning of March 2010, inmates and ex-inmates of Rouen remand centre submitted 38 claims for compensation for emotional distress arising from their degrading conditions of detention.[71]

Thus the "continuous" work carried out at the Rouen centre, as mentioned by France in its reply (§317 et seq.), is clearly insufficient given the degrading conditions of detention, the deplorable hygiene and the well-known overcrowding of this establishment.

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[66] Reports of the commissions of inquiry of the Senate, *Prisons: une humiliation pour la République* and the National Assembly, *La France face à ses prisons*, 28 June 2000

[67]*Specific Recommendations of the Council of Europe Committee of Ministers concerning prison overcrowding and prison population inflation (R (99) 22), custody pending trial (R (80) 11), conditional release (parole) (R (2003) 22) and the new European Prison Rules (R (2006) 2)*

[68] CPT Report, 10 December 2010, paragraphs 146 and 176

[69] Libération, 24 February 2010: « We arrived in a clean prison without rats, without cokroaches, without humantiy », referring to the new model prison at Corbas

[70] Opinion on the prisons bill, 6 November 2008

[71] CAT question 36: « The judgement of the Rouen Administrative Court of 27 March 2008, confirmed on appeal on 24 June 2008, found against the French State on the grounds of detention conditions that constituted a breach of health and hygiene requirements and were contrary to respect fo human dignity, Please indicate what steps have been taken to act on this recommendation, »

Recommendations:

Ensure that there is only one prisoner per available place.

Make sure that sentencing takes account of prison capacity.

16.2 Postponement of individual confinement

The principle of individual confinement in remand centres set out in Article 716 of the Code of Criminal Procedure is not being applied. For a period of five years from 24 November 2009, i.e. until November 2014, exceptions are possible "*if the internal arrangements of remand prisons and the number of persons in detention make it impossible to detain persons individually* ".[72]

Case of Mr B., 65 years old, in pre-trial detention for a number of years
After being obliged to share his cell with an elderly man who was seriously ill and required a great deal of attention, by night as well as by day, he hoped at last to be alone and get his breath back. He asked, indeed begged, to be kept alone. To no avail: he was required to share with another prisoner suffering from serious mental disorders.

From then on Mr B. no longer had a moment's respite. Small of stature, he was face to face with a corpulent person, who incessantly talked loudly to himself, night and day. No dialogue was possible. The sick prisoner spent the nights on his feet, moving about, eating, using up Mr B's small stock of provisions, and making a noise. He did not wash.
One day he was beaten by his cellmate, who was finally transferred.
And Mr B. was at last left alone in his cell. He relaxed and his last months of pre-trial detention were calm. Statement obtained in February 2009.

Case of Mr T., *who had to live 24 hours a day in nine square metres with bunk beds, unenclosed toilets, sharing with another person who never washed, had no change of clothes and left the single tiny table on which they ate, the toilets, the tiny wash basin and the nine square metres of floorspace in a dirty state. The need to clean up after the other prisoner and to suffer the stench made sharing of a cell intolerable, inhuman. It was inevitable that they should come to blows. Life became unbearable.*

According to Mr T., the day he was finally given a cell of his own, even though it was in even worse condition, he regained his calm and his ability to think. He was able to decide to start a training course. Statement obtained in February 2009.

For the majority of prisoners, individual confinement is a precondition for retaining their dignity. Prisoners must be able to choose whether to be alone or not.

[72] This article provides that: « *Persons under judicial examination;defendants and accused subjected to pre-trial detention are placed under the rules governing individual imprisonment by day and night. Exceptions to this principle may be made only in " different cases.*

Recommendation:

Give effect to the right of every detained person to have an individual cell and allow exceptions only at the express request of the prisoner or to ensure his protection.

16.3 Violation of prisoners' physical integrity

Full-body searches, which are carried out e.g. before and after each visit (the prisoner being stripped naked) constitute a particular affront to personal dignity and are humiliating for both the person searched and the staff.

Mr P. " *Ten years after coming out of prison, I still feel the humiliation of the strip search carried out on every occasion, at each visit, in every place. I have been for ever robbed of my dignity as a man*". Statement obtained in February 2009.

Prison is also the scene of violence or humiliation of every kind.

Case of Mr A. *My husband has been detained for the last 17 months. He is beaten by the other prisoners and no one does anything about it. I' m scared stiff that something is going to happen to him. What can one do?* Statement obtained in November 2008.

Case of Mr M., suffering severe behavioural disorders. *He's in solitary. He's raving and spreads excrement on his cell walls. He says he is suffering humiliating treatment, since the staff is sure that he is pretending.* Statement obtained in August 2008.

Case of Mr Y. *I have a friend who is homosexual. He is the victim of homophobic attacks; I fear for his life. I feel so powerless against this prison system.* Statement obtained in November 2008.

Case of Mr X.*, who has been in solitary confinement for several months, pending transfer to an establishment with a block reserved for ex-gendarmes. He is held in a very poorly heated cell where the temperature dropped to 9°C. At the end of his tether, he "blew his top". This violent episode enabled him to obtain work in his cell. Despite the steps taken by the administration to have him transferred, he is still waiting.* Statement obtained in February 2009.

Recommendation:

Make respect for prisoners' physical integrity a reality.

Forbid full-body searches.

16.4 High-security prisoners

CAT question 33: "*Please indicate measures taken by the State party to address the concern expressed by the European Court of Human Rights in the Khider v. France case (No 39364/05, 9 July 2009) that the cumulative and repetitive effects of the conditions under which the complainant Khider was held constituted inhuman and degrading treatment*."

The CAT's question relates to the special prison regime applying to Cyril Khider, that for high-security prisoners (détenus particulièrement signalés – DPS). This involves increased security measures, which in this case are condemned by the European Court of Human Rights.

This heightened surveillance regime is governed only by a circular from the Prison Service Directorate of 18 December 2007. It applies to prisoners liable to pose a threat to the prison system itself and to public order, who belong to the world of organised crime, who have tried to escape or who are linked to terrorist movements.

The resulting DPS regime involves increased security measures which may infringe human dignity: body searches, including full-body searches, cell searches, intensive surveillance of movements, regular changes of cell or establishment, limited access to care outside the establishment and no automatic commitment to hospital on psychological grounds.
Frequent wakening throughout the night, at two-hourly intervals, engenders attention deficit and nervous tension in susceptible persons, with a consequent aggravation of the prisoner's relations with those around him.

In its report published on 10 December 2007 following its visit to France in the autumn of 2006, the European Committee for the Prevention of Torture (CPT) had been unable to obtain details of all measures applicable to high-security prisoners.

According to the circular from the Prison Service Directorate, the decision to place a prisoner on the DPS register is taken by the Minister of Justice after consulting a local DPS board and then a national DPS board comprising the administrative authorities (the prefect), the judiciary (the prosecutor, judge) and the prison service.

Review of the status of high-security prisoners is required only "at least once per year".
Previously, the prosecutor had to review the cases of all prisoners under his authority at least once every three months, proposing that they be placed on the DPS register or removed from it.

In February 2007, the European Court found against France in another case, *Frérot v. France*, for the full-body (anal) searches, not justified on security grounds, undergone by Mr Frérot at the Fresnes remand centre, which amounted to arbitrary measures given the discretion allowed to the prison service and exercised differently in different establishments.[73]

The failure to state what specific measures can be taken is all the more disturbing since entry on the DPS register and the increased surveillance measures that result are based on nothing more than a circular.

[73] ECHR, application 70204/01

In a statement issued jointly with the French ombudsman on 20 October 2009 on implementation of the Frérot judgment, the National Consultative Commission on Human Rights noted that the risk of a further breach of Article 3 of the European Convention cannot be excluded.

Indeed, while prison law appears to regulate searches more closely, it nonetheless requires the prisoner's "personality" to be taken into account before a search is carried out. This poorly defined criterion of "personality" leaves wide discretion, and indeed scope for arbitrary action, to the prison service. This is precisely what was condemned by the European Court in the Khider and Frérot judgments.

Recommendations:

List the surveillance and security measures applicable to high-security prisoners and lay down the conditions under which they can be applied.

Provide for a three-monthly review by the district prosecutor of the status of persons detained in the prison establishments falling within his area of responsibility.

16.5 Confinement of minors

Foreign parents who are to be removed may be placed with their children in administrative detention centres for not more than 32 days pending their return.

Whatever their age, for children, some of whom attend schools in France, to be locked up pending removal is a serious infringement of their dignity and that of their families. Such confinement, in what increasingly resembles a prison environment, where detention is becoming a common means of managing migratory flows, constitutes degrading treatment.

The National Commission on Security Ethics has also stated that confinement of young children, even in centres which can accommodate families, is degrading treatment.

In the transit zone, what is needed is to protect unaccompanied foreign minors, not to place them in confinement.

Recommendations:

Forbid the placement of families in custody.

Automatically admit unaccompanied foreign minors to French territory and refer them to the youth welfare services.

PART 2
OUR RECOMMENDATIONS

ARTICLE 2

2.1 Police violence and the impossibility of lodging a complaint

In order to prevent treatment contrary to the Convention:

As part of their training, bring the content of CNDS opinions to the attention of officials escorting persons refused admission or in charge of their boarding;

Make a medical examination compulsory if there is any allegation of violence, more particularly if the person concerned refuses to board a plane, and issue the medical certificate immediately;

Inform persons concerned of their right to lodge a complaint and enable them to exercise that right effectively;

Until they board the plane, allow the persons concerned to talk to any person or association they choose, with free access to a telephone if necessary;

Allow the persons concerned to talk to any person or association they choose before they board, in a place where confidentiality can be guaranteed;

Allow any independent association with clearance to operate in the transit zone access at any time to persons who are going to be refused entry and authorise it to go to the room where they are being held during the removal phase.

2.2 Restrictions on the basic rights of persons suspected of terrorism

Allow access to a lawyer from the first hour of custody, whatever the offence involved.

Draw up a clear legal definition of "*association de malfaiteurs en relation avec une entreprise terroriste*" (criminal association for the purposes of terrorist activity*)* with a non-exhaustive list of behaviour which might be penalised.

During detention, ban all interrogation and special surveillance practices which constitute cruel, inhuman or degrading treatment.

Rule that any evidence obtained under torture is inadmissible.

2.3 Risks of attacks on personal integrity linked to the use of conducted energy devices (tasers or stun guns) and Flash-Balls

Ban the use of tasers and Flash-Balls.

ARTICLE 3

3.1 Dangerous removals, despite the principle of non-refoulement

Do not send any persons back to countries where they risk being subjected to acts of torture or cruel, inhuman or degrading treatment.

Ensure that the authorities in the country to which persons are returned are not informed that they applied for asylum.

If an application for a laissez-passer is submitted at a foreign consulate in France, do not mention the asylum application or the grounds for its being refused.

Give regularly repeated instructions to staff responsible for escorting or boarding returnees.

Refuse entry to unaccompanied minors who are foreign nationals only when the decision is taken by a judge in the overriding interest of the child, after a social services enquiry and with monitoring of the child in his or her country.

3.2 Lack of any detailed risk-assessment when a person is returned

Train judges to be more aware of the risk of torture in the countries to which asylum-seekers may be returned.

Lighten the burden of proof on a person at risk of removal and give him or her the benefit of the doubt so that any risk upon return can be avoided.

3.3 The right to asylum: a fundamental freedom seriously endangered
3.3.1 Information which is incomplete, frequently incorrect or unavailable

Hand over information of a legal nature, reliably translated into the asylum-seekers' own language, in particular:
- hand out the Guide for asylum-seekers;
- distribute forms for "acceptance to stay" in all available languages;
- allow asylum-seekers access to an interpreter;
- tell them which associations are able to help them.

3.3.2 Asylum procedure hindered by excessive use of the fast-track (priority) procedure

Introduce a suspensive appeal for fast-tracked asylum applications without increasing the period of detention.

3.3.3 Readmission of asylum-seekers to European countries which have no efficient asylum procedure

Do not permit the forced return of asylum-seekers to Greece.

Declare a moratorium on such forced returns until Greece has an asylum procedure in compliance with international and European standards for the consideration of asylum applications.

3.4 Collective arrests and risk of dangerous return

Cease interference with the work of humanitarian organisations.

Put a stop to the repeated arrests, physical violence, police harassment, damage to property, systematic disturbance of migrants' sleep.

ARTICLE 5

Universal competence

Safeguard the right of victims to an effective remedy by creating a procedure by which they can file a complaint and institute a civil action.

Replace the condition of habitual residence of the alleged offender by a requirement for mere presence on French territory, in conformity with the Convention against Torture.

Remove from the bill the restrictive conditions of double criminality and inversion of the principle of complementarity.

ARTICLE 7

Penal proceedings

Do not impede penal proceedings for the prosecution and judgment of an alleged perpetrator of torture or ill-treatment who is present on French territory, whatever his nationality.

Prosecute and judge alleged perpetrators of torture, without making any distinction on the basis of current or past official capacity and without regard for immunities.

ARTICLE 11

Police custody

Restrict the use of police custody.

Allow a lawyer to be present throughout custody, including during questioning.

Authorise publication of the annual overview by the Minister of Justice of the annual inspections of custody premises and strengthen supervision of these premises.

ARTICLE 16

16.1 The scourge of prison overcrowding

Ensure that there is only one prisoner per available place.

Make sure that sentencing takes account of prison capacity.

16.2 Postponement of individual confinement

Give effect to the right of every detained person to have an individual cell and allow exceptions only at the express request of the prisoner or to ensure his protection.

16.3 Violation of prisoners' physical integrity

Make respect for prisoners' physical integrity a reality.

Forbid full-body searches.

16.4 The special prison regime for high-security prisoners

List the surveillance and security measures applicable to high-security prisoners and lay down the conditions under which they can be applied.

Provide for a three-monthly review by the district prosecutor of the status of persons detained in the prison establishments falling within his area of responsibility.

16.5 The inhumanity of confining minors

Forbid the placement of families in custody.

Automatically admit unaccompanied foreign minors to French territory and refer them to the youth welfare services.