



AVOCATS SANS FRONTIERES
France

Written contributions to the consideration of the 6th periodic report of France
on point 11 of the list of issues drawn up prior to the submission of the sixth periodic report of France

Founded in 1998, Avocats Sans Frontières France (hereinafter “ASF France”) is an international solidarity association which contributes to the respect of fundamental rights throughout the world, wherever this proves useful and necessary, in particular:

- By providing a pro bono defense for anyone whose fundamental rights are threatened and who does not have a free and independent lawyer; and
- By intervening anywhere in the world, whenever it is necessary to support the rule of law, the judicial institution or the right to a fair trial.

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As part of its mandate, ASF France has made five trips to north-eastern Syria and Iraq over the period 2020-2024.

I. The missions of ASF France

a. In north-eastern Syria

In 2020, ASF France was approached by lawyers representing French families whose children and grandchildren were detained in camps in north-eastern Syria, seeking support for their repatriation to France.

Five trips to northeast Syria were organized between 2020 and 2024 to meet with authorities in Iraqi Kurdistan and northeast Syria, as well as with French nationals still arbitrarily detained there.

In December 2020, a first trip to northeast Syria was organized in partnership with the Paris Bar Association. Two members of ASF France travelled to Erbil, in Iraqi Kurdistan, in order to then travel to north-eastern Syria via the *Peshabor* border post (also known as *Faysh Kabur* or *Semalka*). However, they were prevented from crossing the border by the authorities of the Kurdistan Regional Government of Iraq (KRG), who explained that the French authorities were opposed to the crossing. The French Consul General in Erbil subsequently explained that the security situation did not allow French nationals to travel to north-eastern Syria. However, French and European journalists and politicians had been able to travel to northeast Syria without difficulty throughout 2020.

In June and October 2021, ASF France organized two new trips to northeast Syria.



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The first trip included four French MPs and MEPs, as well as two members of ASF France. The delegation travelled to Erbil, then to the *Peshabor* border crossing, where they met Dr. Abdulkarim OMAR, then co-director of external relations for North Syria, in the buildings of the Autonomous Authority of North and East Syria (AANES) on the Syrian side of the border. At the end of the exchanges between the delegation and Mr. OMAR, the latter informed the French delegation that they were not authorized to remain in north-eastern Syria due to the refusal of the French authorities.

The second trip included a representative of the *Conseil National des Barreaux* (Council National of French Bars – CNB), a representative of the *Commission Nationale Consultative des Droits de l'Homme* (French National Advisory Commission on Human Rights – CNCDH), a French MP and a member of ASF France. For the first time, this delegation was authorized to visit the northern Syrian town of Qamishli, where it met representatives of AANES, anti-terrorist magistrates and Kurdish lawyers.

In 2022, ASF France intervened as a third party before the Grand Chamber of the European Court of Human Rights in the *H. F. et autres c. France* proceedings. (*H.F. and others v. France* [GC], n^{os} 24384/19 and 44234/20, September 14, 2022), concerning the repatriation of French nationals detained in the Roj camp in north-eastern Syria, which resulted in France being condemned by a judgment of September 14, 2022.

This decision by the Court's most solemn body has led the French authorities to change their position on the repatriation of French women and children detained in north-eastern Syria. Whereas the authorities had hitherto carried out targeted repatriations of orphaned children or minors whose mothers had agreed to relinquish their parental rights, following this decision - and the parallel condemnations of the Committee on the Rights of the Child on February 24, 2022, and then of the United Nations Committee against Torture on January 21, 2023 - the French authorities began collective repatriation operations from the Roj camp.

Four repatriation operations were organized in the space of a year, on July 5, 2022 (35 children and 16 women), October 20, 2022 (40 children and 15 women), January 24, 2023 (32 children and 15 women) and July 4, 2023 (25 children and 10 women).

The French authorities have indicated that 169 children and 57 adult women have been repatriated to French territory since 2019.

Some 100 children and 50 women are currently being held in camps in northeast Syria, according to figures provided to ASF France by the northeast Syrian authorities.

The repatriation of the women still present in the Roj camp (and with them their children) is now conditional on their express agreement.

In February 2024, a fourth trip was organized by ASF France to northeast Syria. The delegation included two representatives of the *Collectif des Familles Unies* (United Families Collective) and two members of ASF France. The delegation was authorized to visit the Roj camp and meet the children and their mothers detained there. The delegation was also authorized to visit the Orkesh juvenile rehabilitation center and meet four of the five French nationals detained there.



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From August 20 to 26, 2024, ASF France organized its fifth trip to northeast Syria. The aim of the trip was to talk to women detained in the Roj camp, and to answer their questions about their legal status in France and the care of their children in the event of repatriation (placement of children, gradual re-establishment of links with their mother and family in France).

The trip also included a return visit to the Orkesh and Houry juvenile rehabilitation centers, where three young adults and a French minor are currently being held, and to Alaya prison in Qamishli, where a young adult recently transferred from the Orkesh rehabilitation center is being held.

b. In Iraq

On behalf of the families of eight French nationals sentenced to death by the Iraqi Central Criminal Court in Baghdad and since detained in Iraq, two members of ASF France, including its co-chairman, accompanied by other counsel, made two trips to Baghdad from September 29 to October 2, 2023, then from February 20 to February 21, 2024.

During these two trips, members of ASF France visited Al-Rosafa men's prison and Baghdad women's prison to meet seven French nationals (six men and one woman) being held there.

With these written contributions, ASF France wishes to convey to the Human Rights Committee the precise, reliable and objective information it has drawn from its missions to north-eastern Syria and Iraq.



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II. Women and children detained in camps in north-eastern Syria

In point 11 of the list of issues drawn up prior to the submission of France's sixth periodic report, the Human Rights Committee asks France to "[p]rovide information on the measures taken to protect the mental and psychological integrity and the lives of children and women of French nationality detained in the Al-Hol and Roj camps in the Syrian Arab Republic".

France responds in paragraph K. of its sixth periodic report dated January 10, 2023, stating that:

"114. Firstly, with regard to humanitarian repatriations from Syria, France's international commitments to the protection of human rights do not require it to repatriate people who are not under French jurisdiction within the meaning of these international conventions. Moreover, as the national court has ruled, any repatriation requires France either to enter into negotiations with foreign authorities or to intervene on territory outside its sovereignty. It follows that the position adopted by the French authorities, in line with France's international commitments, is as follows:

- Adults who have chosen to join the ranks of a terrorist organization must be tried on the spot, as close as possible to where they committed their acts;*
- Unlike their parents, the children have not chosen to join the cause of a terrorist organization, which is why the French government is proactively mobilizing considerable resources to bring them back whenever possible. When the repatriation of children implies the return of their mothers, and conditions on the ground make this possible, these mothers are returned, provided they accept and with full knowledge of the facts. These mothers are referred to the courts on their arrival in France. For the first time in early July 2022, France repatriated mothers (16) at the same time as repatriating French minors (35).*

115. France has carried out a number of operations to bring back 72 particularly vulnerable children (including 2 Dutch children, making a total of 70 French minors) and 16 women.

116. In addition, France is providing humanitarian support to improve the situation in northeast Syria. In 2022, France will pay humanitarian actors on the ground €40 million, of which €16 million will be devoted to stabilization and €24 million to humanitarian aid. This aid benefits, in particular, humanitarian actors active in camps in northeastern Syria. For the 2018-2022 period, more than €30m has been specifically allocated to the humanitarian response for the benefit of displaced persons and refugees in the camps of northeast Syria."

A. Establishment of France's jurisdiction over French nationals detained in northeastern Syria

Contrary to what France maintains, French nationals present in northeast Syria fall under its jurisdiction in application of its international commitments to protect human rights.

Indeed, in its aforementioned *H. F. and others v. France* judgment, the Grand Chamber of the European Court of Human Rights (hereinafter "the Court") found that France exercised jurisdiction, within the meaning of Article 1 of the European Convention on Human Rights (hereinafter "the Convention"), over French nationals detained in camps in northeast Syria with



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regard to the complaint based on Article 3 § 2 of Protocol No. 4 to the Convention (*H.F. and others v. France* [GC], n^{os} 24384/19 and 44234/20, §§ 204 to 214, 14 September 2022):

“204. The applicants maintain that the national status of L., M. and their children constitutes, together with the extraterritorial application by nature of Article 3 § 2 of Protocol No. 4, a sufficient connecting factor to the respondent State, at least for the purposes of that provision, which provides:

“No one may be deprived of the right to enter the territory of the State of which he is a national.

205. The Court notes that the right of entry guaranteed by this provision specifically concerns “nationals” of that State, to the exclusion of aliens. In this respect, it differs from the principle that emerges from the wording of Article 1, which grants the benefit of the Convention to all persons, whatever their nationality. It goes without saying, therefore, that the French nationality of L. and M. and their desire to return to France, in full knowledge of the facts, after having lived there all their lives, in order to join their family, who reside there, constitute strong legal and factual links with the respondent State for the purposes of Article 3 § 2 of Protocol no. 4. The Court nevertheless considers that the fact that Article 3 of Protocol no. 4 applies only to nationals cannot be regarded as a sufficient circumstance for the purposes of establishing France's jurisdiction within the meaning of Article 1 of the Convention.

*206. While nationality is an element that is usually taken into account as a basis for the extraterritorial exercise of jurisdiction by a State (*Banković and others*, decision cited above, § 59), it cannot constitute an autonomous ground of jurisdiction. Indeed, in the present case, as the domestic courts have indicated, France's protection of the applicants' relatives requires it to enter into negotiations with the Kurdish authorities holding them, or even to intervene in the territory they administer.*

*207. The Court notes, moreover, that the applicants' refusal did not formally deprive their relatives of the right to enter the country, nor did it prevent them from doing so. If the persons concerned were deprived of the right to enter France, it was not because the respondent State failed to carry out the formalities required by domestic law and international regulations to guarantee their entry into the territory, or failed to issue the necessary travel documents that would have enabled them to cross the border and ensure their return (see, for example, *Marangos v. Cyprus*, no. [31106/96](#), Commission decision of May 20, 1997, unpublished, *Momčilović v. Croatia* (dec.), no. [59138/00](#), August 29, 2002). This decision does not therefore fall within the exercise by the State of its traditional prerogatives of public authority at the border, which would suffice to bring the applicants' relatives, of French nationality, within the territorial jurisdiction of France, which begins at the border line (*N.D. and N.T. v. Spain* [GC], nos. [8675/15](#) and [8697/15](#), § 109, 13 February 2020). The Court refers here in particular to the position of the Government which, in its written observations on the complaint under Article 3 § 2 of Protocol No. 4 and at the hearing, indicated that if the applicants' relatives presented themselves at the border, they would not be turned back and could enter the national territory (paragraph 218 below).*

*208. However, the question arises as to whether their extra-frontier situation can have consequences for the jurisdiction *ratione loci* and *ratione personae* of the French State. In answering this question, the Court must take account of the fact that the provision in question forms part of a treaty for the effective protection of human rights, and that the Convention must be read as a whole and interpreted in such a way as to promote its internal coherence and harmony between its various provisions. It must also pay attention to the purpose and meaning of Article 3 § 2 of Protocol no. 4, which must themselves be analyzed in accordance with the principle, firmly rooted in its case-law, that the Convention must be interpreted and applied in such*



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a way as to render its guarantees concrete and effective and not theoretical and illusory (see, among many others, Airey v. Ireland, 9 October 1979, § 24, Series A no. 32, N.D. and N.T. v. Spain, cited above, § 171).

209. *However, as the parties point out, Article 3 § 2 of Protocol no. 4 by its very nature presupposes the possibility that the right guaranteed applies to the relationship existing between a State party and its nationals if the latter are outside its territory or a territory over which it exercises effective control. Indeed, to limit the invocability of the right of entry guaranteed by this provision to nationals already in the territory of that State or under its effective control would be tantamount to rendering it inoperative, since Article 3 § 2 of Protocol No. 4 would in this case offer no real protection of the right of entry for those who, from a practical point of view, would most need such protection, i.e. persons wishing to enter or return to the territory of the State of nationality. Both the purpose and the scope of this right presuppose that it can benefit nationals of the State party who are outside its jurisdiction. Thus, **neither the wording of Article 3 § 2 of Protocol no. 4, nor the preparatory work of this Protocol, which draw on other sources of international law, in particular Article 12 § 4 of the ICCPR, limit the right to enter to nationals who are already under the jurisdiction of the State of nationality (General Comment no. 27, § 19, quoted in paragraph 97 above).***

210. *The Court also points out that increasing globalization presents States with new challenges in terms of the right to enter their national territory. A long period has elapsed since Protocol No. 4 was drafted. The absolute prohibition of expulsion of nationals, and the resulting absolute right to enter, originated in the desire to ban exile once and for all, which was seen as incompatible with modern democratic principles. This historical foundation is reflected in the case law of the Commission and Court at the time, which had been seized of complaints concerning the compatibility of measures banning members of royal houses with the right of entry guaranteed by Article 3 § 2 of Protocol no. 4 (Victor-Emmanuel De Savoie v. Italy ((deregistration), no. [53360/99](#), April 24, 2003, Association "Regele Mihai" v. Romania no. [26916/95](#), Commission decision of September 4, 1995, unpublished, Habsburg-Lothringen v. Austria, no. [15344/89](#), Commission decision of December 14, 1989, DR 64-B, p. 222). Since then, international mobility has continued to intensify, in an increasingly interconnected world where many nationals settle or travel abroad. The provisions of Article 3 of Protocol No. 4 must therefore be interpreted in the light of this context, which poses new challenges to States in terms of security and defense in the field of diplomatic and consular protection, international humanitarian law and international cooperation.*

211. *The work of the International Law Commission shows the evolution of the debate on the usefulness of diplomatic protection as an instrument for the protection of human rights (paragraphs 91 and 92 above). The right of entry is at the heart of issues linked to the fight against terrorism and to national security, as shown by the adoption of legislation concerning the control and management of the return to national territory of persons who have left for terrorist purposes (paragraphs 71 to 75 above and 231 below). If Article 3 § 2 of Protocol No. 4 were to apply only to nationals who are at a State border or who lack travel documents, it would be deprived of any useful effect with regard to the contemporary phenomena referred to above.*

212. In this context, it cannot be ruled out that certain circumstances relating to the situation of the person claiming to enter the territory of the State of which he is a national on the basis of the rights he derives from Article 3 § 2 of Protocol no. 4, may give rise to a jurisdictional connection with that State for the purposes of Article 1 of the Convention. *The Court considers, however, that it does not have to determine these*



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circumstances in abstracto, as they will necessarily depend on the specific features of each case and may vary considerably from one case to another.

213. In the present case, it considers that, in addition to the legal connection between the State and its nationals, the following particular circumstances linked to the situation of the camps in north-eastern Syria must be taken into account. *Firstly, the applicants have made several official requests for return and assistance to the national authorities for the purpose of enjoining the respondent State to fulfill their relatives' right under this provision (paragraphs 44, 45, 48 and 54 above). Secondly, these requests were made on the basis of the fundamental values of the democratic societies that make up the Council of Europe, when the lives and physical integrity of their relatives were under real and immediate threat both from the point of view of the living and security conditions in the camps, considered incompatible with respect for human dignity (paragraphs 17, 24 and 25 above and paragraphs 230, 232, 238 and 239 below), and from the situation of extreme vulnerability in which they found themselves, given their age, in the case of the children (Khan v. France, no. 12267/16, § 74, 28 February 2019, X and Others v. Bulgaria [GC], no. 22457/16, § 197, 2 February 2021), and their health. Thirdly, in view of the modalities and duration of their detention, the persons concerned are not in a position to leave the camps, or any other place where they would be held incommunicado, to reach the national territory without the assistance of the French authorities, finding it materially impossible to reach the French border or any other State border from which they would be handed over to those authorities (paragraphs 25 below and 232 above). Lastly, the Court notes that the Kurdish authorities have indicated their willingness to hand over the detained women of French nationality and their children to the national authorities (paragraphs 26 and 29 above and paragraphs 240 and 268 below).*

214. In these circumstances, the Court concludes that there are circumstances capable of establishing France's jurisdiction within the meaning of Article 1 in respect of the complaint based on Article 3 § 2 of Protocol No. 4." (emphasis added)

While the Court concluded that the applicants' claims under Article 3 of the Convention (prohibition of torture and inhuman and degrading treatment) were inadmissible on the grounds that they had no connecting links with the respondent State, it held that "*both the object and the scope of the right guaranteed by Article 3 § 2 of Protocol No. 4 presuppose that it can benefit nationals of the State party who are outside its jurisdiction*".

The Court points out that in the present case, in addition to the legal connection between the State and its nationals, there are several specific circumstances, linked to the situation of the camps in north-eastern Syria, which are capable of establishing France's jurisdiction within the meaning of Article 1:

- The applicants have submitted official requests for return and assistance;
- They made these requests on the basis of the fundamental values of democratic societies, when the lives and physical integrity of their loved ones were under real and immediate threat, both because of the living and security conditions in the camps, which are incompatible with respect for human dignity, and because of the health of these loved ones and the extremely vulnerable situation in which the children in particular found themselves, given their young age;



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- The applicants' relatives find it materially impossible to leave the camps or any other place where they would be held incommunicado to reach the French border or another state border without the assistance of the French authorities;
- Lastly, the Kurdish authorities have indicated their willingness to hand over to the French authorities the women detainees of French nationality and their children.

B. Lack of independent oversight of decisions by French authorities to refuse repatriation

In its above-mentioned *H.F. and others v. France* judgment, the Court also recalled that it was incumbent on the French authorities, under Article 3 § 2 of Protocol No. 4, to provide appropriate safeguards against arbitrariness in the process of deciding on requests for return, and to guarantee an independent review of such decisions, enabling the legitimate and reasonable grounds for refusal to be examined.

On this point, the Court's judgment reads as follows (*H.F. and others v. France* [GC], n^{os} 24384/19 and 44234/20, § 276 and § 281, 14 September 2022):

“276. In the present case, the Court is of the opinion that the rejection of a request for return made in the context at issue must be subject to appropriate individual review by a body independent and detached from the executive authorities of the State, without this having to be a judicial body. This examination must make it possible to assess the factual and other elements that led these authorities to decide that there were no grounds for granting the request in question. The independent body must thus be able to review the legality of a decision rejecting such a request, either because the competent authorities have refused to grant it, or because they have endeavored to do so but to no avail. Such a review should also enable the applicant to acquaint himself, albeit summarily, with the reasons for the decision and thus to verify that they rest on a sufficient and reasonable factual basis (see, mutatis mutandis, Muhammad and Muhammad, cited above, § 201, and the references cited in that judgment at paragraphs 196 and 198). Where, as in the circumstances of the present case, the request for return is made on behalf of minors, this control must in particular make it possible to verify that the competent authorities have effectively taken into account, in compliance with the principle of equality with regard to the right to enter the national territory (paragraph 244 above), the best interests of the children as well as their particular vulnerability and specific needs (paragraph 269 above). In short, there must be a mechanism for reviewing decisions not to grant requests for return to the national territory, so that it can be ascertained that the reasons based on overriding considerations of public interest or legal, diplomatic and material difficulties that the executive authorities could legitimately invoke are indeed free of arbitrariness.”
[...]

“281. Secondly, the Court notes that the situation it has just described could not be rectified by the proceedings brought before the domestic courts. The latter declined jurisdiction on the grounds that they were seized of claims relating to acts that could not be detached from the conduct of France’s international relations, whether, in the administrative courts, of the application for interim measures asking the court to order the Minister to organize the repatriation of L., M. and their children, or of the application for annulment of the implied decision by which the Minister had refused to take such a measure, or, in the judicial courts, of the application for a finding of an act of God. As regards the application of the theory of acts of government in the present cases, which rests on constitutional foundations, it is not for the Court to interfere in the institutional balance between the executive and the courts of the defendant State, nor to make



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a general assessment of the cases in which they decline jurisdiction. What matters solely is whether the persons concerned had access to an independent review of the implied decisions to refuse them repatriation, enabling them to examine whether there were legitimate and reasonable reasons, free from arbitrariness, justifying those decisions in the light of the positive obligations arising, in the present case and in the light of the exceptional circumstances described above, from the right to enter the national territory guaranteed by Article 3 § 2 of Protocol no. 4. However, this was not the case before the Conseil d'Etat or the Paris Court.” (emphasis added)

To date, however, the French authorities have not set up an independent body to review decisions to refuse repatriation, and the French administrative courts continue to declare appeals against such decisions inadmissible on the basis of the jurisprudential theory of acts of government.

The Paris Administrative Court has thus rejected petitions challenging the legality of implicit and explicit repatriation refusals issued after the Court's ruling of September 14, 2022, adopting a principled reasoning based on the theory of acts of government (see for example: TA Paris, ord., July 11, 2023, no. 2314413/4-1; July 19, 2023, no. 2311453/4; TA Paris, ord., July 19, 2023, no. 2312441/4):

“Considering the following:

1. Under the terms of article R.222-1 of the French Code of Administrative Justice: “[...] the presidents of the court panels [...] may, by order: [...] / 2° Reject applications that clearly do not fall within the jurisdiction of the administrative court [...]”.

2. The claimants are asking the court to annul the implicit rejection decision by which the French authorities refused to repatriate them. They are currently being held in the Roj camp in Syria. The repatriation measure requested would require negotiations with foreign authorities or intervention on foreign territory. As ruled by the Conseil d'Etat in orders no. 429668, 429669, 429674 and 429701 dated April 23, 2019, such a measure cannot be detached from the conduct of France's international relations in Syria. Consequently, the administrative court clearly has no jurisdiction to hear a challenge to the legality of the decisions at issue in the present proceedings. The present application should therefore be dismissed in its entirety.” (emphasis added)

C. The Syrian authorities' failure to try adults detained in north-eastern Syria

In its sixth periodic report, France also reiterates its opposition in principle to trying in France “adults who have chosen to join the ranks of a terrorist organization”, explaining that the latter should be tried “on the spot, as close as possible to the place where they committed the acts”.

However, as noted by the *Commission nationale consultative des droits de l'homme* (National Advisory Commission on Human Rights) there is a “lack of concrete and credible prospects in this direction”¹ in northeast Syria - or more broadly in the territory of the Syrian Arab Republic - where no criminal proceedings have been initiated against the men and women arbitrarily detained there.

¹ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045216382>



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"This situation is the direct consequence of AANES' lack of resources to judge the large number of foreign nationals held in its camps and prisons, the impossibility of respecting the minimum requirements of a fair trial and the rights of the defense (access to an interpreter and independent lawyers in particular), and AANES' lack of international recognition, which effectively deprives any judgments handed down there of any res judicata effect in third countries.

Finally, it is worth noting the inconsistency of the French authorities, who maintain this position despite the fact that French anti-terrorist magistrates have issued international arrest warrants for French nationals detained in camps and detention centers in northeast Syria.

D. Young French people placed in juvenile rehabilitation centers and prisons

Concerning the French children detained in northeast Syria, France states in its periodic report that it "*proactively mobilizes extremely important resources to bring them back, whenever possible*".

However, during its last two trips to north-east Syria, ASF France had the opportunity to visit, in addition to the Roj camp where the majority of French women and children are detained, the Orkesh and Houry rehabilitation centers for minors and the Alaya prison in Qamishli, where 1 minor and 5 young French adults (the oldest being 22) are held.

ASF France has observed that while French intelligence services regularly visit these centers and prisons to question these young French people, there is no mobilization to bring about their repatriation.

1. Orkesh rehabilitation center for minors

The Orkesh center, which opened on September 20, 2022, has a capacity of around 150 people. 148 adolescents and young adults are currently detained there.

During his last visit in August 2024, the director of the Orkesh center told ASF France that French intelligence services had regularly visited the center to talk to French adolescents and young adults.

ASF France was also told that after the age of 18, there was no solution for these minors and that they had to be repatriated by their countries.

The director of the Orkesh center authorized the delegation to speak individually with the **four French nationals**² (3 young adults and 1 minor) present in the Orkesh center and to have them sign repatriation requests.

The **first French national** is the eldest son of a French woman detained in the Roj camp with her younger siblings. He was separated from his mother and siblings in 2023 and transferred alone to the Orkesh center. He has not seen his mother since. He was able to talk for over two hours with his grandparents, who accompanied the delegation. He expressed great despair and told the delegation that he wanted to return to France with them.

The **second French national** immediately told the delegation of his despair at still being held at the Orkesh center. He explained to the delegation that the minors were locked in their rooms from 2 p.m. to 6 p.m. and from 7 p.m. until the following morning.

² Anonymized.



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He has a fractured skull, which is causing him extreme pain and requires urgent surgery (impossible in north-eastern Syria). The medication he is taking (Pregabalin), three times a day, is too strong and knocks him out. He is also blind in his left eye. At 22, he is the oldest man in the Orkesh center, but looks like a teenager because of his thinness.

Lastly, he told the delegation that the intelligence services had recently come to speak to one of the French nationals present at the Orkesh center, which he confirmed.

The **third French national** is the last member of his family still present in northeast Syria, his mother and siblings having been repatriated to France 18 months ago.

When the members of ASF France saw him in February 2024, they were alarmed by his state of health. Six months later, his condition has deteriorated dramatically.

In February 2024, he had confided to the delegation that he had serious memory problems. In August 2024, the delegation found that he had no memory of their visit six months earlier, or of who they were. He explained to the delegation that he was even forgetting what he had done the day before. He is motionless, articulating a few words with difficulty. His body and neck are stiff, his right hand and right arm inert. "*They're dead,*" he tells the delegation.

His skull is fractured and he receives no treatment. He suffers severe head pains and sinks several times a day into what he calls a "coma". A young French adult recently transferred to Alaya prison told the delegation that he had already seen him lose consciousness five times in a row: "*White foam was coming out of his mouth, he was all stiff, his eyes were empty. It was horrible. He looked like he was dying.*"

The authorities at the Orkesh center are very concerned about his state of health, and explained to the delegation that only a repatriation to France would enable adequate medical care, which is urgently needed.

The family of the **fourth French national** (his mother, grandmother and siblings) are being held in camp Roj. ASF France met his mother, who has requested the repatriation of her entire family.

He explained that he hadn't received a call from his family in 2 or 3 months. He explained to the delegation that these calls are "*live*" video exchanges lasting less than five minutes, but that they are often interrupted due to network difficulties. He also tells us that he is obliged to speak Arabic during these calls, and that two Kurdish camp guards are present at his side throughout the interview. During the interview with the delegation, he kept repeating that he was at the end of his tether and wanted to be repatriated to France.

He told the delegation that he had been questioned by French intelligence services some two months before their meeting. The agents took photographs of him and asked him questions about his background.

2. Houry juvenile rehabilitation center

The Houry center can accommodate 85 to 100 minors.

During ASF France's visit in August 2024, the manager of the Houry center told the delegation that repatriation operations were organized from this center.



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Members of ASF France met the only French national detained in this center since 2018. He arrived when he was 13, after the death of his father and brother, and is now 19. Until the delegation's arrival, he had had no news of his mother.

Six years after his arrival in this center from which he has never left, he despairs of ever seeing his family and his country again. He continues to speak as much French as possible, even though he is the only Frenchman in the center. He showed the delegation his room, which he shares with several other young men of different nationalities. The members of the delegation noted that he was in urgent need of psychological care.

3. Alaya Prison

During its trip to north-east Syria in August 2024, ASF France visited Alaya prison in the town of Qamishli, where a young French adult has been held since June 5 or 6, 2024 after being transferred from the Orkesh center.

A representative of Alaya prison met the delegation and explained that there is a juvenile section at Alaya where some forty children are held. Three of them come from the Orkesh center and only one is French. He shares a cell with 25 detainees of Syrian nationality.

The representative of Alaya prison also told the delegation that the French intelligence services had come to visit this young French adult, which the latter confirmed.

On arrival, he explained that he did not understand his transfer, felt alone and helpless, and could no longer bear his prison conditions. He told the delegation that he had recently tried to commit suicide and had been stopped by another Syrian detainee sharing his cell, who had surprised him in the middle of the night. He explains that he spends nights crying and has had no news from his family since his transfer, with the exception of a letter from his mother.

Having undergone eye surgery in France, he suffers from extremely painful ophthalmic migraines and fears he may lose his sight. His left leg, which he is unable to bend, also causes him a great deal of pain. He hasn't seen a doctor since he left the Al Hol camp several years ago.

He is regularly questioned by French intelligence services, who ask him about his family, other French nationals held at the Orkesh center and his own background.

He appeared very fragile compared to the impression he had made on the delegation in February 2024. His transfer to Ayala prison seemed to be a further trauma that he was finding it difficult to overcome. He felt alone and abandoned, and confided to the delegation that he did not have the strength to continue enduring his incarceration.

III. French nationals convicted by Iraqi courts

The Human Rights Committee asks France to *“also provide explanations on the measures taken by the State party to ensure, in particular, respect for the right to a fair trial and protection against ill-treatment, and to prevent the execution of French citizens sentenced to death by Iraqi courts”*.

In its sixth periodic report of January 10, 2023, France responded by stating that:

“117. Secondly, the Government recalls that France respects the sovereignty of the Iraqi state, with which it maintains regular diplomatic relations and political dialogue. In particular, France respects the



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independence of the Iraqi judiciary. This attitude applies to the handling of all legal cases involving our nationals abroad. That said, the President of the Republic and the Minister have reiterated, whenever necessary, France's opposition to the death penalty, in all places and under all circumstances, and their wish to see the sentences of French citizens commuted. At the time of writing, French representations to the Iraqi authorities have ensured that these death sentences will not be carried out."

During two visits to Iraq by members of ASF France - from September 29 to October 2, 2023 and from February 20 to February 21, 2024 - they observed flagrant violations of the rights of French nationals convicted by the Central Criminal Court in Baghdad, following trials that failed to comply with minimum fair trial standards, and who have remained incarcerated in Baghdad for several years in conditions contrary to human dignity and likely to constitute acts of torture and cruel, inhuman or degrading treatment or punishment within the meaning of article 3 of the Convention and article 7 of the International Covenant on Civil and Political Rights.

These French nationals have requested to be transferred to France.

A. The failure of the Central Criminal Court in Baghdad to comply with the rules of fair trial when judging French nationals

While the death penalty initially imposed on a number of French nationals convicted by the Central Criminal Court in Baghdad has since been commuted to life imprisonment, it must be noted that the various trials which led to their conviction failed to comply with the minimum rules of fair trial.

In its *Opinion on French nationals sentenced to death or facing the death penalty in Iraq* dated February 2, 2020, the National Advisory Commission on Human Rights recalled that:

*"According to outside observers, all the death sentences against French nationals were handed down following **expeditious and unfair trials**, held in an oppressive security climate. Excessively short, lasting **no more than 30 minutes**, these trials are devoid of any real preliminary investigation, and do not respect the principles of fair trial or individualized sentencing. The rights of the defense are non-existent, notably because the lawyers, most of the time appointed by the court, do not have access to the documents in the case file, nor do they have the opportunity to speak with their client other than a few minutes before the hearing. What's more, these lawyers rarely plead, and when they do, only very briefly. As for the defendants, who face serious difficulties due to their lack of knowledge of the Arabic language, they only have the right to speak for a few brief moments. This is all the more worrying given that confessions are allegedly extracted under torture, a common practice in Iraq, and then used by Iraqi judges as the sole means of proof. What's more, these trials take place in the absence of the victims and without the accusation being supported by the slightest testimony. Finally, the Iraqi judicial system suffers from shortcomings in terms of the independence and training of judges. **Some experts do not hesitate to use the expression "arbitrary executions", under international law, to qualify the death sentences pronounced in this context.**"³ (emphasis added)*

These findings were verified by members of ASF France, who were able to talk to these nationals in detention.

³ CNCDH, *Opinion on French nationals sentenced to death or facing the death penalty in Iraq*, JORF n°0028, February 2, 2020.



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A French national incarcerated in Baghdad's women's prison was sentenced to life imprisonment with a 20-year security period by Baghdad's Central Criminal Court in April 2018, after a trial that lasted just 28 minutes.

Several French nationals incarcerated in Baghdad's Al Rosafa men's prison were sentenced under comparable conditions in judgments handed down in May 2019.

B. Detention conditions contrary to human dignity in Baghdad's prisons

During two trips to Iraq in 2023 and 2024, each of which involved meetings with French nationals in detention, members of ASF France witnessed the appalling conditions in which they were being held.

1. Al-Rosafa men's prison

French nationals held in Baghdad's men's prison are incarcerated in a cell measuring around 16 by 6 meters, or just under 100 square meters.

At the time of the February 2024 visit, the cell in which the French nationals were being held housed 123 inmates. The inmates thus had less than one square meter each.

The extreme promiscuity of the prisoners prevents them from sitting all together, and forces them to set up shifts so that they can sit in turn. Not everyone can sit with their backs to the wall, so they are often forced to sit cross-legged in the middle of the room.

Lack of space also forces inmates to walk on top of each other when moving around. Inmates sleeping next to the two Turkish-style toilets in the cell are trampled by all the other inmates using the toilet at night.

Members of ASF France were able to see the reality of this overcrowding on the screens in the prison director's office: men, wearing brown prison uniforms, huddled together in cells, their belongings hanging from bags on the ceiling.

Prisoners sleep on the floor, on dirty mattresses. They have no choice but to sleep on their sides, 2, 3 or 4 to a mattress measuring 1 meter by 2 meters. The best places, reserved for the oldest prisoners in the cell, are against the walls. Changing cells is dreaded, as it means losing one's seniority rank. Lights remain on all night in the cell.

The cells have no real windows, only small openings at the top of the cell, which don't allow much air to circulate. Inmates smoke constantly inside the cells, which stink.

The cells are extremely noisy due to overcrowding and the presence of a television, the remote control of which remains in the hands of the administration and is never switched off. This television is constantly broadcasting - from 8 a.m. to 11 p.m. - Shiite programs featuring religious fanatics. One noise after another makes life impossible: the screams of some inmates, scenes of violence, the television set, the loudspeakers broadcasting messages from the administration into the cells, etc.

Each cell is managed by an inmate known as the "*chief*", who governs the life of his fellow inmates. In particular, he's in charge of distributing places and food. The cell head has every right to insult, humiliate and abuse his fellow inmates with impunity.



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The cells are the scene of recurrent inter-prisoner violence. The authorities have indiscriminately placed Shiites, Sunnis, former members of the Islamic State and others who remain loyal to this terrorist group in the same cell. As a result, fights are commonplace, as are, it seems, sexual assaults and rapes. In the event of fights, the guards enter the cell and club everyone.

Cells are regularly searched by the prison administration. These searches are the occasion for numerous thefts (particularly of medicines), with prisoners' belongings being stolen in whole or in part by prison officers. Thefts are sometimes committed on the inmates' own initiative.

In the morning, if the occupants of one of the cells fail to wake up, all the inmates are punished. They may be required to remain on their knees for hours, without being allowed the slightest movement or word.

In terms of hygiene, prisoners have access to only one shower and two toilets per cell. Many of them bear the intimate after-effects of torture, or are suffering from illnesses that make shared use of the toilets particularly difficult for everyone. You have to give something to the cell manager to use the shower. Otherwise, no access is possible, and if the inmate nevertheless requests access, he or she is forced to sleep in one of the worst places in the cell.

When it comes to food, portions are always missing and the produce is never fresh. Fruit, for example, is always very damaged.

The heat inside the cells is punishing (often over 40 degrees), and the water from the cell taps is sometimes turned off, especially on Shiite religious holidays, in order to punish the Sunni-majority inmates. Bodies dehydrate very quickly. Prisoners are given one and a half liter bottles a day for drinking, hygiene and washing up. Sometimes, without explanation, they go without water for two days in a row.

As far as medical care is concerned, the necessary care is not being provided. Some French nationals have blocked backs due to their detention conditions. One also suffers from recurrent gastric problems. Another suffers from leg pain. However, no tests are prescribed. The doctor simply gives them a few painkillers from time to time.

A French national suffers from an untreated broken rib and has reported persistent back pain caused by the conditions in which he has been sleeping since being detained at *Al-Rosafa*. His conditions of detention have led him to severely scarify his arms in an unsuccessful attempt to get the prison administration to react.

As far as walks are concerned, prisoners are allowed out twice a week, for 10 to 30 minutes, in a courtyard so cramped that it is virtually impossible to walk. No stretching movements whatsoever are allowed.

2. Women's prison

Members of ASF France also met several times with a French national detained in Baghdad's women's prison. On her arrival, she was incarcerated in an 80-square-meter cell with 129 other women.

At present, 36 women are incarcerated in a cell measuring 86 square meters, and each has just over two square meters at her disposal.



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As far as hygiene is concerned, without money, no products are distributed (neither soap nor shampoo). The women can buy products with money sent to them by their families, but the distribution of these products is very partial and arbitrary. The supervisors help themselves to a lot, and many products disappear.

For over six months, no products were distributed. The French citizen seen by members of ASF France explained that she had to brush her teeth with salt, which greatly weakened her dentition (several of her teeth had fallen out).

The cell is infected with rats, cockroaches and insects. Garbage cans remain in the cells, emitting a pestilential odor. The women empty them and take them out every morning, and the food distributed is placed inside the empty garbage cans.

The mattress on which the French citizen seen by members of ASF France stays all day is very dirty, and the inside of her pillow is made up of cigarette butts and bits of glass.

As far as food is concerned, the women and children (detained with her) lack food and are all deficient.

Between 10:30 and 11 a.m., each woman receives lentil soup, two or three cheesy pastas and a piece of bread. At 2 or 3 p.m., each woman receives a glass of rice, a sour bean soup and olives. The olives are replaced by chicken once a week. The women prisoners have nothing to cook with and boil the water to cook their rice by putting electric cables in buckets of water.

In terms of treatment, the French national seen by members of ASF France suffers from severe ophthalmic migraines, particularly centered on her left eye. Her eyesight has deteriorated enormously. She suffers a lot where she has herniated a disc. However, she has no access to medical care.

As far as violence is concerned, the French woman seen by members of ASF France appears to be completely traumatized and exhausted by the sexual harassment and violence to which she is constantly subjected. Prison staff constantly touch the women, caress them, make degrading comments with sexual connotations and threaten them with rape.

The French citizen we met explains that she no longer wants to leave the cell, and no longer wants to call her mother to avoid further sexual assaults. The person in charge of calls takes advantage of being alone with her in the call room to touch her on the buttocks and sexually assault her. All day long, she is belittled because of her appearance.

Some inmates give in to the guards' advances and have sexual relations with them. Others refuse to leave their cells.

* * *

These findings demonstrate that France's continued position to try *“adults who have chosen to join the ranks of a terrorist organization [...] on the spot, as close as possible to where they committed the acts”*, i.e. in Iraq, leads to serious human rights violations incompatible with France's treaty obligations and compliance with the International Covenant on Civil and Political Rights ratified by the French authorities.