



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



**Alternative report by ACAT- France  
and FIACAT on torture and cruel,  
inhuman or degrading punishment or  
treatment in France**

**Presented to the Human Rights Committee  
prior to  
France's fourth periodic review  
93rd session, from 7 to 25 July 2008**

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**Research and editorial team:**

**ACAT- France:**

**Lucile Hugon, person in charge of asylum: [lucile.hugon@acatfrance.fr](mailto:lucile.hugon@acatfrance.fr)**

**Florence Boreil, person in charge of places of detention: [florence.boreil@acatfrance.fr](mailto:florence.boreil@acatfrance.fr)**

**FIACAT:**

**Nathalie Jeannin, person in charge of relations with international organisations:**

**[n.jeannin@fiacat.org](mailto:n.jeannin@fiacat.org)**

## **Introductory note**

ACAT-France<sup>1</sup> and FIACAT, an international association with consultative status in ECOSOC, are honoured to put before you the following concerns that regard the implementation by France of the International Covenant on Civil and Political Rights, hereafter called the Covenant.

This report is to be presented at the 93rd session of the Human Rights Committee that will take place in Geneva from 7 to 25 July 2008. During this session, France's fourth periodic review of its implementation of those rights enshrined in the Covenant will be studied, although this is seven years overdue.

ACAT-France and FIACAT have only considered those articles that fall within their remit: the fight against torture and abuse.

This study comprises three sections:

The first section outlines the general international legal framework and the protection of human rights in France.

The second section analyses, article by article, the implementation of the Covenant nationally.

The report concludes with a series of recommendations.

All the information contained in the report is recent and reliable.

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<sup>1</sup> ACAT-France is a member of FIACAT. ACAT-France is an organisation defending human rights and was set up in 1974 to fight against torture and the death penalty and to promote the right to asylum.

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# **I – General international legal framework**

France has ratified most of the international and regional conventions on human rights. It has not yet ratified:

- ✓ The Optional Protocol to the United Nations Convention against Torture and other cruel, inhuman or degrading punishment or treatment;
- ✓ The Convention for the protection of each individual against enforced disappearances;
- ✓ The International Convention on the protection of the rights of migrant workers and members of their families;
- ✓ The Convention on the rights of disabled people;
- ✓ The Optional Protocol to the Convention on the rights of disabled people.

## **France and the Human Rights Committee:**

The Human Rights Committee examined France's third periodic report (CCPR/C/76/Add.7) on 21 and 22 July 1997 and on 31 July 1997, it adopted its recommendations. Under its obligations set out in the Covenant, France should have produced its fourth report seven years ago.

The report by the French State is presented in the form of non-exhaustive responses to the previous recommendations of the Committee, article by article.

For the sake of clarity in this report, those articles relating to the Covenant, the recommendations of the Committee and France's responses are summarised and followed by the sections containing our concerns and recommendations.

## II – Analysis of the implementation of the Covenant, article by article

### Article 2

[...]3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

#### **Recommendation n°15 of the Human Rights Committee in 1997: investigative procedures into human rights violations committed by law enforcement officers**

The Committee recommended that France take steps to ensure that investigations into human rights violations by police officers are properly conducted and that legal action is taken within a reasonable time frame in accordance with articles 2(3), 9 and 14 of the Covenant.

Although France in its response sets out how current legislation is applied, in practise things are quite different.

#### **1. Extreme difficulty for a person in detention to bring a complaint when abuse is alleged to have occurred, or even to be heard**

There is an enormous gulf between the right in theory<sup>2</sup> of anyone who is a victim of violence at the hands of an agent acting as a law enforcer to make a formal complaint and reality. The victim alleging ill treatment must, in effect, confront the inertia of the authorities in order both to obtain medical confirmation of injuries incurred while in detention and to bring the complaint or seek protection.

##### **1.1 Case 1<sup>3</sup>**

Jérémy M, a 19 year old, was serving a three-year prison sentence, two of which were suspended on probation, at Valence prison. As a minor, he had been found guilty of criminal damage, tampering and mobile telephone theft and had been incarcerated in Valence for three months. His expected release date was January 2009.

Since mid-February 2008, he had been sharing a cell with two other inmates, one of whom was on remand for attempted murder and seriously mentally disturbed. A situation of intense rivalry developed between his two cellmates, at Jérémy M's expense, and in a letter dated 26 February 2008 and intended for the prison authorities but not sent, he asked for help and requested a change of cell.

<sup>2</sup> Article 15-3 of the Code of Criminal Procedure (the police are obliged to receive complaints and to draft a statement) and Article 40 of the same Code (the State Prosecutor receives complaints and decides how to proceed)

<sup>3</sup> As part of its work on detention centres in France, ACAT- France supports victims of abuse. Some situations that ACAT- France has dealt with are mentioned in the report.

The case of Jeremy M. received extensive media coverage:

<http://rhone-alpes-auvergne.france3.fr/info/41825685-fr.php>

<http://www.come4news.com/58-mort-avant-de-vivre-911643.html>

The ACAT was subsequently in contact with his family.

On 1 March 2008, three days before Jérémy M's death, his grandparents during a social visit saw signs of injuries to his body and noticed his intense feelings of insecurity. They immediately alerted the prison guards in the visits room and asked that he be examined by a doctor and that he change cells.

Despite their insistence and the urgency of the situation, no one paid any attention. They were told that there was no doctor on call and that the young man had to put his request in writing.

Between 3 and 4 March, Jérémy M was in his cell with the individual on remand, the third cell mate being on the punishment wing. On 4 March 2008, Jérémy M was found suffocated in his cell.

The prison authorities informed the family and indicated that it was a case of suicide without waiting for the results of the investigation or of the autopsy. The family challenged the idea that the young man had committed suicide, as he was due to be released in the near future.

An internal investigation within the prison is underway as well as two legal proceedings: one against the cell mate, the suspect, for murder and one against persons unknown for failing to give assistance to a person in danger.

How is it possible that the family were able to see signs of injuries that the prison personnel did not notice, although every prisoner is searched after a social visit? Moreover, why was no doctor or nurse called to examine the detainee when an urgent request was made?

Why was a young man, recently turned 18 and convicted of minor criminal offences, sharing a cell with two others, one of whom was on remand for a serious crime?

The French authorities must respond to these questions and find a way to ensure that every allegation of abuse in a place of detention is properly dealt with.

## 1.2 Case 2

The National Commission for the Code of Professional Conduct in the Security Sector (CNDS) issued an opinion on 10 September 2007<sup>4</sup>, about Mr Farid B. detained in a holding centre and on whose behalf ACAT-France had intervened<sup>5</sup>.

The CNDS is an independent government body responsible for follow-up monitoring to ensure that people employed in the security sector in France respect their Code of Professional Conduct. These individuals include employees of :

- public authorities: policemen, military policemen, prison staff, customs officials, local law enforcement officers, rural policemen and forest wardens;
- public services : transport police ;
- private security firms: security guards, those responsible for transporting currency and members of other private security services.

The Commission can only be asked to look at a matter indirectly, in particular at the request of a member of Parliament. It has investigative powers and issues opinions and recommendations that are published annually.

In the above opinion, the CNDS highlighted shortcomings in respect of the code of professional conduct by those working on behalf of the French state in the security sector, in that they had refused to register the individual's complaint, had only noticed his injuries late in the day and had only written up a medical record and provided him with a copy after endless action by the man himself and steps taken on his behalf by ACAT- France.

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<sup>4</sup> Opinion n°2006-97 of 10 September 2007

<sup>5</sup> The CNDS was asked to investigate a matter on 22 September 2006 by Mr Etienne Pinte, *député*, following a request by ACAT-France for its intervention.

In its response to this opinion, dated 20 November 2007, the head of the French National Police Force declared that the CNDS recommendation, criticising the provision of medical care of those held under the responsibility of the police force, did not in his opinion seem to be *“borne out by the facts to amount to shortcomings in following the code of professional conduct”*. He added that *“as is often the case in this type of affair, the incident that the [person in question] provoked was probably aimed at providing a means of stalling the deportation procedure”* and that in the end his lawyer had succeeded in obtaining his release from custody.

By making out before any investigation that allegations of ill treatment brought by a person in detention are by default a stalling mechanism or excessive, the French authorities are in contravention of the provisions of Article 2 of the Covenant.

### 1.3 Case 3

In a separate opinion of 14 April 2008<sup>6</sup> (the case of E.M.), regarding a commando attack by several inmates in Nîmes prison on 12 June 2006 on a prison guard and subsequently on a fellow inmate who had recently been sentenced for a serious high-media profile offence, the CNDS noted *“inappropriate placing of the prisoner”*, *“a concatenation of simultaneous failures that allowed the attack to occur with impunity for the aggressors”*, *“medical treatment following the attack that all but disregarded medical confidentiality”* and *“a casual attitude by the administration of the attack”*. The CNDS recommends in particular that all heads of prison establishments be reminded that *“every allegation of a criminal offence committed within a prison must be investigated in exactly the same way as any incident of this sort committed outside and, in addition, the matter must be dealt with in line with internal guidelines”*.

The CNDS points out the lack of consideration given to allegations of acts of violence brought by a detained person and highlights the difficulty of ensuring the right for a person placed in detention to proper and effective remedy against abuse.

### 1.4 Time frame for bringing legal action

The French government report mentions the possibility for a victim of acts of violence at the hands of those responsible for law enforcement to bring legal action through a civil suit before the *juge d’instruction* [investigating judge] (paragraph 119 of the report). When a civil suit is brought, the State Prosecutor can no longer discontinue the matter although it is the body responsible for deciding which cases are followed up.

However, even if the victim of abuse forces the judge to investigate by bringing a civil suit (Article 85 of the Code of Criminal Procedure), the law sets out that the victim must first lodge a complaint and then wait, either for the prosecution not to proceed or for a period of three months, unless the matter concerns a serious criminal offence.

A government-initiated report in January 2008 sets out the possibility of extending the time frame within which a complaint must be received and a civil suit made from 3 to 6 months following the initial complaint to the State Prosecutor<sup>7</sup>.

An extension of this type would have the effect of delaying any enquiry by the investigating magistrate into the allegations of ill treatment, in addition to the inertia on the part of the authorities with which a victim often has to deal.

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<sup>6</sup> Case n°2007.3, opinion due to appear in the 2008 report.

<sup>7</sup> Report from the Minister of Justice, January 2008, the decriminalisation of company matters, *la documentation française*, <http://lesrapports.ladocumentationfrancaise.fr/BRP/084000090/0000.pdf>

**Recommendations:**

- Systematic creation of a written medical record when abuse is alleged, with a copy immediately provided for the person in question to enable him to bring a complaint, together with a regular reminder to staff to give due consideration to any allegation of ill treatment brought by a person in detention and their obligation to register the complaint;
- Not to extend the time frame within which a complaint must be brought by civil suit in cases of torture, cruel, inhuman or degrading punishment or treatment.

## 2. Risk of intimidation

On top of the initial difficulty facing a person in detention to make known his allegations of abuse, there is the risk of intimidation. The CNDS notes in its 2007 report, published in April 2008<sup>8</sup>, a police practise of bringing a libel action against those individuals that have brought a matter to the Committee's notice, before the Commission has issued an opinion on the matter in question (opinion 2006-29). The CNDS "*fears the development of inadmissible pressure by this course of action on the witnesses and actual victims of shortcomings in the code of professional conduct of personnel working in the security sector and that this development could compromise its proper functioning*"<sup>9</sup>. No solution has yet been found to deal with this major stumbling block.

## 3. Lack of disciplinary procedures and effective remedies for foreign nationals detained in holding centres

Illegal foreign nationals who cannot be guaranteed proper representation can be detained in holding centres for a maximum of 32 days<sup>10</sup>, after which they can be deported. They can be held in solitary confinement in so-called "separate" cells following any failure to adhere to the internal rules. Internal rules in this type of establishment leave the centre manager too much room for manoeuvre to decide what constitutes "*creating a disturbance or representing a security threat*" without providing in return sufficient guarantees for the foreign national in solitary confinement.

There is no framework disciplinary procedure setting out, for example, a list of reprehensible types of behaviour, sanctions that can be imposed, a procedure that respects the right to defence or a maximum time limit for being placed in solitary confinement and how to seek remedy, all of which were raised by the Committee for the Prevention of Torture of the Council of Europe during its visit to France from 27 September to 9 October 2006<sup>11</sup>.

**Recommendations:**

- Rapid setting up of disciplinary procedures, setting out a list of reprehensible types of behaviour, sanctions for the same and a procedure that respects the right to defence and means of remedy;
- Systematic communication to the medical care team each time a foreign national is placed in solitary confinement.

## 4. Inspection mechanisms: the new Inspector of Prisons

France's report mentions under national guarantee bodies the CNDS and the Commission for the Inspection of Holding Areas that was created in 2003 and came into being in 2006 but that has only issued one brief report and has since been abolished.

<sup>8</sup> <http://www.cnds.fr/>

<sup>9</sup> [http://www.cnds.fr/ra\\_pdf/ra\\_2007/Introduction\\_2007.pdf](http://www.cnds.fr/ra_pdf/ra_2007/Introduction_2007.pdf), page 32.

<sup>10</sup> Articles L552-1 and L552-7 of the Code for Entry and Leave to Remain of Foreign Nationals

<sup>11</sup> [Report](#) by the CPT of 10 December 2007 on its visit to France from 27 September to 9 October 2006, paragraphs 75 onwards and the [response](#) by the French Government, page 41 at <http://www.cpt.coe.int/en/states/fra.htm>

The report also quotes the European Committee for the Prevention of Torture (hereafter CPT) and the national prevention body set out in the optional Protocol to the Convention against Torture and other cruel, inhuman or degrading punishment or treatment (paragraphs 142 onwards in the French report). The body mentioned is, in fact, the Inspector of Prisons set up by Law n° 2007-1545 of 30 October 2007, the future of which is uncertain.

Approximately 6,000 places of detention are concerned and include police custody suites, customs custody suites, army detention areas, border holding areas, government holding centres, prisons, high security prisons and psychiatric hospitals.

#### **4.1 A national prevention body to meet the obligations of the optional Protocol to the Convention against Torture**

The Law of 30 October 2007 excluded any inspection of areas under French responsibility outside French territory, such as French army bases abroad.

In addition, any inspection can be postponed for “*serious and urgent reasons*” although the optional Protocol does not contain such a provision. Lastly, included in the optional Protocol is a national prevention body that can set out a visits action plan, whereas French legislation lists different instances where cases can be submitted on appeal and puts the role of prevention firmly in second place.

What is more, the Inspector would only have a budget of €2.5 million and a staff of between 18 and 20 assistants. That would appear to be insufficient in order to inspect approximately 6,000 detention centres.

In order to be efficient, the inspecting body must be able to carry out regular and unannounced visits. Only if the Inspector can make real use of his right to investigate cases and enforce his authority to carry out visits as frequently as he sees fit will be able to keep a proper watch on the respect of the basic rights of persons held in detention. Failing that, he cannot hope to represent anything other than a reactive body and not a preventive one which would severely limit the impact of his inspections.

By ensuring sufficient funding for this task, France will be able to prove its genuine commitment to the fight against torture and abuse.

#### **Recommendation:**

- That the French government ensures that the national body for the prevention of abuse has adequate funding and staff at its disposal to exercise its preventive role

#### **4.2 Delay in nominating the Inspector and lack of transparency in his appointment**

More than six months after the post of Inspector was officially established by Law of 30 October 2007, and more than two months after the decree was issued instituting the post on 12 March 2008, a name has been suggested by the Prime Minister<sup>12</sup> as the person to inspect the care and transfer of individuals placed in detention on the decision of the French authorities<sup>13</sup>.

<sup>12</sup> Announcement made on 22 May 2008 following the visit to France by the European Commissioner for Human Rights, Thomas Hammerberg.

<sup>13</sup> Law n° 2007-1545, <http://www.legifrance.gouv.fr/>

The nomination of the Inspector by the President of the Republic following the opinion of the Law Commission of both parliamentary assemblies must be carried out in accordance with the Paris Principles<sup>14</sup>. The law only states the need to consult the Law Commissions of both parliamentary assemblies (National Assembly and Senate).

It would be important to involve in this appointment the national institution for the Promotion and the Protection of Human Rights in the form of the National Consultative Commission on Human Rights so that the nomination procedure meets all the necessary guarantees to “*ensure a pluralist representation of the social forces (of civil society)*”<sup>15</sup>.

A transparent and independent appointment is the only way to guarantee the credibility of the national body for the prevention of torture and ill treatment and for the monitoring of full respect of the basic rights of persons in detention.

The constitutional bill to modernise the institutions of the V Republic<sup>16</sup>, currently being scrutinised by the National Assembly (since April 2008) runs the risk of skewing the present system of human rights defence. The bill proposes setting up a citizen’s ombudsman that would combine the roles of mediator of the Republic, the CNDS and the Prisons Inspector. To date scanty information is available on how the ombudsman would liaise with the existing bodies. There is a need for great care in order to ensure that the protection of citizens rights are not compromised by such an institutional change and that bodies such as the CNDS, whose abilities are unanimously recognised, can continue their good work.

**Recommendations:**

- The powers of inspection of the Ombudsman must be clarified as soon as possible and the French State must commit itself to a timetable for implementing such a body.

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<sup>14</sup> Resolution 48/134 of the General Assembly of the United Nations of 20.12.93, Annex, Principles concerning the status of national institutions in promoting and protecting human rights.

<sup>15</sup> Resolution 48/134, Annex, Composition and guarantees of independence and pluralism

<sup>16</sup> [http://www.legifrance.gouv.fr/html/actualite/actualite\\_legislative/modernisation\\_institutions.html](http://www.legifrance.gouv.fr/html/actualite/actualite_legislative/modernisation_institutions.html), summary of the reasons

## Article 7

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.[...]*

### A- Detention centres

#### **Recommendation n°16: abuse of persons in detention by officers responsible for law enforcement**

In 1997 the Committee recommended that France take action on instances of abuse of those held in detention, on the unnecessary use of firearms, take the necessary steps to prevent suicides in detention, reduce the use of solitary confinement cells, set up an independent body to deal with complaints brought by persons in detention and train law enforcement officers in human rights (§16).

Once again, the French report lists the law that is applied without making any criticism of how it is actually applied.

#### **1. Slow access to legal representation in custody and increased risk of ill treatment**

The length of time before which a person in custody can consult a legal advisor has been extended by the laws of 9 March 2004, on modifying justice to keep pace with changes in criminal behaviour, and of 23 January 2006, on the fight against terrorism, containing different provisions on security and border controls<sup>17</sup>.

A special procedure is provided for organised crime and delinquency that pushes back initial contact with a legal advisor to 48hrs (2 days). Where there is a serious risk of an imminent terrorist attack or if there is a need for international cooperation, contact with a legal representative is not permitted before 96hrs (4 days) and 120 hrs (5 days) respectively. In cases of extremely sensitive offences, contact with a lawyer is only allowed after 4 days custody which itself cannot last more than 144hrs (6 days)<sup>18</sup>.

The recommendation made back in 1996 by the CPT, on the possibility of delaying access to the lawyer of choice of the person in custody but granting him the right to consult a duty lawyer, should be the way forward.

#### **Recommendation:**

- Allow access to a lawyer within the first hour of detention in custody whatever the offence being investigated

<sup>17</sup> Law n° 2004-204 of 9 March 2004 and Law n°2006-64 of 23 January 2006, <http://www.legifrance.gouv.fr/>

<sup>18</sup> Articles 63-4, 706-73 and 706-88 of the Code of Criminal Procedure, <http://www.legifrance.gouv.fr/>

## 2 Lack of proper inspections of custody suites

Apart from the CPT, that was able to visit custody suites during its visits to France and that published its findings and recommendations, the obligation under Article 41 of the Code of Criminal Procedure that puts the onus on the State Prosecutor's office to visit such places once year is purely theoretical.

During its visit in autumn 2006, the CPT noticed not only unfit material detention conditions but also a lack of any systematic medical record being written up where allegations of abuse were made by a person in detention<sup>19</sup>.

Since the implementation of Law n° 2000-156 of 15 June 2000, reinforcing the presumption of innocence and the rights of victims, members of parliament are authorised to visit custody suites at any time<sup>20</sup>. Although this visiting right by a member of parliament constitutes an important guarantee, it is exercised subject to the good intentions of the parliamentarian and cannot be compared to a regular inspection that gives rise to published findings and follow-up of observations made.

### **Recommendations:**

- Proper inspections of custody suites and publication of a report of visits by the authorities responsible for inspections;
- Systematic writing up of a medical record where allegations of abuse are made in custody suites.

## 3. Use of stun guns in general and within prison environments in particular

In April 2008, France announced an amendment to 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 regarding the arming of municipal police officers to allow 17,000 municipal police officers to use stun guns. The use of stun guns is currently being tested in three prisons according to the French government, one of which is the prison in Fresnes<sup>21</sup>.

However, the position of the Committee against Torture of the United Nations is final: the use of non-lethal electric shock weapons "*causes intense pain that constitutes a form of torture*" in contravention of Articles 1 and 16 of the United Nations Convention against Torture<sup>22</sup>.

Questions to the French State:

- What is France's position on the compatibility of arming its municipal police officers with stun guns and the recommendation of the Committee against Torture?
- What is France's position of the compatibility of using stun guns in prisons and the above recommendation of the CAT?

### **Recommendation:**

- The use of electric shock weapons should be banned in France.

<sup>19</sup> [Report](#) of the CPT of 10 December 2007 on its visit to France from 27 September to 9 October 2006, paragraphs 16 and 24 onwards and [response](#) by the French government at <http://www.cpt.coe.int/en/states/fra.htm>

<sup>20</sup> In accordance with Article 719 of the Code of Criminal Procedure, members of parliament can also visit holding centres, border holding areas and prisons at any time

<sup>21</sup> Response of the French government to the CPT report of 10 December 2007, page 66

<sup>22</sup> Recommendations addressed to Portugal, CAT/C/PRT/CO/4 of 22 November 2007, paragraph 14.

#### **4. Solitary confinement in prison: a measure that has no time limit and that occurs in conditions that are comparable to abuse**

As a means of protection or security, solitary confinement of a detainee, initially for a period of three months, can be renewed indefinitely if it “*provides the only means of guaranteeing the security of individuals or of the prison environment*”<sup>23</sup>.

Besides this absence of any limit on a maximum time it can be imposed, conditions of detention in solitary confinement are especially arduous. They are similar to cruel, inhuman and degrading treatment. Moreover, a person held in solitary confinement is often kept in darkened conditions, even during authorised exercise periods in an open-air courtyard because the sky is often obscured by bars. Prison staff are under no obligation to follow a doctor’s advice concerning ending a period of solitary. The inmate held under such conditions in reality can rarely take part in communal activities and is frequently and excessively subjected to searches.

The CPT, during its visit to France in autumn 2006, met a detainee who had been in solitary confinement for 19 years<sup>24</sup>!

The Committee also noted that there had been no implementation of its 1996 recommendation regarding a quarterly review based on a full assessment or any enforced solitary confinement lasting three months or more of an inmate, including considering the social and medical aspects of the measure<sup>25</sup>.

The CPT at the same time highlighted its grave concerns that solitary confinement is being resorted to outside its original purpose and used in dealing with severely disturbed inmates who require urgent psychiatric attention<sup>26</sup>.

A judge at the Administrative Court in Melun ruled on 1 April 2008 on suspending the isolation of a prisoner, on this occasion in a disciplinary cell (Cyril K v Minister of Justice<sup>27</sup>). The Judge ruled that there were grounds “*to consider in addition the serious effects that being placed in a disciplinary cell for a thirty day period would have on the physical and mental health of an individual subjected to such treatment*”. According to the Judge, consideration must also be given to the onset of medical conditions, both of wasting of the muscles and weakness of the bones and of psychiatric trauma in a prisoner who is repeatedly placed in solitary confinement for long periods during his sentence. The French State for its part believes that it is more important to maintain order within the prison environment.

Before the confinement was suspended, the detainee had been kept in a disciplinary cell throughout the legal process, that is to say, for at least 22 days.

#### **Recommendations:**

- Review solitary confinement measures as part of a total assessment, including medical and social issues;
- Review legislation on solitary confinement.

#### **5. Lack of inspection of the care of high-risk prisoners (HRP)**

The care of HRP is outlined in a simple interministerial instruction dated 19 May 1980. The prison authorities note the prisoner’s name in a register of HRP, either based on a scale from the *Office Central de Répression du Banditisme*, [Serious Crime Office] or on advice from the Prosecutor.

<sup>23</sup> Article D 283-1-7 of the Code of Criminal Procedure, <http://www.legifrance.gouv.fr/>

<sup>24</sup> Article D 283-1-7 of the Code of Criminal Procedure, <http://www.legifrance.gouv.fr/>

<sup>25</sup> [Report](#) of the CPT 10 December 2007, note at the foot of page n°146 of paragraph 155.

<sup>26</sup> [Report](#) of the CPT of 10 December 2007, paragraphs 151 onwards

<sup>27</sup> Decision of the Administrative Court of Melun n° 0802161/6 of 1 April 2008 (unpublished)

Once every three months at least, the latter must reassess the position of all prisoners under its responsibility and suggest those who should be added or removed from the HRP list.

The HRP care that follows involves increased security measures: body searches, cell searches, intensive monitoring of all movements, regular changes of cell or prison, limits on access to outside treatment and no possibility of being admitted to a psychiatric hospital.

The CPT noted that the quarterly review by the State Prosecutor is not carried out, or when it is only annually<sup>28</sup>.

**Recommendation:**

- Put in place proper standardised regulations for the care of HRP that guarantee proper remedies for detained individuals

## 6. Dramatic state of prison psychiatry and provision of care that fail to respect human dignity

In the Moulins-Yzeure prison in the Allier *département*, high risk inmates or those considered dangerous who are severely psychiatrically disturbed are put into solitary confinement naked and, if need be, treated under duress. They are not offered psychiatric treatment. This dramatic situation has been described as inhuman and degrading treatment by the CPT<sup>29</sup>. The Committee adds: “generally all those spoken to by the delegation, both in the Ministries [...] and locally and health professionals and those responsible for running the centres visited, admitted that prison psychiatry in France is in a parlous state”<sup>30</sup>.

Indeed France was found guilty by the European Court of Human Rights in the Rivière sentence on 11 October 2006 of keeping in detention an individual whose psychiatric state of health required specialised care in a proper environment<sup>31</sup>.

As regards the delivery of medical treatment, handcuffs and other restraining devices are systematically used during medical extractions and during treatment. Treatment is given in the presence of police officers in total contravention of medical confidentiality.

This practice contravenes the recommendations made in the reports concerning visits made in 1996 and 2000<sup>32</sup> by the CPT that in 2006 notes a disproportionate accumulation of security measures in environments that are already very secure.

France was even found guilty by the European Court of Human Rights, in the decision on appeal of Hénaf on 27 November 2003, of inhuman and degrading treatment through restraining to his hospital bed an individual who was detained the day before he was due in hospital as this was disproportionate to the need for security<sup>33</sup>.

**Recommendation:**

- Complete review of the provision of psychiatric care and conditions of the delivery of treatment in cases of medical extractions.

<sup>28</sup> [Report](#) of the CPT of 10 December 2007, paragraphs 160 onwards.

<sup>29</sup> [Report](#) of the CPT 10 December 2007, paragraphs 201 onwards

<sup>30</sup> [Report](#) of the CPT 10 December 2007, paragraph 203.

<sup>31</sup> Case of Rivière v France, appeal n° 33834/03, final ruling on 11/10/2006

<sup>32</sup> [Report](#) of the CPT 10 December 2007, paragraph 210.

<sup>33</sup> Case of Hénaf v. France, appeal n° 65436/01, final ruling on 27/02/2004

## **7. Lack of a Code of Professional Conduct for prison staff**

If human rights are to be respected in prison then a Code of Professional Conduct for all prison staff needs to be drawn up that includes national and international provisions on the subject.

### **Recommendation:**

- To adopt as soon as possible a Code of Professional Conduct for all prison personnel that sets out in detail procedures and behaviour to be used in situations where those working on behalf of the State may use force

## **8. Lack of any definition of torture in French law**

In French criminal law acts of torture, although they are punished as an offence in themselves (article 222-1 of the Criminal Code) or amount to an aggravating circumstance, are not precisely defined.

### **Recommendation:**

- Define acts of torture in national legislation in accordance with Article 1 of the United Nations Convention against Torture

## **B. Asylum and returning individuals to their country of origin, exposing them to danger**

Regarding questions of asylum that formed the basis of recommendations 20 and 21 of the final observations of the Human Rights Committee in 1997, ACAT- France notes with satisfaction that the Committee's concerns were in part taken up by the French authorities

Thus, as the French government highlights in paragraph 315 of its report delivered to the Committee on 18 July 2007, the notion of persecution that was used in recognising the status of refugees was extended by Law of 10 December 2003.

### **1. The situation of asylum seekers in France's coastal ports**

Paragraph 20 of the final observations of the Committee on France outlines the concerns about "*foreign nationals who are not authorised to disembark in French coastal ports and are not being given the opportunity of proving their identity on an individual basis*".

As the French government states at paragraph 330 of its report, the Council of State in its decision of 29 July 1998 ruled that foreign nationals must be placed in waiting areas under conditions set out in Articles L221 onwards of the Code of Entry and Residence for Foreign Nationals and the Right to Asylum (CESEDA).

However, in reality, the disembarkation of these foreign nationals remains very tricky in practice and ACAT-France is still concerned by cases of asylum seekers who are not permitted to disembark in coastal ports.

According to the Office of the High Commissioner for Refugees, "*disembarking illegal passengers is often extremely problematic. A positive outcome in this type of situation largely depends on the nationality of the person concerned, on the possibility of identifying him, on the expected route of*

*the vessel on which he is travelling and, in particular, on the degree of cooperation offered by the port and immigration authorities in the stop-off ports on the vessel's route*<sup>34</sup>.

One should note the increase in financial sanctions for companies<sup>35</sup> that fail to respect the obligations they are required to meet<sup>36</sup>. Indeed, to avoid being found guilty, maritime carriers go so far as to refuse to let foreign nationals disembark. There is no way to gauge precise figures for this practice. The actions by these “new” immigration watchdogs are becoming habitual and amount to discrimination (the exercising of the right to asylum is often flouted). This is because although the law sets out that carriers are not themselves sanctioned when an individual is given asylum in a European country, the companies’ inspectors do not take the risk of letting an asylum seeker enter a country if he does not have any travel documents. The procedures adopted by the Border Police mean a reduction in the costs of monitoring the border. However, their action can have serious consequences because it encourages illegal maritime passengers to jump ship when the vessel arrives near the coast or when the individual is not authorised to leave the boat. Although some make it to safety, others drown. In recent years, several cases have been reported near the port of La Rochelle, between Nantes and Saint-Nazaire and near Le Havre where, in two separate incidents (November 1994 and September 2003) three illegal passengers were found dead on the banks of the Seine.

In addition to the recommendations drawn up by the Committee and presented to the French government, ACAT-France hopes to draw attention to certain aspects of procedures for asylum seekers and returning individuals to their country of origin, exposing them to danger, currently applied in France that violate Articles 7 and 23 of the International Covenant on Political and Civil Rights.

## **2. The procedure for seeking asylum**

In 2007, 23,804<sup>37</sup> first time asylum claims were made in France. Since the consequences are weighty, a request for asylum must give rise to a full examination of the foreign national’s personal situation, considering risks for him in person and the current situation in his country. However, the French procedure does not make allowance for this.

There are two ways of examining an asylum claim for individuals at large on French territory:

- 2.1) the normal procedure, once an asylum seeker has been granted permission to reside by the office of the *Préfet*
- 2.2) the so-called fast track procedure for individuals who have been refused permission to reside based on Article 741-4 of the Code of Entry and Residence for Foreign Nationals and the Right to Asylum.

In 2006, 28 % of asylum claims were considered under the fast track procedure (14% of first-time claimants). Aside from the social consequences of this procedure (no access to state-funded lodging, no access to temporary welfare payments while awaiting a decision, etc), the processing of the asylum claims from these individuals is affected by the inability of staying on appeal a refusal from the French Association for the Protection of Refugees and Stateless individuals, OFPRA, and the speed with which an asylum claim is examined by OFPRA.

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<sup>34</sup> HCR (2005) : « Note for information in advance of the Round Table of experts in saving and intercepting individuals in the Mediterranean

<sup>35</sup> The Ministry of the Interior declared 939 fines in 2005, to a total of €4,547,863

<sup>36</sup> See Anafe report (National Association for the Assistance of Foreign Nationals at Borders) “Campaign to visit waiting areas in France”, November 2005 to March 2006

<sup>37</sup> not including accompanying minors

## 2.1 The normal procedure: existence of bars to asylum claims

Once placed in the “normal” procedure, the asylum seeker is given a provisional residence permit by the Office of the *Préfet* which can be renewed until OFPRA, or if necessary, the National Tribunal for the Right to Asylum (CNDA) decides on the request for protection

Different provisions currently in force do not ensure an examination that respects the rights of foreign nationals

- **Material bars to asylum claims:** the ability of the *préfectures* to deal with claims is recognised as wanting thereby interfering in practice in making an asylum claim by refusing to register claims for spurious reasons. For example, refusing to register requests to re-examine an asylum claim until the individual has been issued with a deportation order when this document is not necessary at this stage of the procedure<sup>38</sup>.

Similarly, the law states there is an obligation to send a fully completed claim to OFPRA within 21 days of the date of withdrawing an asylum claim which is extremely complicated for non-French speaking asylum seekers. In 2007, 800 asylum claims were unable to be registered either because they were submitted outside the legal time limit of 21 days or because they were incomplete<sup>39</sup>.

- **An asylum claim can be rejected without the claimant being given a hearing:**

### *Before OFPRA*

The law of 10 December 2003 establishes the principle of a hearing before OFPRA to decide on the claim. OFPRA can however dispense with the hearing if the asylum claim seems in its eyes to be “fundamentally unfounded”. This notion is not defined in French law and is arbitrarily decided by OFPRA. Although OFPRA did hear almost all asylum seekers (94%) in 2007, the possibility of not calling claimants before them remains legal. ACAT-France fears that the decision not to hear certain claimants is linked to productivity targets within OFPRA and fluctuates according to the number of asylum seekers making claims in France.

### *Before the National Tribunal for the Right to Asylum*<sup>40</sup>

Article L 733-2 of CESEDA stipulates that [before the National Tribunal for the Right to Asylum]: “the Chairman and heads of section can, legally, decide claims where the content does not justify setting up a full hearing”. Article R 733-16 of the same Code outlines that appeals could be decided by a court order “if they do not contain any serious points that might overturn the decision by the head of OFPRA”.<sup>41</sup>

It should be noted that only asylum seekers who have entered French territory legally can claim legal aid. They often have to fill out their appeal forms alone, in a foreign language in which they are unable to express themselves: this increases the risk of their claim being turned down by court order. The report by the National Tribunal for the Right to Asylum for 2007 puts at 13% the proportion of claims being turned down by the so-called “new” order (Article L 733-2 of CESEDA).

Just as the notion of a fundamentally unfounded request to OFPRA, that allows an asylum claim to be rejected without offering the asylum seeker a hearing, is not defined in law, the seriousness of the issues that could overturn OFPRA’s decision is not matched by official criteria.

## 2.2 The fast-track procedure: unlawful detention and lack of proper remedy

Article L 741-4 of the Code of Entry and Residence of Foreign Nationals lists three reasons why a *Préfet* can refuse provisional residence to an asylum seeker:

<sup>38</sup> For numerous other examples, see the CIMADE report “Hands off asylum”, June 2007

<sup>39</sup> Source: OFPRA report 2007

<sup>40</sup> Formerly Commission des recours des réfugiés [Refugees Appeals Commission]

<sup>41</sup> Article L 733-2 of CESEDA

- He comes from a country designated as “safe”;
- His presence in France represents a serious threat to public law and order;
- His asylum request is improper.

In these instances, the asylum claim of the individual is fast-tracked and will be considered by OFPRA within 2 weeks. Any appeal before the National Tribunal for the Right to Asylum cannot stay a deportation order.

The Executive Committee of the Office of the High Commissioner of the United Nations for Refugees (UNHCR) does not ban fast-track procedures but points out that because of the *serious consequences* of a wrong decision, all procedural guarantees must be respected and in particular *a full, face to face interview* and an appeal procedure to stay the decision if the claim is refused<sup>42</sup>.

These conditions are not respected in France:

➤ **The timetable for submitting a claim is too short:**

The timetable within which an asylum claim must be completed and legal aid requested is too short (sent within 2 weeks following examination of the case) in order to arrange the necessary accompanying documentation and find interpreters. This haste often ends in poorly completed claims that may result in a refusal without the claimant being interviewed. OFPRA is able to consider the claim to be fundamentally unfounded and reject it without interviewing the asylum seeker.

The percentage of fast tracked individuals being interviewed has not been declared by the French State.

➤ **The choice of safe countries of origin is debatable:**

The Law of 11 December 2003 introduced the possibility of fast tracking asylum seekers who are nationals of “safe countries”<sup>43</sup>. In 2006, 30.61%<sup>44</sup> of individuals originating from these countries were officially recognised as refugees or granted subsidiary protection. The Council of State, in a decision of 13 February 2008, announced that Niger and Albania had erroneously been put on the list<sup>45</sup>.

From the viewpoint both of the human rights situation in some of these countries and the extremely serious consequences of being fast tracked, it is imperative that this list is reviewed as soon as possible.

Such a review seems all the more necessary in view of new circumstances that are now legal and effective. Through Article 92 of the Law of 24 July 2006, the legislator has transposed Article 30-2 of Directive 2005-85 EC of 1 December 2005 that states that:

*“By derogation from paragraph 1, Member States may retain legislation in force on 1 December 2005 that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:*

*(a) persecution as defined in Article 9 of Directive 2004/83/EC;*

*nor*

*(b) torture or inhuman or degrading treatment or punishment”*

<sup>42</sup> Conclusion No 30 (XXXIV) on the problem of fundamentally unfounded or improper claims to refugee or asylum status, 20 October 1983

<sup>43</sup> Destinations listed as safe countries, to 13 February, are: 2008: Republic of Albania; former Yugoslav Republic of Macedonia; Republic of Madagascar, Republic of Niger; United Republic of Tanzania, Benin, Bosnia-Herzegovina, Cap Verde, Croatia; Georgia; Ghana; India; Mali; Mauritius; Mongolia; Senegal and Ukraine.

<sup>44</sup> Sources: OFPRA 2006 report and report from the Commission des recours des réfugiés [Refugees Appeals Commission]

<sup>45</sup> EC, 13 February 2008, n° 295443

However one is obliged to recognise that OFPRA and the National Tribunal for the Right of Asylum in 2006 recognised almost a quarter of asylum seekers originating from the following countries officially as refugees or granted them subsidiary protection, especially due to ongoing or simmering civil wars (Bosnia, Herzegovina, Georgia, Niger, Senegal, India), a recent declaration of a state of emergency (Georgia, Niger), persecutions or serious threats linked to being of roma origin (former Yugoslav Republic of Macedonia, Bosnia) or being linked to criminal networks, honour crimes or human trafficking networks (Albania, Georgia, Ukraine) or upholding the death penalty (Mongolia, Tanzania).

In 2007, there appears to be a very high percentage of cases of foreign nationals originating in so-called safe countries in which refugee status was recognised or subsidiary protection offered.

Country	percentage agreement
Georgia	44 %
Ukraine	32 %
Mongolia	17 %
Mali	82 %
Senegal	25 %

In addition, consideration of the internal situation of these countries did not take into account specific persecution of women (risk of excision, forced marriage, rape, forced prostitution) that jurisprudence from the Council of State and the National Tribunal for the Right to Asylum included within the context of asylum, whether it be belonging to a particular social group or a serious threat under Article L.712-1 of CESEDA that concerns foreign nationals from these countries (Albania, Ghana, India, Mali, Senegal, Ukraine).

Taking all these elements into consideration, one cannot fail to consider in a general sense that these individuals are subject to persecution or serious threats in many of the countries indicated in the decisions of 30 June 2005 and 16 May 2006.

➤ **Lack of effective remedy:**

Article L 742-6 of CESEDA sets out an appeal procedure that cannot stay refusals of an asylum application despite the fact that the HCR makes it an essential element for considering claims.

The procedure is heavily contested by a number of institutions. The Human Rights Commissioner at the Council of Europe, Mr Alvaro Gil-Robles, in his report on full respect for human rights in France<sup>46</sup> stated moreover as regards the fast track procedure that it “*only leaves an infinitesimally small chance to claimants. In fact, any appeal that an individual chooses to submit to the Refugees Appeals Commission cannot stay a prior decision and the individual can thus be deported during the procedure itself*”

He concluded by stating, “*There is a two speed system of asylum seeking in France [...]. As such, I believe it important to draw attention to the fact that a fast track procedure must under no circumstances become an exceptional procedure. Even if certain steps can indeed be sped up bearing in mind the details of some cases, the fast track procedure must not become an expedient and each case must be fully and carefully examined*”.

Similarly, the Council against Torture at the United Nations stated in its final observations<sup>47</sup> in April 2006 on the report presented by France that “*the Committee is also concerned by the expeditious nature of the so-called fast track procedure regarding the examination of applications made in gov-*

<sup>46</sup>.HR Comm (2006)2 – Report drawn up after his visit to France from 5 to 21 September 2005.

<sup>47</sup> Conclusions and recommendations of the Committee against Torture : France. 03/04/2006. CAT/C/FRA/CO/3. (Concluding Observations/Comments

ernment or border holding centres, as this does not allow an assessment of the risks as set out in Article 3 of the Convention”.

Lastly, the Executive Committee of the Office of the High Commissioner for Refugees<sup>48</sup> believes that “*it is necessary that when an application is refused the individual must have the opportunity of appealing the negative ruling before being returned to the border or deported*”.

In 2007, 28 % of asylum seekers (14 % of first-time applicants) were fast tracked.

In France, 58 % of individuals recognised as refugees (or subsidiary protégées) obtained their status following the overturning of an OFPRA decision by the National Tribunal for the Right to Asylum<sup>49</sup>. The texts do not, however, allow asylum claimants in the fast track procedure access to the National Tribunal for the Right to Asylum.

The combination of an appeal that cannot stay a decision made by OFPRA with a reform of the contentious administrative procedure results in the deportation of asylum seekers, whose appeals have not been examined by the National Tribunal for the Right to Asylum, back to their countries of origin. The case of Mr. Ferdi Aydin, on which the National Tribunal for the Right to Asylum solemnly ruled, is emblematic and opens the way to numerous similar cases.

Mr. Ferdi Aydin of Turkish origin was fast tracked having made an asylum application that was refused without an interview by OFPRA on 23 February 2006. He lodged an appeal before the Refugees Appeals Commission on 17 March 2006. As the appeal process could not stay the first decision, Mr Aydin was served with an order for his removal which he disputed before an Administrative Court. The Administrative Court rejected his request “*ex parte*” in accordance with Article L 523-1 of the Code of Administrative Justice that states that “*when the claim does not appear urgent or when it seems clear from the claim that it does not fall within the jurisdiction of the administrative body, or is inadmissible or is poorly reasoned, the Urgent Applications Judge can reject it by a reasoned judgement without the need to apply the first two paragraphs of Article L 522 -1*”. Mr Aydin was deported to Turkey on 30 May 2006 where he was immediately incarcerated in Tekirdag prison because of his active role within the Communist, Marxist-Leninist Party (MLKP). Mr Aydin is still in prison today.

The Refugees Appeals Commission decided that since Mr Aydin was no longer “outside the country of his nationality”, he could not attempt to be recognised in his capacity as a refugee. The Refugees Appeals Commission therefore declined to rule on the appeal lodged by Mr Aydin and concluded there was no case to rule upon<sup>50</sup>.

During the entire procedure, Mr Aydin was never granted an interview or a hearing in order to give a verbal account of his fears were he to return to his country of origin.

French legislation, fortified by this solemn decision of the National Tribunal for the Right to Asylum, allows the removal of asylum seekers placed in the fast track procedure without their having been able to benefit from any proper remedy whatsoever and without even having heard from them their fears of persecution should they be deported. This established fact is reinforced by the introduction of a new means of removal: an obligation to leave French territory, a measure that is automatically taken by the *Préfecture* following a refusal by OFPRA in fast track cases and which is likely to be subject to an “*ex parte*” decision before the Administrative Courts (see §3 above).

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<sup>48</sup> Conclusion No 30 (XXXIV) on the problem of fundamentally unfounded or improper claims of refugee status or of asylum, 20 October 1983

<sup>49</sup> Source : OFPRA 2007 report

<sup>50</sup> “*Cimade [ecumenical service of mutual help] whose objective is to show solidarity with the suffering, the oppressed and the exploited and to guarantee their defence, irrespective of their nationality, political or religious affiliation*” (Article 1 of the Statutes)

**Recommendations:**

- Setting up an appeal that can stay an OFPRA decision for fast tracked asylum seekers;
- Setting up a regular review mechanism of the list of safe countries in consultation with organisations that specialise in human rights situations in the countries of origin in question;
- Sending clear and firm instructions to the offices of the *Préfectures* on instances of refusal of leave to remain (the fast track procedure);
- Clear definition of the criteria allowing the implementation of the so-called new court orders before the National Tribunal for the Right to Asylum.

### 2.3 Asylum seekers detained in holding centres

➤ **Conditions governing making an asylum application from a holding centre**

ACAT-France is especially concerned by the procedure for claiming asylum for those foreign nationals being detained in holding centres. Current legislation sets out that detained individuals must make their application for asylum within a maximum of 5 days. The application must only be made in French and the claimant cannot be helped by a translator. In some holding centres, the asylum seeker must draft his application in the presence of a police officer because use of a nibbled pen is deemed dangerous. While it is true that CIMADE<sup>51</sup> has a presence in most holding centres, the organisation can in no way guarantee individual help to all asylum seekers thus detained.

Asylum applications submitted by individuals being detained in holding centres are examined by OFPRA within 96 hours. As this legally imposed timeframe is extremely rapid it is vital that asylum claimants be given the time needed to draft a properly supported application.

The European Committee for the Prevention of Torture in its report to the French government on 10 December 2007 recommended extending the time frame within which asylum must be claimed for individuals in detention from 5 to 10 days.

**Recommendation:**

- Increase the time frame within which an asylum claim for individuals in detention must be made to 10 days.  
Providing, of course, that such an extension does not increase commensurately the maximum length of detention, currently 32 days

➤ **Interviews by videoconference**

The experimental interviewing of asylum seekers by videoconference has been implemented in the Lyon holding centre.

This technique does not allow the applicant to set out the reasons for his request with any sense of tranquillity: in order to talk about the reasons and the often traumatic events that have forced him to leave his country, the applicant needs to feel secure and unhindered in his movements and expressions which is clearly not the case in holding centres. The interview is further complicated by the need for interpretation by an interpreter. The conversation should not turn into a question and answer session when what is required is a face-to-face meeting between the claimant and an official from OFPRA.

<sup>51</sup> “*Cimade [ecumenical service of mutual help] whose objective is to show solidarity the suffering, the oppressed and the exploited and to guarantee their defence irrespective of their nationality, political or religious affiliation*” (Article 1 of the Statutes)

**Recommendation:**

- That officials travel to the holding centres to interview asylum applicants and that the use of videoconferences is abolished.

### 3. **Appealing deportation orders: how far, when ordering the deportation of an individual, does the judge consider the risk of treatment that contravenes Article 7?**

The Administrative Court and the Administrative Courts of Appeal as regards examining the legality of removals are requested to rule on the risk of torture or ill treatment of foreign nationals if they are returned to their countries of origin. In reality, this examination is not actually carried out for a number of reasons:

- ✓ If the foreign national has had his asylum application refused by OFPRA and by the National Tribunal for the Right to Asylum, the judges in practice rely on the decision of these two bodies and do not investigate any further the fears linked to any deportation.
- ✓ The Law of 24 July 2006 setting out an obligation to leave French territory offers the possibility for the Administrative Courts to refuse an appeal<sup>52</sup> “*ex parte*” if the claim is fundamentally unfounded. In that case the claimant is not heard by a judge.
- ✓ The contentious proceedings of deportation are discredited by the Administrative Court judges. In reality the advisors in the Administrative Courts jurisdictions are required to meet targets and 3 expulsions count for one case of litigation in another area. This climate of driven target quotas contributes to the discrediting these contentious proceedings and often leads to a superficial consideration of the applications.

**Recommendations:**

- That the advisors in the Administrative Courts jurisdictions receive training on the situation in the countries of origin of those individuals whose risks, should they be deported, they must assess;
- That appeals brought against an obligation to leave French territory cannot be refused “*ex parte*”;
- That, appeals against deportations are recognised, in terms of work load, as being equal to other litigation cases to prevent them continuing to be seen by judges as minor litigation.

<sup>52</sup> From now on, the head of the Administrative Court can, after a month’s waiting period, refuse outright a claim that is poorly argued or expressed and do so without notice to proceed (new Article R. 222-1, 7° of the Code of Administrative Justice).

## Article 7 and 23

1. *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*
2. *The right of men and women of marriageable age to marry and to found a family shall be recognized.*
3. *No marriage shall be entered into without the free and full consent of the intending spouses.*
4. *States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.*

### Family reunion for refugees: an unregulated and interminable procedure

Individuals recognised as refugees in France can request reunion with members of their family that were unable to flee with them. The average timetable for concluding this unregulated procedure in France, according to the latest figures available (2005), was 468 days.

French administrative bodies continue to be excessively suspicious of families because refugees find it terribly difficult to establish links with their family members. However, relatives that remain outside France are sometimes in imminent danger. The separation and lengthiness of this complex procedure simply add to the trauma of persecution that has already been suffered in the country of origin and as a result of forced exile.

The French government in its report to the United Nations Human Rights Committee in March 2008 stated : *“Long waiting times in family reunion procedures [for refugees] have once again been noted by the defender of Children’s Rights. These long timeframes appear to be due to a lack of staff in consular posts and to certain incoherencies in administrative practices that could be improved”*.

A written procedure must be drawn up and sufficient funding made available by France in order to ensure that the right of refugees to lead a normal family life is respected.

#### **Recommendation:**

- Setting up a written procedure to govern family reunion policy for refugees;
- That any children over whom the refugee declares to have been given guardianship be included within the framework of family reunion.

## Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. 2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;  
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.  
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

### **Prison overcrowding leading to conditions of detention that amount to cruel, inhuman or degrading treatment**

On 1<sup>st</sup> April 2008 the number of detained individuals exceeding the number of available places is estimated to be 13,737 prisoners<sup>53</sup>. That means that on average 3 to 4 people are being held in 9m<sup>2</sup>. A new record was set with 66,720 individuals behind bars (+5.4% in one year) broken down as follows: 17,466 remand prisoners (-4.2%), 45,745 convicted prisoners (+7.5%), 3,025 sentenced and tagged individuals (+45%) and 485 prisoners held in other centres (+12%) according to statistics from the Ministry of Justice<sup>54</sup>.

This overcrowding has a serious knock-on effect on conditions of detention, where buildings are poorly suited to their purpose and in bad repair, general standards of hygiene are not met and access to medical care is limited, thereby giving rise to increasing tension in staff-prisoner and prisoner to prisoner relations.

A French judge recently found the State guilty in the first instance of non-pecuniary damage (€3,000) as a result of conditions of detention in the Rouen prison that contravened respect of the dignity of the individual (small size of cells shared by three inmates, lack of hygiene and cleanliness, close contact with mentally unstable individuals (case of Jérémy M.) and lack of respect of individual space)<sup>55</sup>. The French State has appealed.

In its opinion quoted above of 14 April 2008<sup>56</sup>, the CNDS recommends nationwide steps to be taken to clear the men's wing of Nîmes prison: "*current living conditions of detainees resulting in some of them sleeping on the ground do not meet the obligations to respect human dignity*".

<sup>53</sup> Source e-mail bulletin *Arpenter le Champ Pénal*, <http://arpenter-champ-penal.blogspot.com> On 1 April 2008, there were 63,221 individuals behind bars occupying 50,631 actual places, i.e. an excess prison population of 12,590 to which 1,147 operational places must be added although they were unoccupied at the date the statistics were formulated (figures from 1 March)

<sup>54</sup> Source: Ministry of Justice, monthly statistics on the prison population in France on 1 April 2008, [http://www.justice.gouv.fr/art\\_pix/mensuelle\\_inTERnet\\_avril08.pdf](http://www.justice.gouv.fr/art_pix/mensuelle_inTERnet_avril08.pdf)

<sup>55</sup> Decision of the Administrative Court of Rouen n° 0602590 of 27 March 2008, <http://www.acatfrance.fr/medias/communiqués/doc/Decisionjustice-27mars-08.pdf>

<sup>56</sup> <http://www.cnds.fr/>.

The principle laid down in Article 716 of the Code of Criminal Procedure for individual cells has not been applied<sup>57</sup>. There is a derogation of 5 years commencing from the Law of 12 June 2003 that is to say until 13 June 2008 if “*the interior layout of the prisons or the number of inmates housed there do not allow for individual cells*”.

On 29 April 2008, the Vice-President of the Senate asked the Minister of Justice a written question about the urgent measures she intends introducing in order to guarantee the dignity of detained individuals, bearing in mind this expiry date and making use of, in particular, all the alternatives to depriving someone of his freedom. To date we have no details about her reply.

#### Question to the French government:

- What steps have been taken to make the principle of individual cells effective on 13 June 2008?

The difficulty in France of prison overcrowding, recognised by everyone<sup>58</sup> is the result of increasingly repressive criminal policy by which the denial of freedom is not the final sanction but the first sanction. Despite the alarming findings of national and international organisations over the last few years, no significant steps have been taken.

Yet solutions do exist. It is not only a question of increasing prison provision by creating 13,000 extra places by 2011, but also of implementing, for example, the recommendations of the Council of Europe<sup>59</sup>. As the CPT pointed out: “*the specific recommendations of the Council of Ministers at the Council of Europe on prison overcrowding and the growing prison population (R (99) 22), provisional detention (R (80) 11) and bail (R (2003) (22) together with the new European Prison Rules (R (2006) 2)*”<sup>60</sup> must serve as guidelines to end, once and for all, conditions of detention that fail to respect the dignity of detainees<sup>61</sup>.

The implementation of criminal policies that respect human rights demonstrates the understanding that incarceration is the exception and makes civil society aware of human rights in detention.

#### **Recommendation:**

- Implementation in forthcoming prison legislation of the Council of Europe’s recommendations and introduction into French law of the principle whereby incarceration must remain the ultimate sanction.

<sup>57</sup> This article states: “*Persons charged, arraigned and accused and held in custody on remand are kept in individual cells day and night. There is no derogation to this principle except in the following circumstances:*

1° *If the individuals request a change;*

2° *If their mental state justifies them not being left alone, in their own interest ;*

3° *if they have been given permission to work or to attend school or professional training courses and organisational needs dictate it;*

4° *Within five years of Law n°2003-495 of June 2003, reinforcing the fight against street violence, coming into force, if the internal layout of the prisons or number of detainees does not allow for individual cells*

<sup>58</sup> Reports of the Commissions of Enquiry by the Senate, *Prisons : une humiliation pour la République* [Prisons : a humiliation for the Republic] and by the Assemblée Nationale, *La France face à ses prisons*, [France and its prisons] 28 June 2000

<sup>59</sup> *Specific recommendations of the Council of Ministers of the Council of Europe on prison overcrowding and the growing prison population (R (99) 22), provisional detention (R (80) 11) and bail (R (2003) (22) together with the new European Prison Rules (R (2006) 2)*

<sup>60</sup> [Report](#) of the CPT of 10 December 2007, paragraphs 146 and 176.

<sup>61</sup> On 1 April 2008, the prison population stood at 200% or greater in 18 prisons and between 150 and 200% in 48 other centres, between 120 and 150% in 48 further prisons and between 100 and 120% in 31 centres out of a total of 230 prisons. Source from the Ministry of Justice, monthly statistics on the prison population in France, 1 April 2008, <http://www.justice.gouv.fr>

## Article 14

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*
2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*
3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*
  - (a) *To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*
  - (b) *To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*
  - (c) *To be tried without undue delay;*
  - (d) *To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*
  - (e) *To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
  - (f) *To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*
  - (g) *Not to be compelled to testify against himself or to confess guilt.*
4. *In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*
5. *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*
6. *When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.*
7. *No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country*

### **High security detention: a sanction that can be renewed indefinitely based on the uncertain notion of dangerousness**

High security detention is applied to prisoners who have served their sentence (at least 15 years of incarceration) and who are held following the sentence in a “high security institution” because of their presumed dangerousness, independently of any criminal act.

Originally, only those individuals sentenced to at least 15 years incarceration for murder, premeditated murder, torture or barbaric acts or rape of a minor under 15 years of age were subject to this. In the course of parliamentary debates, the law has been tightened up and extended to include all victims who were minors, whatever their age, as well as victims over 18 of the same crimes, committed with aggravating circumstances.

The retroactiveness of locking up an individual in a high security institution, once he has served his sentence, was even brought into force during the parliamentary debates, that is to say it was immediately applied to detainees although when they committed the offences this more restrictive criminal law did not exist.

In its decision n°2008-562 of 21 February 2008<sup>62</sup>, the Constitutional Council rejected the retroactivity of the Law bearing in mind that the measure could be renewed indefinitely while admitting the constitutionality of high security detention. It pointed out that holding a convicted individual beyond the expiry of his sentence implied that he “*had been able to benefit from medical treatment or care, during his sentence, aimed at reducing his dangerousness, but that this had failed to give satisfactory results, either as a result of the state of mind of the individual or his refusal of treatment*”.

In application of Law n° 2008-174 adopted on 25 February 2008, a person can be held for a period of one year, on a renewable basis, not for the act committed but for what he actually is: an individual considered to be dangerous and likely to reoffend<sup>63</sup>.

The theoretical notion of criminal dangerousness divides psychiatric experts and its precise assessment remains uncertain.

Lastly, the retroactivity will apply until 1 September 2008 for individuals failing to meet their obligations within the framework of a separate measure, that is to say high security monitoring, once their “dangerousness” is established and there is a probable risk of reoffending.

The guarantees enshrined in the Law (assistance from a lawyer, expert opinion on the law, right of appeal) will have little bearing in view of the pressures that are incidentally exercised upon magistrates when terrible crimes are committed. The magistrates fall back on the “assessment” of the experts, preferring where there is any doubt to send the person to a high security centre.

This text is a form of admission of the failure of prison to take care of incarcerated individuals to allow their reintegration into our society and highlights the lack of appropriate psychiatric care in detention.

To shut a person away on the basis of a vague and uncertain notion in the interests of zero risk and following the precautionary principle<sup>64</sup> would appear to amount to cruel, inhuman or degrading treatment that also contravenes Article 14 of the Covenant.

#### **Recommendation:**

- Withdraw the text in any case and a commitment from the French State to abide by the actual steps taken to guarantee convicted persons, who fall within the scope of the Law, access to treatment and to medical care while they serve their sentences

<sup>62</sup> <http://www.conseil-constitutionnel.fr/decision/2008/2008562/index.htm>

<sup>63</sup> Application of Article 706-53-13 of the Code of Criminal Procedure, following the Law of 25 February 2008: “*Exceptionally, persons for whom it has been shown that on re-examination of their situation at the end of serving their sentence they represent a certain dangerousness, characterised by an extremely high likelihood of reoffending because they are suffering from serious personality disorders, can be made the subject of high security detention at the end of their sentences in line with the procedures set out in this chapter provided that they were sentenced to a term of imprisonment of at least fifteen years for serious crimes, committed against a minor, premeditated murder or murder, torture or barbaric acts, rape, kidnapping or illegal confinement. The same applies for serious crimes committed against those over 18, premeditated murder or aggravated murder, torture, aggravated barbaric acts, aggravated rape, aggravated kidnapping or illegal confinement [...]*”

<sup>64</sup> Among the organisations of civil society that oppose this Law numbers *la Voix de l'enfant*, a federation of associations that work for children. In its editorial of the 4<sup>th</sup> quarter of 2007, *la Voix de l'enfant* writes “*We understand that society wants to protect itself from genuine predators but we believe that it is illusory to imagine that such a system provides a solution. Other European countries (Netherlands, Germany ...) have applied similar measures for a number of years without it being shown that the rate of reoffending for paedophilia or for murder has dropped in their countries below ours. In France in considering depriving someone of his liberty, our culture and our perception of human rights are probably different to north European countries. Any breach of respect of these rights, even if it is in order to protect minors, flies in the face of the education of minors and the values we wish to instil in young people. Give us the human and financial means to apply existing laws rather than seeking recourse in security-driven artifice to make up for their shortcomings*”.

## **III – Recommendations**

- **On places of detention:**

The party State should :

### **Define acts of torture**

- Define in national legislation acts of torture in accordance with the Convention against Torture.

### **Respect the right to defence**

- Make access to a lawyer obligatory from the first hour of being taken into custody whatever the offence committed;
- Insist that a medical report be written up systematically whenever there is an allegation of abuse, that the report is immediately given to the individual to allow him to make a complaint and that staff are regularly reminded to take into consideration any allegation whatsoever of ill treatment made by those in detention and that they have an obligation to register the complaint;
- Set up rapidly a disciplinary procedure for foreign nationals detained in holding centres that lists wrongdoings and their sanctions; a procedure that respects the right to defence and means of appeal.

### **Solitary confinement and access to treatment**

- Review current practice of solitary confinement by means of a full assessment, including looking at medical and social factors, and a review of legislation governing solitary confinement and make it obligatory systematically to inform medical personnel whenever a foreign national is put in solitary confinement;
- Review fully the provision of psychiatric treatment and the conditions of care under which medical extractions are carried out;
- Withdraw the text within the Law on high security detention outright and ensure that the French State commits itself to those measures taken to guarantee sentenced persons, who fall under the scope of the Law, access to treatment or medical care while they serve their sentences.

### **Respecting human rights in detention**

- Adopt as soon as possible a Code of Professional Practise for prison staff that states in detail procedures and proper behaviour to adopt in situations where state employees can use force;
- Implement in forthcoming Law on prisons the recommendations of the Council of Europe and introduce into French law the principle whereby incarceration must remain the ultimate sanction.

- **Regarding asylum and returning individuals to their country of origin, exposing them to danger**

The State party should:

### **Respect the rights of refugees during the asylum process**

- Put in place an appeal that stays a decision by OFPRA for asylum applicants who are fast tracked;
- Set up a regular mechanism of reviewing the list of safe countries of origin, consulting organisations that specialise in the human rights situation of the countries of origin in question;
- Extend the timeframe within which an asylum claim must be made to 10 days. Providing that any such extension of this period does not extend the maximum length of detention commensurately, currently 32 days;
- Abandon the system of interviewing by videoconference in holding centres.

### **Improving the procedures for seeking asylum**

- Send clear and strict instructions to the offices of the *Préfecture* regarding instances where leave to remain is refused (fast tracking);
- Clearly define the criteria that allow the implementation of so called new court orders before the National Tribunal for the Right to Asylum;
- Train advisors in Administrative Courts on the situation in the countries of origin of individuals for whom they are examining the risks, should they be deported there;
- Outline the criteria for refusing “*ex parte*” appeals brought against the obligation to leave French territory;
- Ensure that appeals against deportations are recognised, in terms of work load, on a par with other litigation cases so that they are not considered by judges to be minor cases.

### **Family reunion**

- Set up a written procedure for family reunion for refugees;
- Consider that any children over whom the refugee declares to have been given guardianship be included within the framework of family reunion.