

SHADOW REPORT BY ACAT-FRANCE AND FIACAT ON TORTURE AND ILL-TREATMENT IN FRANCE

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INTRODUCTORY NOTE

ACAT-France, a Christian human rights organisation founded in 1974 to combat torture and to support the abolition of the death penalty, protect victims and defend the right to asylum, and FIACAT, an international association with consultative status at the United Nations, are honoured to submit their concerns regarding the implementation by France of the International Covenant on Civil and Political Rights (hereafter ICCPR).

This report is presented at the 114th session of the United Nations Human Rights Committee, due to be held in Geneva from 29 June to 24 July 2015, when the fifth periodic report by France will be subject to review.

L'ACAT-FRANCE

Since 1978, ACAT-France, which is a member organisation of FIACAT, has played an active role in France monitoring the acts of sensitive institutions: the police, gendarmerie, judiciary and penitentiary administration. Its role is to ensure absolute respect for the right not to be subjected to torture or any cruel, inhuman or degrading treatment or punishment, and to watch out for any abuses of power that might lead to torture.

The work of ACAT-France is based in particular on witness accounts and in-depth research studies. In 2014, ACAT-France was notably behind an extensive initiative to document abusive use of force by the police and gendarmerie. Based on the information at its disposal, it engages in informative and awareness-raising activities and runs campaigns with the participation of supporters and members. In 2014, it mobilised its resources to address France's criminal reform bill.¹ ACAT-France also provides support to those who have been victims of ill-treatment at the time of arrest, on the country's borders, on premises run by the law enforcement authorities, during administrative detention, in prison or in any other situation in which they were deprived of their liberty.

Furthermore, since 1998 ACAT-France has actively supported the right to asylum by providing legal aid to asylum seekers at all stages of the procedure and by acting as part of collective associations to ensure respect for this fundamental freedom. The organisation's work on torture and capital executions throughout the world has enabled it to provide documented support to asylum seekers in France, many of whom have been victims of torture. ACAT-France has also submitted several analyses of the asylum reform bill and led a campaign against a "discount" approach to asylum.²

This shadow report is produced at a particular juncture in the State's approach to asylum, as an unprecedented series of legislative reforms have since 2013 been drafted, presented and defended by the Interior Ministry and have been approved by both houses of parliament. The treatment of asylum seekers and the scope of the fundamental right to seek asylum have taken on a specific political dimension under these circumstances, resulting in an increase in the volume of communications on the subject by institutions, the media and civil society.

For 15 years ACAT-France has also been involved in advocacy and mobilisation campaigns to eliminate the obstacles written into French law which serve to block the full and complete application of universal jurisdiction in France, in an effort to enable the French courts to prosecute all those responsible for torture under the same universal jurisdiction.³

In 2014, ACAT-France intervened in favour of 394 individuals from 57 different countries. Through its Asylum division, it supported 164 asylum seekers at all stages of the procedure. The actions of ACAT-France as a whole are made possible by a network of more than 39,000 members, supporters and donors.

1. ACAT-France has published two brochures designed to raise awareness among the wider public about the meaning of prison sentences and also to challenge French MPs concerning the specific provisions of the bill. They are available at www.acatfrance.fr/public/reforme-penale-grand-public-acat.pdf.

2. For more information, the analyses used in this campaign are available at www.acatfrance.fr/campagne/asile-au-rabais and www.acatfrance.fr/public/analyse_acat-france_projet_loi_reforme_asile.pdf.

3. A document outlining the organisation's position on this issue is available at www.acatfrance.fr/campagne/competence-universelle.

FIACAT

The International Federation of Action by Christians for the Abolition of Torture is an international non-governmental human rights organisation which was founded in 1987 to fight for the abolition of torture and the death penalty. The Federation is the umbrella group for some 30 national associations (ACATs) spread across four continents.

FIACAT represents its members on international and regional bodies.

It has consultative status with United Nations, participatory status with the Council of Europe, and observer status with the African Commission on Human and People's Rights (ACHPR). FIACAT is also accredited by the International Organisation of La Francophonie (OIF).

By bringing the concerns of its members on the ground to the attention of international bodies, FIACAT targets the adoption of appropriate recommendations and their implementation by the governments concerned. FIACAT contributes to the application of international human rights conventions, the prevention of acts of torture in places of deprivation of liberty, the fight against enforced disappearances and the struggle against impunity. It is also part of the fight against the death penalty, actively encouraging States to abolish this practice in their legislation.

In order to make itself heard as effectively as possible, FIACAT is a founding member of several collective bodies, notably the World Coalition Against the Death Penalty (WCADP), the International Coalition Against Enforced Disappearances (ICAED) and the Human Rights and Democracy Network (HRDN).

FIACAT strengthens the capacity of its 30-strong network of ACATs.

FIACAT helps its member associations to structure their activities. It supports a process that makes the different ACATs significant actors in civil society with the capacity to raise awareness among the public and have an impact on the authorities in their respective countries.

It contributes to the dynamism of the network by facilitating exchanges and by running regional or international training courses and joint intervention initiatives, thereby supporting the actions of the individual ACATs and backing them up on the international stage.

FIACAT – an independent network of Christians united in support of the abolition of torture and the death penalty.

FIACAT's mission is to raise awareness among churches and Christian organisations about torture and the problems associated with the death penalty and to convince them to work towards their abolition.

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ACRONYMS AND ABBREVIATIONS

ACAT	Action by Christians for the Abolition of Torture
ANAFÉ	<i>Association nationale d'assistance aux frontières pour les étrangers</i> (national association providing border assistance for foreign nationals)
CAT	Committee Against Torture
CE	Conseil d'État (Council of State)
CESEDA	<i>Code de l'entrée et du séjour des étrangers et du droit d'asile</i> (code governing the entry and residency of foreign nationals and the right to asylum)
CIMADE	<i>Comité inter-mouvements auprès des évacués</i> (inter-movement committee for evacuated persons)
CGLPL	<i>Contrôleur général des lieux de privation de liberté</i> (inspector general of places of deprivation of liberty)
CNCDH	<i>Commission nationale consultative des droits de l'homme</i> (national consultative human rights commission)
CNDA	<i>Cour nationale du droit d'asile</i> (national court for the right to asylum)
CNDS	<i>Commission nationale de déontologie de la sécurité</i> (national commission for security ethics)
CPT	European Committee for the Prevention of Torture
CRA	<i>Centre de rétention administrative</i> (administrative detention centre)
DGPN	<i>Direction nationale de la police nationale</i> (general directorate of the national police force)
DPS	<i>Détenus particulièrement signalés</i> (singled out detainees)
ECHR	European Court of Human Rights
ECPHRFF	European Convention for the Protection of Human Rights and Fundamental Freedoms
FIACAT	International Federation of Action by Christians for the Abolition of Torture
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political rights
IGGN	<i>Inspection générale de la gendarmerie nationale</i> (inspectorate-general of the national gendarmerie)
IGPN	<i>Inspection générale de la police nationale</i> (inspectorate-general of the national police force)
JLD	<i>Juge des libertés et de la détention</i> (judge responsible for freedoms and detention)
LBD	<i>Lanceurs de balles de défense</i> (Flashball-type weapon)
OFII	<i>Office français de l'immigration et de l'intégration</i> (French immigration and integration office)
OFPRA	<i>Office français de protection des réfugiés et des apatrides</i> (French office for the protection of refugees and stateless persons)
OIP	<i>Observatoire international des prisons</i> (international prison observatory)
PA	<i>Procédures accélérées</i> (expedited procedures)
PAF	<i>Police aux frontières</i> (border police)
PP	<i>Procédures prioritaires</i> (priority procedures)
POS	<i>Pays d'origine sûrs</i> (safe home countries)
ZA	<i>Zone d'attente</i> (holding zone)

EXECUTIVE SUMMARY

This report is an evaluation of the implementation of the International Covenant on Civil and Political Rights in France and is presented jointly by Action by Christians for the Abolition of Torture in France (ACAT-France) and the International Federation of Action by Christians for the Abolition of Torture (FIACAT).

ARTICLE 2

1. IMMUNITIES

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Clarify the regime of jurisdictional immunities that prevent individuals from being prosecuted for acts carried out as part of their official duties (functional or *ratione materiae* immunity) or for any other acts, even in the private sphere (*ratione personae* immunity);
- Take legislative steps to guarantee that no immunity can be invoked in the event of allegations of serious international crimes, as defined in the Rome Statute of the International Criminal Court.

2. CONSULAR AND DIPLOMATIC PROTECTION (ARTICLES 2, 7, 9, 10 AND 14)

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Adopt appropriate legislative, regulatory or administrative measures to make consular and diplomatic protection effective and efficient with a view to protecting French victims of grave violations of their fundamental rights overseas.

3. ADDITIONAL PROTOCOL TO THE FRANCO-MOROCCAN CONVENTION ON COOPERATION ON CRIMINAL MATTERS (ARTICLES 2, 7, 14 AND 26)

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Request from the French authorities to reject the additional protocol to the Convention on mutual legal assistance on criminal matters between France and Morocco.

ARTICLE 7

4. UNIVERSAL JURISDICTION

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Eliminate the obstacles written into French law in order to enable the French courts to prosecute those responsible for torture under a single legal regime of universal jurisdiction.

5. ILL-TREATMENT IN PENITENTIARY FACILITIES (ARTICLES 7 AND 10)

5.1 PRISON OVERCROWDING

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Take the necessary steps to combat prison overcrowding, in particular by reducing sentences.

5.2 INDIVIDUAL CONFINEMENT

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Ensure that the principle of individual confinement be applied when requested by detainees.

5.3 MATERIAL CONDITIONS OF DETENTION AND NEW PRISONS

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Rehabilitate and renovate French prisons to improve their deplorable conditions of detention;
- Carry out an evaluation of current and future penitentiary real estate projects involving all actors concerned.

5.4 FULL BODY SEARCHES

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Bring a definitive end to full body searches and replace them by other means that can ensure the security of penitentiary facilities while at the same time guaranteeing respect for the human dignity of detainees;
- Ensure in the meantime that the provisions of the penitentiary law dated 24 November 2009 be strictly enforced and that all naked search procedures be monitored.

5.5 SINGLED OUT DETAINEES

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- End night-time interruptions currently imposed on singled out detainees.

5.6 PREVENTIVE DETENTION

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Abolish the preventive detention provision.

6. ALLEGATIONS OF ILL-TREATMENT BY MEMBERS OF THE POLICE AND GENDARMERIE (ART. 7)

6.1 ALLEGATIONS OF ABUSIVE USE OF FORCE BY LAW ENFORCEMENT REPRESENTATIVES

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Take the necessary steps to bring an end to current practices of abusive force by members of the police or gendarmerie.

6.2 SPECIFIC QUESTIONS RELATING TO INTERMEDIATE WEAPONS

6.2.1 FLASHBALL-TYPE WEAPONS (LBDS)

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Prohibit the use of LBDS by French law enforcement officials and immediately withdraw those currently supplied.

6.2.2 ELECTRICAL DISCHARGE WEAPONS

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Limit the use of electrical discharge weapons in contact mode and ensure that law enforcement officials privilege alternative methods of control;
- Conduct a medical study on the use of electrical discharge weapons on vulnerable individuals.

6.3 POLICE VIOLENCE AGAINST MIGRANTS

6.3.1 SITUATION OF MIGRANTS IN CALAIS

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Take the necessary steps to bring an end to police violence against migrants in Calais and ensure that such acts are subject to investigations and prosecution and that those responsible are prosecuted.

6.3.2 PROCEDURES FOR ESCORTING INDIVIDUALS TO THE BORDER

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Ensure that procedures to remove individuals from the national territory take place with respect for human dignity and without abusive use of force.

ARTICLES 9 ET 10

7. CONFINEMENT OF FOREIGN NATIONALS AND CONDITIONS OF DETENTION IN HOLDING ZONES AND ADMINISTRATIVE DETENTION CENTRES (ARTICLES 9 AND 10)

7.1 INHUMAN CONDITIONS OF DETENTION AT THE DETENTION CENTRE IN MAYOTTE

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Bring an end to the inhuman conditions of detention to which foreign nationals are subjected at the administrative detention centre in Mayotte.

7.2 MONITORING OF CONDITIONS OF DETENTION FOR FOREIGN NATIONALS HELD IN DETENTION CENTRES AND HOLDING ZONES (ARTICLES 2 AND 9)

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Take the necessary steps to ensure that monitoring by judicial judges of the measures used to place individuals in detention or in holding zones takes place at the earliest opportunity and before any decision is made to conduct a removal or refolement operation.

8. ADMINISTRATIVE INVESTIGATIVE PROCEDURES AND ACCESS TO JUSTICE IN CASES OF HUMAN RIGHTS VIOLATIONS PERPETRATED BY LAW ENFORCEMENT OFFICIALS (ARTICLES 2, 7 AND 10)

8.1 LACK OF OFFICIAL DATA

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Provide the following figures:
 - a) The number of complaints filed with the judicial authorities for illegitimate use of force by public law enforcement officials;
 - b) Detailed statistics on the weapons or technical manoeuvres identified in complaints filed, and on the police operations during which these incidents allegedly took place (operations to maintain law and order, arrests in the home, transport, police custody, etc.);
 - c) The percentage of officials found guilty by the French judicial authorities in respect of the number of complaints filed;
 - d) The types of guilty sentences handed down to officials for each type of harm caused.

8.2 REPRISALS AGAINST DETAINEES WHO FILE COMPLAINTS WITH THE INSPECTOR GENERAL OF PLACES OF DEPRIVATION OF LIBERTY (CGLPL)

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Take concrete and immediate steps to guarantee that all detainees are free to exercise their rights without risk of any breach of said rights, and in particular ensure that no detainee who makes contact with the CGLPL is subject to reprisals;
- Ensure effective respect for the fundamental guarantees necessary for the CGLPL to operate properly.

8.3 DIFFICULTIES FILING COMPLAINTS RELATING TO ALLEGATIONS OF POLICE VIOLENCE

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Combat perceptions of impunity among victims of police violence by guaranteeing judicial sentencing and disciplinary sanctions against those responsible in a way that is proportionate to the facts;
- Ensure that complaints of illegal or abusive use of force and corresponding complaints of contempt and obstruction are judged at the same time.

8.4 DE FACTO IMPUNITY FOR ACTS OF ILL-TREATMENT PERPETRATED DURING REMOVAL OPERATIONS BY AIR

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Put in place a protocol to guarantee effective and exhaustive investigations into allegations of police violence against individuals who are escorted to the border.

8.5 OVERRIDING LEGISLATION FOR MIGRANTS IN FRENCH OVERSEAS TERRITORIES (ARTICLES 2 AND 14)

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Bring an end to the overriding legislation applicable to foreign nationals in French overseas territories.

ARTICLE 13

9. TREATMENT OF FOREIGN NATIONALS, ASYLUM SEEKERS AND REFUGEES (ARTICLES 2, 7, 9, 13, 14 AND 26)

9.1 UNEQUAL ACCESS TO THE ASYLUM-SEEKING PROCEDURE AND OPAQUE ADMINISTRATIVE PRACTICES (ARTICLES 2, 7, 14 AND 26)

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Ensure it can guarantee legal access for asylum seekers to the procedure to request international protection without any discrimination, and supervise the related administrative and institutional practices in a transparent manner.

9.2 EQUAL PROTECTION FOR ASYLUM SEEKERS FROM TORTURE AND INHUMAN OR DEGRADING TREATMENT (ARTICLES 2, 7, 13 AND 14)

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Bring an end to priority or expedited procedures and all other mechanisms designed to speed up the asylum procedure which restrict the full review of asylum requests;
- Abolish the list of safe home countries or at least ensure that it is not drawn up by OFPRA but rather according to a transparent adversarial procedure.

9.3 RIGHT TO LEGAL REMEDIES AGAINST REJECTIONS OF ASYLUM REQUESTS AND PROTECTION FOR FOREIGN NATIONALS AGAINST ARBITRARY EXPULSION (ARTICLES 2, 7, 13 AND 14)

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Guarantee access to a professional interpreter free of charge for all asylum seekers at all stages of the procedure;
- Offer the services of a lawyer free of charge in administrative detention centres and holding zones;
- Take the necessary steps to guarantee in practice an equal right to suspensive and fully effective remedies for all asylum seekers.

9.4 PROTECTING FAMILY LIFE: DIFFICULTIES BRINGING TOGETHER REFUGEE FAMILY MEMBERS (ART. 23))

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Take the necessary steps to expedite procedures to bring family members together.

9.5 PROTECTION OF PRIVACY AND DATA (ART. 17)

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Revise the immigration bill in order to remove the provisions on the communication of private information outside of the criminal procedures governed by law.

9.6 FREEDOM TO CHOOSE RESIDENCY (ART. 12 (1)) AND THE PRINCIPLE OF LEGALITY IN SENTENCING (IMPOSED RESIDENCY AND TERMINATING APPLICATIONS, ART. 14 (7))

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Revise the asylum reform bill in order to guarantee asylum seekers the right to freely choose their place of residency, whether in the home of a private individual or managed by the public authorities, and to enjoy free movement and be able to act freely without interference in their private lives.

ARTICLE 24

10. RIGHTS OF THE CHILD (ARTICLE 24)

10.1 PERSISTENT CONFINEMENT OF CHILDREN IN DETENTION

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Definitively end the confinement of minors in all administrative detention centres in metropolitan France and overseas French territories.

10.2 CONFINEMENT OF MINORS ISOLATED IN HOLDING ZONES

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Automatically grant isolated minors access to the national territory and entrust them to the social child protection authorities.

ARTICLE-BY-ARTICLE ANALYSIS

1. UNIVERSAL JURISDICTION (ART. 7)

In the points to be addressed (point 9), the UN Human Rights Committee asks France about the measures envisaged to address concerns that the cumulative and restrictive conditions provided for in Article 689-11 of its *Code de procédure pénale* make it difficult to prosecute and judge those suspected of crimes against humanity, genocide and war crimes.

ACAT-France, together with other French organisations, has met with many political authorities on this issue since the introduction of this provision to the *Code de procédure pénale* in 2010.

This provision was supposed to include a mechanism for universal jurisdiction for the French courts in relation to war crimes, crimes against humanity and genocide. It has been unanimously criticised by French civil society and regularly denounced by UN committees and has created a space of impunity in France for perpetrators of international crimes.

Four restrictive and cumulative obstacles effectively block any legal prosecutions in France for these crimes: the suspect must be usually resident in France and indicted for the crime both in France and his home State, the International Criminal Court must expressly decline jurisdiction, and finally, the public prosecutor, which falls under the authority of the Minister of Justice, alone decides whether or not to open legal proceedings.

Since it was introduced in 2010, not a single legal prosecution has been based on Article 689-11. It also deprives victims of the right to an effective remedy, as they can no longer act as the plaintiff. It falls to the public prosecutor to decide whether or not to prosecute, which means that victims have no direct access to the judge.

Article 689-11 creates a stand-alone and inconsistent legal regime when it comes to extraterritorial jurisdiction and cracking down on torture. If the French legal authorities are faced with acts of torture (autonomous crime), they can invoke universal jurisdiction provided the suspect is “present” on French soil, as stipulated in the UN Convention against Torture. However, if the acts of torture in question constitute crimes against humanity or war crimes, universal jurisdiction is blocked by the four conditions outlined above.

On the initiative of a Member of Parliament, in February 2013 the Senate removed three of the four obstacles contained in Article 689-11 (the remaining obstacle is the monopoly of the public prosecutor). The text was then submitted to the National Assembly but was not included on the agenda and has not been examined for two years. Article 689-11 therefore remains in force under positive law. The government, and in particular the Ministry of Foreign Affairs, oppose removing the obstacles underpinning this text.

At the time of drafting this report, our latest interviews revealed that the French authorities had no political intentions to modify Article 689-11, clearly expressing their desire to favour sound diplomatic relations over the legal prosecution of these crimes.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Eliminate the obstacles written into French law in order to enable the French courts to prosecute those responsible for torture under a single legal regime of universal jurisdiction.**

2. IMMUNITIES (ARTICLES 2 AND 5)

In August 2014 the French government granted immunity for an exceptional mission to the Bahraini Prince, Nasser bin Hamad al Khalifa, who was visiting France to participate in the World Equestrian Games being held in Normandy. Known for his participation in the regime's repression of the movement in defence of the civic and political rights of the Bahraini people, Nasser bin Hamad al Khalifa has been accused by several victims of directly participating in acts of torture against political dissidents. A complaint of torture was filed against him in the United Kingdom, and another in France invoking universal jurisdiction on the day of his arrival to participate in the games. One notable consequence of this immunity was that the complaint of torture was not receivable, thus blocking any prosecution of Nasser bin Hamad al Khalifa in France.

A similar immunity was granted in 2008 to Donald Rumsfeld, former US Defence Secretary, following a complaint of torture filed in France based on universal jurisdiction and in relation to his involvement in the abuses inflicted on detainees at Guantánamo and Abu Ghraib detention centres.

Through its broad interpretation of the scope for the application of jurisdictional immunities, France is denying victims the right to an effective remedy, as enshrined under Article 2 of the Covenant, and contributes to the impunity of those responsible for international crimes such as torture (prohibited by Article 7 of the Covenant). Similarly, by guaranteeing this impunity for perpetrators of international crimes such as torture, France effectively grants them the right to carry out acts aimed at the destruction of the rights and freedoms recognised by the Covenant, in breach of Article 5 thereof.

The 1961 Vienna Convention on diplomatic relations and international customs only provides for a limited number of beneficiaries of jurisdictional immunity. Depending on the duties of the individual concerned, immunity is more or less absolute and long-lasting. For example, a Minister of Foreign Affairs such as Donald Rumsfeld only benefits from jurisdictional immunity in the exercise of his duties.

In any case, such immunity cannot be maintained in the case of allegations of serious international crime such as war crimes, crimes against humanity, genocide, torture and enforced disappearance. Immunity cannot be invoked before the International Criminal Court to prevent senior officials from being prosecuted for crimes that fall under the court's jurisdiction.

ACAT-France is mindful that France has a broad interpretation of the immunity that can potentially be granted to a public official from a third-party State, regardless of his position, notably expressed in a mission letter that was validated by the department responsible for protocol in the Ministry of Foreign Affairs.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Clarify the regime of jurisdictional immunities that prevent individuals from being prosecuted for acts carried out as part of their official duties (functional or *ratione materiae* immunity) or for any other acts, even in the private sphere (*ratione personae* immunity);**
- **Take legislative steps to guarantee that no immunity can be invoked in the event of allegations of serious international crimes, as defined in the Rome Statute of the International Criminal Court.**

3. CONSULAR AND DIPLOMATIC PROTECTION (ARTICLES 2, 7, 9, 10 AND 14)

ACAT-France has documented several cases of French nationals who have been the victims of serious violations of their fundamental rights overseas (notably in Tunisia and Morocco). In most cases, these individuals were arrested without a warrant, detained in secret or *incommunicado*, tortured and sentenced on the basis of confessions obtained under torture and following an unfair trial.

All of these victims say they did not receive adequate support from the French consulate, which was made aware of their allegations of torture and other violations and in some cases found traces of physical abuse but did not take any steps to help its national citizens receive a fair trial and secure damages for the harm suffered.

Yet even overseas, under Article 2 of the Covenant, French nationals partly fall under the jurisdiction of France, which should take all effective steps to ensure that they are not subjected to any violations of their rights as enshrined under the Covenant.

The French authorities have at their disposal several international mechanisms to provide diligent and substantial assistance to any French nationals who are the victims of grave violations of their rights overseas.

Consular protection as provided for by the Vienna Convention is one of the means available to the home State of detainees (sending State) to ensure the preservation of the physical and psychological integrity of their national citizens who are deprived of liberty in the host State, in accordance with Articles 7, 9 and 10 of the Covenant, and to ensure respect for their right to a fair trial, as provided for by Articles 9 and 14 of the Covenant.

In practice, consular protection should be provided in the form of complaints or strong protests by the French authorities to the authorities of the host State, regular visits to the detainees concerned, requests made to the relevant authorities so that the detainee receives appropriate medical attention, and the systematic presence of a French representative at the trial where there is a serious risk of unfair proceedings.

Furthermore, France can and should use the path of international remedy at its disposal in the case of a breach by the host State of the provisions related to consular protection. As established by the precedent set in an international trial, and developed in particular by the International Court of Justice (ICJ, *LaGrand (Germany v. United States of America)*, 27 June 2001; ICJ, *Avena and other Mexican Nationals (Mexico v. United States of America)*, 31 March 2004), Article 36 of the Vienna Convention guarantees certain rights for sending States but also for individuals who can benefit from consular protection. A breach by the State of residency of one of the rights of a national of the sending State enshrined by the Vienna Convention can result in the jurisdiction of an international body being invoked by the sending State.

Furthermore, when a French national has been the victim of a serious breach of one of his fundamental rights and is unable to secure justice in the State in which this breach was committed, France should make more systematic use of the diplomatic protection defined by the International Law Commission as “the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility”.⁴

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Adopt appropriate legislative, regulatory or administrative measures to make consular and diplomatic protection effective and efficient with a view to protecting French victims of grave violations of their fundamental rights overseas.**

4. International Law Commission, Draft Articles on Diplomatic Protection, 2006.

4. ADDITIONAL PROTOCOL TO THE FRANCO-MOROCCAN CONVENTION ON COOPERATION ON CRIMINAL MATTERS (ARTICLES 2, 7, 14 AND 26)

ACAT-France is currently defending several victims of torture in Morocco, on behalf of whom the association has filed complaints in France.⁵ In February 2014, following one of these complaints, a French investigating magistrate requested a meeting with the Moroccan Director of the General Directorate of Territorial Security (DGST), Mr Abdellatif Hammouchi, who was present in France at the time. This simple request resulted in Morocco suspending all legal cooperation between the two countries.

Anxious to re-establish good relations with Morocco at any price, the French government announced that Mr Hammouchi was to be awarded the *Légion d'honneur*, despite being implicated in complaints of torture.

On 6 February 2015, France and Morocco signed an additional protocol to the Convention for mutual legal assistance on criminal matters between the two countries.⁶ The proposed legislation to ratify the protocol was added to the agenda of the Parliament, which is expected to adopt it before 10 July 2015. If adopted, it will be added to the Convention as Article 23 (b).

This Protocol raises serious concerns with regard to its legality and its compatibility with the French Constitution, as well as the international commitments made by France and in particular the ICCPR.⁷

INFORMATION OBLIGATION: BREACH OF THE REQUIREMENT OF FAIRNESS IN JUSTICE

First of all, the text provides that each country must immediately inform the other of any criminal proceedings opened on its territory potentially involving the liability of a national from the other country. This would oblige the French authorities to notify Morocco of any proceedings initiated in France for acts committed in Morocco, where a Moroccan national is liable to be implicated.

At the stage of an investigation into a crime or other offence, the work of the public prosecutor or examining magistrate in France is protected by the secrecy of the investigation or examination (Article 11 of the *Code de procédure pénale*). This is an essential condition for effective and uninterrupted investigations; it also protects them from any pressure or other forms of manipulation that could prevent the truth from coming out. By guaranteeing the effectiveness of investigations and the independence of magistrates, secrecy is a necessary condition for fair hearings as enshrined under Article 14 of the Covenant.

The consequences of this information obligation, which is completely unprecedented, could be serious. If the crime or offence targeted by the investigation is considered sensitive by the Moroccan State – for example in torture cases involving officers from the Moroccan security services but also in the case of economic crimes to which French investors in Morocco may fall victim –, the Moroccan authorities, once informed about the French investigation, will be in a position to interfere with the process, including the use of intimidation on victims and witnesses, by destroying evidence or by warning the Moroccan suspects.

The text is made all the more dangerous by the fact that it does not stipulate which information must be communicated to Morocco. If the magistrate were to provide personal information such as the name of the victim, the location where the offence was committed, or the name of the Moroccan national at risk of prosecution, this would give the Moroccan authorities enough information to take steps to impede the investigation or clear the suspect.

REFERRAL PROCEDURE: UNDERMINING VICTIMS' ACCESS TO JUSTICE AND THEIR RIGHT TO A FAIR TRIAL

Second, the Protocol provides that the judicial authorities in each country be given the observations or information held by their counterparts in the other country as soon as possible. Based on this information, the other State may decide to open its own proceedings, in which case the judicial authorities in the first State must privilege the option of either closing the case or referring it to the other State. If the other State does not respond to the request for information or does not act on the case, the judicial authorities in the first State may take it over.

This means that a French judge responsible for investigating a crime or other offence committed in Morocco by a Moroccan national, including where the victim involved is a French national, must refer the case to the Moroccan judiciary if Morocco decides to investigate the same case.

By making it extremely difficult to prosecute Moroccan nationals in France for crimes or offences committed in Morocco, the Protocol clearly breaches the right of victims to have access to a judge as well as their right to a fair trial, in violation of Articles 2 and 14 of the Covenant.

5. ACAT-France, 'Nos plaintes pour torture et la convocation de l'ACAT par la justice marocaine en 7 questions', 26 February 2015, www.acatfrance.fr/communiquede-presse/plaintes-pour-torture-et-convocation-de-lacat-par-la-justice-marocaine.

6. Draft legislation published on the website of the National Assembly, www.assemblee-nationale.fr/14/projets/pl2725.asp.

7. ACAT-France, 'La France, nouvelle alliée du système tortionnaire marocain', 4 March 2015, www.acatfrance.fr/communiquede-presse/la-france--nouvelle-alliee-objective-du-systeme-tortionnaire-marocain; ACAT-France, Amnesty International et al., 'Questions / Réponses sur le Projet de Protocole additionnel à la Convention d'entraide judiciaire en matière pénale entre la France et le Maroc', 28 April 2015, www.acatfrance.fr/public/questions_reponses_france-maroc-27-avril-2015.pdf.

In the future, this type of provision could be extended to other legal cooperation agreements in accordance with diplomatic imperatives, so for example it is conceivable that the investigation into the assassination of the Tibhirine monks could be closed and handled by the Algerian judiciary, or that the investigation into the assassination of French journalists in Syria would be referred to the Syrian authorities without any guarantee that the victims would receive a fair and impartial hearing.

Furthermore, the Protocol does not provide for any remedy against decisions to refer a case to Morocco, again in breach of Articles 2 and 14 of the Covenant.

REFERRING TORTURE COMPLAINTS TO MOROCCO IN BREACH OF ARTICLE 7 OF THE COVENANT

Where a complaint filed in France relates to the crime of torture, any referral of the case to Morocco constitutes a serious violation of Article 7 of the Covenant, which, by prohibiting torture, recognises the right of victims to secure justice. This access to justice for victims of torture in itself constitutes one of the most effective ways of preventing further acts of torture.

UNJUSTIFIED DISCRIMINATION BASED ON NATIONALITY OF VICTIMS OR IDENTITY OF SUSPECTS

The Protocol provides that the procedure to refer or close a file applies to procedures initiated in France relating to foreign victims who turn to the French judicial system, invoking universal jurisdiction for crimes of torture, enforced disappearance, terrorism, war crimes, crimes against humanity or genocide. Paragraph 4 of the Protocol extends this procedure to cases in which the victim or suspect is a national "of one or other Party", i.e. with dual Franco-Moroccan nationality.

The text thereby creates unjustifiable inequality between French citizens and is a clear breach of Article 26 of the Covenant. A complaint filed by a French national in France for a crime of which he was the victim in Morocco will always be treated differently depending on whether he is Franco-Moroccan or only has French nationality (or dual nationality involving a third-party State other than Morocco). In the former case, the French judge will choose to refer the case to the Moroccan judiciary, while in the latter he will choose to lead the investigation himself.

Similarly, there is a potential breach of the right to equal access to justice for French victims of offences committed in Morocco and French victims of offences committed in other countries. There is also a difference established between foreign victims of torture in Morocco and foreign victims of torture elsewhere in the world who wish to file a complaint in France by invoking universal jurisdiction.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- Request from the French authorities to reject the additional protocol to the Convention on mutual legal assistance on criminal matters between France and Morocco.

5. ILL-TREATMENT IN PENITENTIARY FACILITIES (ARTICLES 7 AND 10)

5.1. PRISON OVERCROWDING

In Paragraph 17 of its concluding observations, the United Nations Human Rights Committee called on the State party to multiply its efforts to reduce overcrowding in prisons and enhance its monitoring of prisons in a proactive way, in order to guarantee that all persons in custody are treated in accordance with the requirements of articles 7 and 10 of the ICCPR and the Standard Minimum Rules for the Treatment of Prisoners.

Prison overcrowding in France has been rising steadily for 10 years.⁸ As of 1 September 2010, shortly before the last visit by the CPT, France had 60,789 individuals in detention.⁹ By 1 April 2015, this figure had risen to 66,371.¹⁰

France's penitentiary facilities therefore continue to suffer from overcrowding. As of 1 April 2015, the average occupancy rate in French prisons stood at 114.6%. There were more an estimated 12,575 detainees too many, and 1,090 detainees were sleeping on a mattress on the ground.¹¹ Although there is increased use of reduced sentences, not enough has been done.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- Take the necessary steps to combat prison overcrowding, in particular by reducing sentences.

5.2. INDIVIDUAL CONFINEMENT

Articles 87 and 90 of the penitentiary law dated 24 November 2009 reaffirmed the principle of individual confinement for detainees. A period of five years was granted to the penitentiary authorities to apply this principle in its facilities, i.e. until 25 November 2014.¹² In December 2014, a further five-year period was granted to the penitentiary authorities, i.e. until December 2019. At the time of writing, the necessary resources had not been put in place to allow this principle to be effectively applied.

L'ACAT-France et la FIACAT invitent le Comité des droits de l'homme à recommander à l'État partie de :
- Veiller à ce que le principe de l'encellulement individuel soit mis en œuvre lorsque les personnes détenues en font la demande.

8. 'Statistique mensuelle de la population écrouée et détenue en France, situation au 1^{er} octobre 2014', Direction de l'administration pénitentiaire, p. 7; Council of Europe annual Penal statistics SPACE I, Survey 2012, pp. 60-61.

9. Statistique mensuelle de la population écrouée et détenue en France, situation au 1^{er} septembre 2010', Direction de l'administration pénitentiaire.

10. OPALE, Observatoire de la privation de liberté et des sanctions et mesures appliquées dans la communauté, 'Etat de la surpopulation carcérale au 1^{er} avril 2015', Université Paris 1.

11. *Ibid.*

12. ACAT press release, 'Encellulement individuel, un nouveau report intolérable', www.acatfrance.fr/communiquede-presse/encellulement-individuel_en_prison_-_un_nouveau_report_intolérable.

5.3. MATERIAL CONDITIONS OF DETENTION AND NEW PRISONS

ACAT-France and FIACAT would like to draw the attention of the experts on the Committee to the dilapidated state of certain old prison facilities (Centre pénitentiaire de Ducos in Martinique¹³, Maison d'arrêt de Varcès in Isère, Centre pénitentiaire des Baumettes in Marseille, and the disciplinary unit of the women's detention centre in Fleury-Mérogis).

More recent facilities deserve just as much attention. The latest programmes for the construction of penitentiary facilities have been unanimously criticised for their excessive dimensions, architecture, dehumanisation and in many cases their remote locations far from urban centres. Significant security resources have been used in these facilities to replace a more human approach (e.g. detention centre in Alençon-Condé-sur-Sarthe).

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Rehabilitate and renovate French prisons to improve their deplorable conditions of detention;**
- **Carry out an evaluation of current and future penitentiary real estate projects involving all actors concerned.**

5.4. FULL BODY SEARCHES

The use of body searches in detention is strictly governed by Article 57 of the penitentiary law dated 24 November 2009, which requires that all types of searches (full body searches and pat downs) be adapted to the personality of the detainees concerned and justified by a suspected offence or security risk. It prohibits systematic searches. Full body searches can only be used as part of an auxiliary approach, when all other types of searches prove insufficient.

On 6 June 2013, France's Council of State very clearly prohibited systematic full body searches and determined that the penitentiary authorities at the prison in Fleury-Mérogis had committed a serious breach of respect for human dignity by imposing systematic full body searches on all detainees leaving the visiting area. Following several condemnations by the French authorities, in a memorandum dated 15 November 2013, the *Garde des Sceaux* reiterated the legal framework for the supervisory methods used on detainees. The document nonetheless provides for "*the possibility of resorting to systematic full body searches on detainees identified as posing a risk*".

Repeated testimonies recorded by ACAT-France appear to indicate that at least in some facilities this approach is very widely applied and is therefore in practice no longer the exception but rather the rule. Witnesses speak of "*almost systematic searches*", for example in the detention centres in Caen and Fleury-Mérogis. In the latter, this exceptional approach is said to be used on almost half of all detainees. During an interview with ACAT-France, the CGLPL confirmed that there was a certain amount of heterogeneity and opacity in the practices used, confirming that there are significant differences from one facility to another. He also estimated that at least 30% to 40% of detainees are subjected to systematic naked body searches and regretted that such measures were not traceable.

Full body searches are a humiliating and degrading practice which needs to be abolished.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Bring a definitive end to full body searches and replace them by other means that can ensure the security of penitentiary facilities while at the same time guaranteeing respect for the human dignity of detainees;**
- **Ensure in the meantime that the provisions of the penitentiary law dated 24 November 2009 be strictly enforced and that all naked search procedures be monitored.**

13. ACAT press release, 'Conditions de détention indignes à la prison de Ducos (Martinique)', October 2014, http://www.acatfrance.fr/action/conditions_de_detention_indignes_a_la_prison_de_ducos_martinique.

5.5. SINGLED OUT DETAINEES

ACAT-France and FIACAT wish to highlight the treatment reserved for “singled out” detainees, which can amount to ill-treatment (night-time interruptions, repeated transfers, naked body searches, etc.). Indeed, France has been found to be in breach by the ECHR on several occasions in this respect.¹⁴ The Observatoire international des prisons (OIP) reports that “*certain detainees complained of checks every two hours between 7 PM and 6 AM, with the lights systematically turned on*”. Female detainees at the penitentiary facility in Poitiers-Vivonne complain that “*It is becoming impossible to rest during the night. We are tired during the day and our bodies can no longer handle this routine*”. Sleep deprivation can amount to a form of cruel, inhuman and degrading treatment and must be brought to an end.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- End night-time interruptions currently imposed on singled out detainees.

5.6. PREVENTIVE DETENTION

In Paragraph 16 of its concluding observations, the United Nations Human Rights Committee made recommendations in relation to preventive detention: “The State party should review the practice of seeking to detain criminal defendants for “dangerousness” after they have served their prison sentences, in the light of the obligations imposed by articles 9, 14 and 15 of the Covenant”.

In spite of these recommendations, the legislation on the individualisation of sentences designed to strengthen the effectiveness of criminal sanctions, which came into force on 15 August 2014, has not eliminated the use of preventive detention, which constitutes a clear breach of the fundamental principle of the legality of sentences.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- Abolish the preventive detention provision.

6. CONFINEMENT OF FOREIGN NATIONALS AND CONDITIONS OF DETENTION IN HOLDING ZONES AND ADMINISTRATIVE DETENTION CENTRES (ARTICLES 9 AND 10)

In Paragraph 18 of its concluding observations, the United Nations Human rights Committee recommended that the State party review its detention policy in regard to undocumented foreign nationals and asylum-seekers, including unaccompanied children. It also called on the State to take steps to reduce overcrowding and improve living conditions in detention centres, particularly those located in France's overseas departments and territories.

6.1. WIDESPREAD CONFINEMENT AND ADMINISTRATIVE CHECKS ON FOREIGN NATIONALS FOR UNAUTHORISED RESIDENCY

France is a country that almost systematically locks up foreign nationals: in 2013, more than 45,000 foreign nationals were subjected to administrative detention in a CRA.¹⁵

The administrative detention of foreign nationals is currently being considered by the legislature as part of plans to reform the law on immigration, due to be examined by Parliament in 2015. The bill proposes to make detention the exception and promote alternatives to detention as the rule. However, having studied the bill in detail, ACAT-France notes that the proposed legislation provides for checks on foreign nationals to be extended. The key measure in the bill, the so-called "confinement to residency", constitutes yet another coercive measure at the disposal of the administration. It will be implemented using means of pressure and reinforced police checks (e.g. reporting to the prefecture, forcing the individual concerned to report to the consulate, possibility of arrest in the home) to the detriment of fundamental individual rights: freedom of movement, right to privacy and family life, etc. It will be possible to combine the various constraint measures (confinement to residency, detention), thereby maintaining those targeted in a highly precarious situation, without any right to work and facing the constant risk of being removed from the country. The bill provides for individuals to be confined to residency for an initial period of 90 days, then placed in detention for 45 days, before being confined to residency again for a year or more and finally placed in detention yet again. No limit has been set on how many times these various measures can be combined.¹⁶

6.2. INHUMAN CONDITIONS OF DETENTION AT THE DETENTION CENTRE IN MAYOTTE

While the material conditions of detention overall in France's administrative detention centres (CRAs) are mostly satisfactory, the same cannot be said of the Pamandzi CRA in Mayotte. This detention centre has been described by the *Commission nationale de déontologie de la sécurité* (CNDS) as "an area of lawlessness"¹⁷, and the CGLPL¹⁸ has referred to its "undignified" and "unacceptable" conditions of detention, which the Senate has said amount to "inhuman and degrading treatment".

This facility suffers from chronic overcrowding, with around 1.37 m² per person.¹⁹ Conditions are very cramped, and detainees lack any intimate space. According to the latest information obtained by ACAT-France, detainees are not provided with beds, the toilet facilities are not freely accessible, and the insufficient number of showers are in a deplorable condition. The detention centre has been awaiting reconstruction since 1999. According to the French authorities, this is now due to take place in late 2015. In the meantime, it continues to be used to detain migrants in conditions that amount to inhuman and degrading treatment.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- Bring an end to the inhuman conditions of detention to which foreign nationals are subjected at the administrative detention centre in Mayotte.

15. ASSFAM, Forum réfugiés-COSI, FTDA, la Cimade, Ordre de Malte, 'Rapport 2013 centres et locaux de rétention administrative', http://cimade-production.s3.amazonaws.com/publications/documents/95/original/Rapport_Retention_2013.pdf.

16. Communiqué ADDE - Anafé - Fasti - Gisti - La Cimade - LDH - MOM - SAF - Syndicat de la magistrature, 'Synthèse de l'analyse interassociative du projet de loi relatif aux droits des étrangers en France', www.gisti.org/spip.php?article4888.

17. CNDS, 2008 activity report, page 23, www.cnds.fr/rapports/ra_pdf/Bilan_activite_2008.pdf. The CNDS merged with the *Défenseur des Droits* in 2011.

18. CGLPL, 'Recommandations relatives au centre de rétention administrative de Pamandzi (Mayotte)', 30 June 2010, www.cglpl.fr/wp-content/uploads/2010/07/CRA-Mayotte-visite-final-13-novembre-2009.pdf.

19. OEE and MOM, 'Etrangers en Outre-mer : un droit exceptionnel pour un enfermement ordinaire', conference proceedings, 8 December 2012, p. 16, www.gisti.org/publication_som.php?id_article=3038.

6.3. MONITORING OF CONDITIONS OF DETENTION FOR FOREIGN NATIONALS HELD IN DETENTION CENTRES AND HOLDING ZONES (ARTICLES 2 AND 9)

The law on immigration dated 16 June 2011 pushed back from two to five days the intervention of JLDs to monitor detention centres. In holding zones, these judges can only be summoned by the administration at the end of the fourth day, with the possibility of an extension. If the decision to remove an individual is definitive, this may take place without access to a judicial judge being granted.

The direct effect of this provision is to deny a substantial proportion of detainees access to a judicial judge with responsibility for monitoring the legality of the decision to place them in detention as well as the conditions in which they are detained.²⁰ Recourse before an administrative judge against the decision to place an individual in detention is only granted at the request of the foreign national. If the individual concerned does not request this within the timeframe stipulated (48 hours after being notified of the decision), it is possible that no judge, either judicial or administrative, will intervene to monitor the detention. Associations have reported that 60% of detainees are removed before being brought before a JLD, i.e. before the end of the five-day period. The exact same is true of holding zones, where most detainees are removed before being brought before a JLD.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Take the necessary steps to ensure that monitoring by judicial judges of the measures used to place individuals in detention or in holding zones takes place at the earliest opportunity and before any decision is made to conduct a removal or refoulement operation.**

20. ACAT press release, 'Enfermement des étrangers : une procédure en trompe-l'œil', www.acatfrance.fr/actualite/enfermement-des_etrangers_-_une_procedure_en_trompe-l-oeil.

7. ALLEGATIONS OF ILL-TREATMENT BY MEMBERS OF THE POLICE AND GENDARMERIE (ART. 7)

7.1. ALLEGATIONS OF ABUSIVE USE OF FORCE BY LAW ENFORCEMENT REPRESENTATIVES

ACAT-France and FIACAT continue to be concerned by the persistent allegations of ill-treatment inflicted by law enforcement officials. They have received testimonies and have documented situations involving reports of abusive use of force by members of the national police or gendarmerie. According to the initial observations made by ACAT-France, allegations of the illegal use of force mainly relate to the national police force. In 2012, 63.3% of the cases filed with the “ethics and security” section of the *Défenseur des droits* related to the national police.

It would also appear that most of these allegations relate to incidents at the time of arrest or during operations to maintain law and order (demonstrations) or police transfers. A non-negligible proportion of recorded testimonies also relate to border escort operations.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Take the necessary steps to bring an end to current practices of abusive force by members of the police or gendarmerie.

7.2. SPECIFIC QUESTIONS RELATING TO INTERMEDIATE WEAPONS

Intermediate weapons have developed considerably in recent years in France. Although, in theory, they make it possible to provide a measured response and reduce the use of firearms, each year these weapons are responsible for many serious injuries, incapacitations and even fatalities.

7.2.1. FLASHBALL-TYPE WEAPONS (LBDS)

France currently has two types of LBDS: the Flashball Superpro and LBD 40x46. These weapons, which have been widely developed in France, have been responsible for many serious injuries in recent years. Their usage is particularly challenged in the case of demonstrations, during which it is difficult to respect the prescribed user precautions and prohibited target body areas (movement of people, firing range difficult to evaluate, etc.).

LBDS have been responsible for many irreversible eye wounds and are the focus of several medical studies, one of which was published by emergency medical staff at the hospital in Nantes (France) following the admission of a patient who had been hit in the eye by a Flashball: “*the eye was no longer behind the eyelid, it had been replaced by a spherical foreign body*”.²¹ The authors of the study warned against the harm that can be caused by this weapon and, in light of the risks posed, suggest that under no circumstances should it be used to target the head.

The risks identified by the above-mentioned medical studies are confirmed by the high number of cases of injury recorded in France. Since the widespread use of LBDS was introduced in 2004, ACAT-France has recorded at least 29 individual cases of serious injury mostly involving the face, 18 of whom lost an eye or the use of an eye. One man, shot in the chest in a centre for migrant workers in Marseille, died in December 2010. In 2010-2014 alone, 19 people were seriously injured by LBDS, among them two children aged nine.

According to the observations made by ACAT-France, most of these situations occurred during or on the fringes of public demonstrations.

21. Virginie Pinaud, Philippe Leconte, Frédéric Berthier, Gilles Potel, Benoît Dupas, ‘Orbital and ocular trauma caused by the Flash-ball: a case report’, *Injury Extra*, June 2009, www.sciencedirect.com/science/article/pii/S1572346109000749.

At least 29 serious injuries and one fatality since 2004

- **13 December 2010**, **Mostepha Ziani** dies following a shot to the chest with a Flashball Superpro during an arrest at his home;
- **30 October 2014**, a 20-year-old man loses an eye following a police operation in Blois involving an LBD;
- **19 October 2014**, **Alexandre Meunier** (25) suffers a serious injury to his right eye following a shot with an LBD during violent scuffles on the fringes of a football match in Lyon;
- **10 May 2014**, **Davy Graziotin** (34) suffers a serious face injury following a shot with an LBD during a demonstration against the airport in Nantes;
- **21 April 2014**, **Yann Zoldan** (26) suffers a serious face injury following a shot with a 40x46 LBD during the evacuation of a squat;
- **22 February 2014**, three young men suffer injuries following shots fired with 40x46 LBDs during a demonstration against the airport in Nantes: **Quentin Torselli** (29) loses an eye, **Damien Tessier** (29) loses the use of an eye, and **Emmanuel Derrien** (24) suffers a face injury;
- **1 February 2014** : **Steve** (16) loses the use of an eye following a shot with a 40x46 LBD during clashes with police in La Réunion;
- **27 December 2013**, **Quentin Charron** (31) loses the use of an eye following a shot with a 40x46 LBD during a demonstration by French firefighters in Grenoble;
- **19 July 2013**, Salim (14) loses an eye following a shot with an LBD on the fringes of clashes during a demonstration;
- **6 February 2013**, **John David** (25), loses the use of an eye following a shot with an LBD during a demonstration by Arcelor Mittal employees in Strasbourg;
- **21 September 2012**, **Florent Castineira** (21) loses an eye following a shot with an LBD during a police operation involving clashes after a football match;
- **22 February 2012**, **Jimmy Gazar** suffers a serious face injury following a shot with an LBD in La Réunion;
- **7 October 2011**, **Nassuire Oili** (9) loses an eye following a shot with a Flashball Superpro during a police operation on the fringes of demonstrations against the high cost of living in Mayotte;
- **5 June 2011**, **Daranka Gimo** (9) falls into a coma for three months and suffers serious long-term injuries following a shot with a 40x46 LBD;
- **7 February 2011**, **Ayoub Boutahara** (17), loses the use of an eye following a shot with an LBD on the fringes of clashes with police;
- **18 December 2010**, **Mohamed Abatahi** (37) suffers a face injury following a shot with an LBD during a police operation at a demonstration;
- **14 October 2010**, **Geoffrey Tidjani*** (16) suffers a serious face injury following a shot with a 40x46 LBD during a demonstration in Montreuil;
- **19 May 2010**, **Nordine** (27), suffers a serious face injury following a shot with an LBD during clashes between youths and police in Villetaneuse;
- **8 July 2009**, **Joachim Gatti** (34), loses an eye following a shot with an LBD during the evacuation of a squat in Montreuil;
- **21 June 2009**, **Clément Alexandre**, (30) suffers a serious face injury following a shot with an LBD during a police operation at the national music festival in Paris;
- **9 May 2009**, **Alexandre** (21) et **Clément** (31) each lose the use of an eye following shots with a 40x46 LBD during a police intervention at a birthday party;
- **1 May 2009**, **Samir Ait Amara** (18),) suffers a serious head injury following a shot with an LBD;
- **17 April 2009**, **Halil Kiraz** (29), loses an eye following a shot with an LBD during an arrest;
- **19 March 2009**, **Joan Celsis** (25) loses the use of an eye following a shot with an LBD during a demonstration in Toulouse;
- **27 November 2007**, **Pierre Douillard** (16), loses the use of an eye following a shot with an LBD in Clichy-sous-Bois;
- **28 October 2006**, **Jiade El Hadi** (16 ans), perd l'usage d'un œil suite à un tir de LBD à Clichy-sous-Bois ;
- **5 July 2005**, , a 14-year-old boy loses an eye as a result of an intervention involving an LBD.

* ACAT press release, 'Mineur blessé par un tir de flashball', <http://www.acatfrance.fr/communique-de-presse/mineur-blesse-par-un-tir-de-flash-ball--a-montreuil---le-policier-condamne>.

Due to the lack of precision of the Flashball Superpro, the DGPN announced that this weapon would be withdrawn “over the course of 2014”. It is due to be replaced by short-range ammunition compatible with the 40x46 LBD but which can be used in the same conditions as the Superpro. This new ammunition will first be tested by 100 police officers from three French departments in the Paris region (Yvelines, Val-de-Marne and Essonne). It should also be noted that the Flashball Superpro is not the only weapon associated with eye injuries suffered in recent years. The 40x46 LBD has also been responsible for several injuries (see box inset above).

It is therefore legitimate to question whether it is appropriate to use such a weapon in the case of operations to maintain law and order, a context that does not appear very compatible with the weapon’s strict rules of usage. The risk of serious injury and even death associated with these intermediate weapons is surely disproportionate in respect of the objectives to achieve.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Prohibit the use by French law enforcement officials of Flashball-type weapons, already prohibited in several other countries, and immediately withdraw those currently supplied.**

7.2.2 ELECTRICAL DISCHARGE WEAPONS (EDWS)

On several occasions, the European Committee for the Prevention of Torture has expressed its view on the use of electrical discharge weapons and warned against the potential dangers associated with them. In France, 1,647 Taser X26-type weapons are currently used by the police force and 3,270 by the gendarmerie. Their usage is steadily rising, particularly in the police force. They were used a total of 442 times by police officers in 2012 (compared to 350 in 2011 and 288 in 2010, and 619 times by the gendarmerie in the same year (compared to 473 in 2011 and 522 in 2010).²²

The very nature of electrical discharge weapons makes them conducive to abusive usage. In the last report on its visit to France, the CPT wrote: “the use of EDW should be limited to situations where there is a real and immediate threat to life or risk of serious injury” (para. 13). It added: “Recourse to such weapons for the sole purpose of securing compliance with an order is inadmissible. Furthermore, recourse to such weapons should only be authorised when other less coercive methods (negotiation and persuasion, manual control techniques, etc.) have failed or are impracticable and where it is the only possible alternative to the use of a method presenting a greater risk of injury or death”.²³ However, the Défenseur des droits notes that “this practice of using electrical discharge weapons to assist handcuffing appears to be widespread”.²⁴ This is not denied by the Interior Ministry, which justifies this practice by suggesting that the use of this weapon to handcuff an individual can prove “less dangerous for the physical integrity of the individual than a physical intervention by police officers and gendarmes”.²⁵

The CPT has expressed grave reservations about the use of electrical discharge weapons in “contact” mode, which causes “very intense localised pain and possible skin burns”.

The Défenseur des droits recommends restricting the use of the Taser X26 in contact mode. It argues that “while it is true that the danger of the Taser X26® in contact mode appears to be minor (although everything depends on the part of the body where the weapon is applied), receiving a high electrical charge causes highly intense localised pain and psychological trauma and is a much more serious attack on human dignity than, for example, an arm lock practised manually or use of a tonfa”.²⁶

Yet the use of electrical discharge weapons in contact mode has been developed in France and is now the most widely used method by law enforcement officials. In 2012, the gendarmerie used Tasers on 619 occasions, 360 of which were in contact mode (259 in firing mode). The police force used them on 442 occasions, 229 of which were in contact mode (122 in firing mode and 91 in dissuasive mode).²⁷

Finally, serious concerns remain regarding the effects of using EDWs on certain vulnerable individuals (children, elderly persons, pregnant women, individuals under the influence of narcotics, and heart disease sufferers).

22. Défenseur des droits, op. cit., May 2013, p. 13.

23. CPT, 20th General Report (2009-2010), para. 70, www.cpt.coe.int/en/annual/rep-20.pdf.

24. Défenseur des droits, decision no. MDS 2010-167, 10 April 2012, www.defenseurdesdroits.fr/decisions/ddd/MDS-2010-167.pdf.

25. Response from the Interior Ministry to decision 2010-167 by the DDD, cited in Défenseur des droits, Rapport sur trois moyens de force intermédiaires, May 2013, p. 17, www.defenseurdesdroits.fr/sites/default/files/upload/rapport_deontologie_sur_trois_moyens_de_force_intermediaire_2.pdf.

26. Défenseur des droits, ‘Rapport sur trois moyens de force intermédiaires’, May 2013, p. 17,

www.defenseurdesdroits.fr/sites/default/files/upload/rapport_deontologie_sur_trois_moyens_de_force_intermediaire_2.pdf

27. Défenseur des droits, op. cit., May 2013, p. 13, www.defenseurdesdroits.fr/sites/default/files/upload/rapport_deontologie_sur_trois_moyens_de_force_intermediaire_2.pdf.

According to the information obtained by ACAT-France, there are four known cases of fatalities in France following the use of Tasers.

- 5 September 2014: a 34-year-old man died in Paris following two shots with an EDW in “contact” mode. No link has been established between use of the weapon and the fatality, but police officers claimed that the individual was in “an acute state of dementia”.
- 3 November 2013: Loïc Louise (21) died in La Ferté-Saint-Aubin (Loiret). The prolonged use of a Taser (17 seconds) has been particularly challenged in this case. A judicial investigation against X was opened on 8 August 2014 for involuntary homicide. It is ongoing.
- 4 April 2013: a 45-year-old man died in Crozon (Finistère) following a shot with a Taser. Very little information is known about this case, which appears to have been definitively closed in February 2014.
- 30 November 2010: Mahamadou Marega (38) died after receiving 17 electrical charges with a Taser, both in “contact” and “firing” modes. He was described by the officials involved as being in “an agitated state of delirium”. The case was thrown out by the examining magistrate; this was upheld on 22 February 2013 by the Court of Appeal in Versailles.

When in contact with an individual that needs to be brought under control, law enforcement officials can use other control techniques.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Limit the use of electrical discharge weapons in contact mode and ensure that law enforcement officials privilege alternative methods of control;**
- **Conduct a medical study on the use of electrical discharge weapons on vulnerable individuals.**

7.3 PERSISTENT FATALITIES OCCURRING AS A RESULT OF IMMOBILISATION MANOEUVRES

Since the CPT’s last visit to France in 2010, several cases of fatalities as a result of immobilisation techniques have been recorded. There are persistent concerns in particular about the practice of maintaining subjects in the “ventral decubitus” position. This immobilisation technique impedes respiratory movement and has been recognised as a potential cause of postural asphyxia. In the case of *Saoud v. France*, the ECHR observed that “*this form of immobilising an individual has been identified as posing a high threat to life*”.²⁸ Indeed, several countries have abandoned this practice, including Switzerland and Belgium. During the review of France’s periodic report in 2010, a CAT co-rapporteur said “the continuing use of the “ventral decubitus” position was a matter of concern”.²⁹

However, this practice has not been prohibited in France. This is made clear in a memorandum by the DGPN dated 8 October 2008: “*When it is necessary to immobilise an individual, compression – especially when exerted on the chest or abdomen – must be applied as quickly as possible and released as soon as the individual is immobilised using regulated methods. (...) Where applicable, all steps must be taken to ensure a medical examination can quickly take place.*”³⁰

France has nonetheless informed the CAT that it has “reflected on the possibility of developing technical equipment that would make it possible to immobilise individuals in a state of paroxysmal excitement without using the ventral decubitus technique”.³¹ As far as ACAT-France and FIACAT are aware, the results of this process of reflection have not been made public.

Several fatalities have regrettably occurred as a result of immobilisation techniques.

Lamine Dieng died on 17 June 2007 after being immobilised on the ground by five police officers. The autopsy report concluded that he had died from “asphyxia due to the regurgitation of food and his face being pressed into the ground with pressure on the apex of his head in toxic circumstances”.³² The CNDS, which handled the case, noted the dangers associated with the so-called ventral decubitus technique and recommended that precise instructions and adequate training be provided in respect of this form of restraint, “which should only be used in the most exceptional circumstances and limited over time”.³³ In June 2014, seven years after the events, the examining magistrate ruled there were no grounds for prosecution.

28. CEDH, *Saoud v. France*, Judgement 9375/02, 9 October 2007, Para. 102, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82583#{"itemid":\["001-82583"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82583#{).

29. Review of fourth to sixth periodic reports of France by the Committee against Torture, Summary record of the 928th meeting, CAT/C/SR.928, p. 6, www.bayefsky.com/summary/france_cat_c_sr928_2010.pdf.

30. Cited in CNDS report 2008, p. 20, <http://cnds.defenseurdesdroits.fr/rapports/annuels.html>.

31. Review of fourth to sixth periodic reports of France by the Committee against Torture, Summary record of the 931st meeting, CAT/C/SR.931, p. 10, www.bayefsky.com/summary/france_cat_c_sr931_2010.pdf.

32. CNDS, Decision no. 2007-83, <http://cnds.defenseurdesdroits.fr/rapports/annuels.html>.

33. *Ibid.*

7.4. POLICE VIOLENCE AGAINST MIGRANTS

In Paragraph 18 of its concluding observations, the Committee reminded the State party that it should have no tolerance for acts of ill-treatment perpetrated by law enforcement officials against foreign nationals, including asylum-seekers, who are detained in prisons and administrative detention centres. It said the State party must establish adequate systems for monitoring and deterring abuses and should develop further training opportunities for law enforcement officials.

7.4.1. SITUATION OF MIGRANTS IN CALAIS

Over the course of 2014, several international organisations alerted the public authorities to the dramatic situation facing migrants in Calais. ACAT-France conducted an exploratory mission in the city in April 2015 in order to evaluate the humanitarian situation. The associations with which it met emphasised the issue of police violence. Certain associations, most notably Human Rights Watch, have spoken of daily police harassment.³⁴ This takes the form of verbal violence, disproportionate use of tear gas both outdoors and in confined spaces (e.g. in trucks), use of truncheons, bites by police dogs and beatings in trucks. Recent video footage broadcast by the media in May 2015 illustrates the testimony provided.³⁵ Some associations have also reported that certain migrants, including women, have been escorted by law enforcement officials several kilometres outside Calais and then had to return on foot. Identity checks carried out on migrants are often abusive (some migrants are subjected to checks several times a day).

It is difficult to identify the police officers/mobile gendarmes/CRS agents responsible for this violence, as units are transferred on a regular basis. Various senior members of associations have pointed out that at the time of these violent incidents the police officers/gendarmes involved deliberately covered up their ID numbers. Several complaints have been filed on site, but no-one is in a position to know whether they led to anything. This was brought to the attention of the *Défenseur des droits* in 2012, and again two or three months ago for alleged acts of violence between 2012 and 2014.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Take the necessary steps to bring an end to police violence against migrants in Calais and ensure that such acts are subject to investigations and prosecutions and that those responsible are prosecuted.**

7.4.2 PROCEDURES FOR ESCORTING INDIVIDUALS TO THE BORDER

In 2010, the CNDS noted the persistence of dehumanising procedures when removing individuals from national soil, pointing out that human consideration was often overlooked faced with the imperatives of escorting individuals to the border, which had to be executed as quickly as possible.³⁶ Anafé recorded more than 10 witness accounts of police violence in holding zones in 2008³⁷ and 22 in 2009.³⁸ In most cases, these violent incidents took place as the individuals concerned were being forcefully boarded onto an aeroplane or immediately following their refusal to board. Violent acts occur more frequently when several attempts to board the individuals have to be made. More restrictive methods are generally used after an initial refusal to board (on the first attempt, the officials involved use an insistent approach to obtain acquiescence, and if further attempts are required more force is used).

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Ensure that procedures to remove individuals from the national territory take place with respect for human dignity and without abusive use of force.**

34. Maryline Baumard, 'Human Rights Watch dénonce les violences policières contre les migrants à Calais', *Le Monde*, 20 January 2015, www.lemonde.fr/immigration-et-diversite/article/2015/01/20/human-rights-watch-denonce-les-violences-policieres-contre-les-migrants-a-calais_4559335_1654200.html#tAzXHJvwAUREZq.99.

35. AFP, 'Calais : une vidéo montre des violences policières contre les migrants', *Le Point*, 12 May 2015, www.lepoint.fr/societe/calais-une-video-montre-des-violences-policieres-contre-les-migrants-12-05-2015-1927964_23.php.

36. Défenseur des droits, Annual report 2010, p. 79, www.cnds.fr/rapports/rapport_annuel_2010.pdf.

37. Anafé, 'De l'autre côté de la frontière : suivi des personnes refoulées', April 2010, p. 12.

38. Anafé, 'Inhumanité en zone d'attente, Bilan 2008', May 2009, p. 17.

8. ADMINISTRATIVE INVESTIGATIVE PROCEDURES AND ACCESS TO JUSTICE IN CASES OF HUMAN RIGHTS VIOLATIONS PERPETRATED BY LAW ENFORCEMENT OFFICIALS (ARTICLES 2, 7 AND 10)

8.1 LACK OF OFFICIAL DATA

ACAT-France and FIACAT would like to point out that there is no official statistics on allegations of police violence, even though a large amount of highly specific data is regularly gathered in relation to police matters.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Provide the following figures:

- a) The number of complaints filed with the judicial authorities for illegitimate use of force by public law enforcement officials;**
- b) Detailed statistics on the weapons or technical manoeuvres identified in complaints filed, and on the police operations during which these incidents took place (operations to maintain law and order, arrests in the home, transport, police custody, etc.);**
- c) The percentage of officials found guilty by the French judicial authorities in respect of the number of complaints filed;**
- d) The types of guilty sentences handed down to officials for each type of harm caused.**

8.2 REPRISALS AGAINST DETAINEES WHO FILE COMPLAINTS WITH THE INSPECTOR GENERAL OF PLACES OF DEPRIVATION OF LIBERTY (CGLPL)

When presenting his activity report for 2013, the CGLPL expressed considerable concern about allegations of reprisals against detainees who took their case before him. *“For the first time in 2013, the number of letters received has not risen year-on-year [...] I’m convinced that this stabilisation of the number of letters we receive is the result of these threats and reprisals. We visited entire units in which detainees told us that they no longer wrote to us as they were afraid to do so. We know that some letters reach us through irregular channels, passed on through the visiting area”.*³⁹ In a recent recommendation published in the Journal Officiel on 13 May 2015 in relation to the prison in Strasbourg, the CGLPL again pointed out that *“Many detainees are reluctant to speak out for fear of reprisals”.*⁴⁰

More broadly, ACAT-France has identified difficulties faced by detainees in seeking remedies against the penitentiary authorities. In his activity report for 2013, the CGLPL notes that he had received information about several incidents involving obstacles or reprisals in relation to legal procedures followed by detainees.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Take concrete and immediate steps to guarantee that all detainees are free to exercise their rights without risk of any breach of said rights, and in particular ensure that no detainee who makes contact with the CGLPL is subject to reprisals;**
- Ensure effective respect for the fundamental guarantees necessary for the CGLPL to operate properly.**

39. Jean-Marie Delarue’s hearing before the parliamentary Commission des lois, 12 February 2014, www.assemblee-nationale.fr/14/pdf/rapports/r1832.pdf.

40. Urgent recommendations made by the CGLPL on 13 April 2015 in relation to the prison facility in Strasbourg, <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030587380&fastPos=1&fastReqId=1830874139&categorieLien=id&navigator=navigateurnaturetexte&modifier=RECOMMANDATION&fastPos=1&fastReqId=1830874139&oldAction=rechTexte>.

8.3 DIFFICULTIES FILING COMPLAINTS RELATING TO ALLEGATIONS OF POLICE VIOLENCE

Whether involving the hierarchical or legal authorities, ACAT-France and other civil society organisations note that sanctions are rarely taken against representatives of the legal system in the case of violent acts and, where such sanctions are taken, they are lenient relative to the facts. The victims face obstacles at all stages of the legal process: - Difficulté de porter plainte au commissariat et nécessité de se constituer partie civile ;

- Difficulties filing complaints at police stations and victims obliged to act as plaintiffs;
- Difficulties securing effective investigations and proving the facts;
- Difficulties securing justice: guilty sentences are rare (cases often thrown out or accused discharged) and, where they do occur, they seem lenient relative to the facts or relative to other types of sentences handed down to “regular” citizens;
- Police officers increasingly use “contempt and obstruction” procedures. Complaints of this type are quasi-systematic in the case of complaints against law enforcement officials for violent acts. Furthermore, it should be noted that when such complaints are filed the two cases are not judged at the same time: the contempt and obstruction case is heard long before that relating to the alleged police violence.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Combat perceptions of impunity among victims of police violence by guaranteeing judicial sentencing and disciplinary sanctions against those responsible in a way that is proportionate to the facts;**
- **Ensure that complaints of illegal or abusive use of force and corresponding complaints of contempt and obstruction are judged at the same time.**

8.4 DE FACTO IMPUNITY FOR ACTS OF ILL-TREATMENT PERPETRATED DURING REMOVAL OPERATIONS BY AIR

Each year, Anafé says it is made aware of around 10 cases of police violence in holding zones, mostly at the time of boarding. In August 2014, an Algerian national died in the police van being used to transport him from the CRA to the airport.⁴¹ As well as the difficulty of filing a complaint in such locations, detainees being escorted to the border are clearly unable to make themselves heard, which constitutes an obstacle to the smooth running of the inquiry.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Put in place a protocol to guarantee effective and exhaustive investigations into allegations of police violence against individuals who are escorted to the border.**

8.5 OVERRIDING LEGISLATION FOR MIGRANTS IN FRENCH OVERSEAS TERRITORIES (ARTICLES 2 AND 14)

ACAT-France and FIACAT would like to draw the Committee’s attention to the overriding legislation applicable to foreign nationals in certain overseas territories. In contrast to the applicable law in metropolitan France, the remedies in these territories against orders to escort an individual to the border are not suspensive, which effectively deprives migrants of an effective remedy. In a decision dated 19 November 2013, the Défenseur des Droits recommended that the French government should “*introduce the necessary provisions to ensure that foreign nationals, in accordance with the decision by the European Court of Human Rights (ECHR) in the case of De Souza Riberiro v. France dated 13 December 2012, have access to an effective remedy to contest orders to escort them to the border*”.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Bring an end to the overriding legislation applicable to foreign nationals in French overseas territories.**

41. ACAT press release, ‘Décès durant une expulsion à Roissy : la lumière doit être faite sur ce drame’, www.acatfrance.fr/communique-de-presse/deces-durant-une-expulsion-a-roissy_-la-lumiere-doit-etre-faite-sur-ce-drame.

9. RIGHTS OF THE CHILD (ART. 24)

9.1 PERSISTENT CONFINEMENT OF CHILDREN IN DETENTION

On 19 January 2012, the ECHR ruled against France for the confinement of children in unsuitable places of detention.⁴² In response, the Interior Minister recommended to prefects that they should no longer place families with children in detention but instead confine them to residency.⁴³ However, children continue to be regularly placed with their parents in administrative detention centres and other premises in metropolitan France. ACAT-France and FIACAT also point out that the above-mentioned circular excludes the territory of Mayotte from its scope. This overriding provision is far from trivial: according to figures provided by La Cimade, 3,500 children were placed in this centre in 2013.⁴⁴

ACAT-France and FIACAT would also like to draw the committee's attention to the information provided by both La Cimade and the *Défenseur des droits*, which noted that in the territory of Mayotte some minors are falsely placed with adults they do not know and are escorted to the border with them despite the absence of any blood link. France's Council of State (CE) sanctioned this practice in a recent order in January 2015. In line with a previous decision published in October 2014, the CE confirmed the case law in this matter and developed a body of guarantees to be implemented by the authorities in order to check the identity of minors and confirm links between them and an adult based on the principle of the higher interests of the child as enshrined under the Convention on the Rights of the Child. Although it reasserts the rights of minors in detention, this decision by the CE is also problematic. It condemns the State but at the same time confirms the legality of detaining minors, in contradiction with one of the fundamental principles of protection for children. The CE refuses to pronounce on the legality of placing an eight-year-old child in detention where no alternative to detention was considered.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Definitively end the confinement of minors in all administrative detention centres in metropolitan France and overseas French territories.**

9.2 9.2. CONFINEMENT OF MINORS ISOLATED IN HOLDING ZONES

The situation of minors isolated in holding zones is also a matter of considerable concern. In 2012, according to figures released by the Interior Ministry, 416 isolated minors were placed in holding zones, of whom 379 were at Roissy airport, 24 in Orly and 13 in other French regions. According to statements made by the *Défenseur des droits* to Human Rights Watch, the refoulement rate for isolated minors kept at the border was between 30% and 40% in 2012.⁴⁵ The national consultative human rights commission (CNCDDH) regularly stands against the confinement of isolated minors in holding zones.⁴⁶ The Interior Ministry has announced that the legislative reforms of the right to asylum, due to be voted on in 2015, will bring an end to this practice in the case of asylum seekers. Yet very broadly interpreted exceptions will be applied to this rule. Furthermore, isolated minors who are not asylum seekers – but are just as vulnerable – remain exposed to the risk of being deprived of their liberty upon arriving in France. On the contrary, we need to protect rather than lock up isolated foreign minors.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Automatically grant isolated minors access to the national territory and entrust them to the social child protection authorities.**

42. ECHR, *Popov v. France*, 19 January 2012, nos. 39472/07 and 39474/07, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108708#{"itemid":\["001-108708"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108708#{).

43. Circular dated 6 July 2012 relating to the implementation of confinement to residency under Article L.561-2 of the CESEDA as an alternative to placing families in administrative detention (NOR: INTK1207283C), www.gisti.org/IMG/pdf/horintk1207283.pdf.

44. ACAT petition, 'Des enfants derrière les barreaux', www.acatfrance.fr/action/des-enfants_derriere_les_barreaux.

45. Human Rights Watch, 'France : les mineurs non accompagnés se retrouvent bloqués aux frontières', April 2014.

46. www.cncdh.fr/fr/dossiers-thematiques/mineurs-etrangers-isoles-0.

10. TREATMENT OF FOREIGN NATIONALS, ASYLUM SEEKERS AND REFUGEES (ARTICLES 2, 7, 9, 13, 14 AND 26)

10.1. UNEQUAL ACCESS TO THE ASYLUM-SEEKING PROCEDURE AND OPAQUE ADMINISTRATIVE PRACTICES (ARTICLES 2, 7, 14 AND 26)

10.1.1. UNEQUAL TREATMENT OF ASYLUM SEEKERS

Prefectures in France (general administration and the police responsible for foreign nationals) govern access to the asylum-seeking procedure. They are responsible for the mandatory preliminary steps and have the authority to grant access to national soil based on asylum applications. They are also responsible for handing out asylum application forms, which are then sent by applicants to OFPRA or handed in to a prefecture during a subsequent appointment. Some prefectures apply *ultra legem* regulations to control applicants' access to the procedure under the pretext that they lack sufficient resources or "available places", factors that should not be allowed to take precedence over the requirement incumbent on the authorities to respect the fundamental right to seek asylum.

According to the information obtained, the prefecture in Seine Saint-Denis informally blocks access to the asylum-seeking procedure for applicants being re-examined (independently of any consideration of the validity of their application) by refusing to hand out the numbered tickets that give access to the desk to those waiting in the queue outside. Alternatively, even where applicants gain access to the desk, they are regularly told that "the prefecture will not be re-examining any applications until further notice".

The Paris prefecture operates a discriminatory practice against asylum seekers who have not been administratively domiciled by an authorised association (e.g. France Terre d'Asile, or Coallia) but are officially housed by private citizens. No more than a few tickets are handed out to such applicants each day, and only when all other applicants have been received. Asylum seekers discriminated against in this way are forced to try their luck on a daily basis by queuing from 5 AM outside the premises until at least 1 PM in the hope of obtaining one of these few "tickets".

While having an address – and therefore proof of one's domicile – continues to be a precondition (one that has been criticised) of accessing the asylum application form, being housed by an association is in no way a formal precondition.

ACAT and its partner associations within the collective group known as "Asile Ile-de-France" have observed that such practices are recurring and widespread.

Furthermore, some asylum seekers benefit from more favourable access to the procedure without any transparent or specific explanation provided by the authorities or by the Interior Ministry. It would appear that the reasons for this unequal treatment (a form of positive discrimination) is based more on the circumstantial imperatives of the ministry's public relations than it is on fair and verifiable criteria.

On 20 August 2014, the President of the Republic, François Hollande, announced that Iraqi nationals from religious minorities would be granted visas by the French consular authorities allowing them to be received as "refugees" in France.⁴⁷ The civilians for whom these visas are intended are said to be those with links to France. So far no official or verifiable information has been provided by the public authorities as to the criteria and procedure for the supply of these visas and the number of people admitted based on this procedure.

Beyond its impact as an official announcement, this statement is a reflection of a selective vision of asylum that is detrimental to the principle of non-discrimination enshrined in the 1951 Geneva Convention.

On 21 May 2015, the Interior Minister and Director-General of OFPRA travelled unofficially to Calais, where 120 asylum applications by Sudanese nationals were filed and accepted in a single day.⁴⁸

It is clear that the treatment of asylum seekers varies from one prefecture to another depending on nationality and on the application by the various authorities in charge of asylum of unofficial and unpublished instructions issued by the Interior Ministry.

47. In an interview with Le Monde on 20 August, François Hollande said: "Christians – and not only Christians – have applied to come to France because they have links here. 8,000 applications have been filed, which will be examined favourably based on this criterion". See http://www.acatfrance.fr/communique-de-presse/asile-pour_les_chretiens_d-irak_-_gare_aux_effets_d-annonce.

48. www.lexpress.fr/actualite/societe/calais-120-migrants-obtiennent-l-asile-dans-une-operation-eclair_1681833.html.

10.1.2. STATISTICS ON ASYLUM PROVIDED BY THE FRENCH GOVERNMENT

In the highly specific context of the political debates surrounding the reforms of the right to asylum in France, many figures have been put forward by the public authorities (Interior Ministry, OFPRA, senators and MPs on various commissions, and the *Cour des Comptes*) requiring careful reading and analysis. Attention has focused more on the financial cost of asylum than on the need to respect the rights of asylum seekers. Furthermore, the Council of Europe's Commissioner for Human Rights has criticised France for the low level of protection given to asylum seekers⁴⁹ compared to other European States. In response, the authorities announced improvements and figures on the increase.

By giving a priority response to the "stock" of asylum applications made by Syrian nationals, 93% of whom were successful in 2014, the average number of favourable decisions published by OFPRA is artificially high and does not reflect the reality on the ground. The rate of international protection provided, not including civilians, remains abnormally low. The percentage of favourable decisions reached by OFPRA in 2014 was 12.6% of the total number of decisions. The overall rate of favourable decisions by OFPRA and CNDA in terms of international protection granted in 2014 was 16.9%, compared to a European average of 35%.⁵⁰ However, these figures are never published as such by the French authorities or by the representatives of OFPRA, who provide higher figures.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- Ensure it can guarantee legal access for asylum seekers to the procedure to request international protection without any discrimination, and supervise the related administrative and institutional practices in a transparent manner.

10.2 EQUAL PROTECTION FOR ASYLUM SEEKERS FROM TORTURE AND INHUMAN OR DEGRADING TREATMENT (ARTICLES 2, 7, 13 AND 14)

10.2.1 PRIORITY PROCEDURES (PP)

In a letter dated 24 April 2012 sent to Mr Jean-Baptiste Mattei, then ambassador and France's permanent representative at the United Nations in Geneva, the President of the Human Rights Committee wrote that additional information was needed and should be included in France's fifth periodic report in relation to "(i) the frequency and conditions of application of the "priority" procedure and (ii) the measures taken to guarantee that asylum seekers are effectively informed of their rights and obligations once they arrive on French soil" (paragraph 20).

Placing an individual in a priority procedure constitutes discriminatory and unfavourable treatment. Priority procedures benefit from fewer procedural guarantees and in particular deny the individual concerned the right to a suspensive remedy. The rejection of applications under the priority procedure continues to be based on discriminatory presumptions: the nationality of the applicant, whether he is a national of a so-called safe home country, presumption that the applicant is trying to gain time based solely on his administrative past (e.g. date of arrival in France, with or without a visa, and the existence of previous administrative measures).

The decision to use a priority procedure is not based on any examination of the asylum application and in most cases is based on irrefutable legal presumptions – or at least extremely difficult to contest – applied by the administration.

The current code governing the entry and residency of foreign nationals and the right to asylum (CESEDA)⁵¹ identifies the priority procedure (PP) as the exception, stipulating that the administration can only invoke this procedure in certain cases which are exhaustively listed. It is therefore a discretionary power held by the administrative authorities, who in principle should examine whether the decision is appropriate on a case-by-case basis. In practice, however, prefectures act as if they were bound to adopt this approach, basing their decision on no more than the nationality of the applicant.

As already pointed out, the priority procedure is applied in particular to applications by citizens of so-called safe home countries. The procedure under which OFPRA includes a country on the list of such countries remains highly opaque, and the sources on which such decisions are based are not communicated to civil society. France's legislative asylum reforms will not remedy this state of affairs as long as the decision to include a country on the list of safe home countries continues to be taken by OFPRA's board of directors, who effectively serve as both judge and defendant. The Council of State, France's supreme administrative body, has overruled half of the decisions taken by OFPRA over the last 10 years. These rulings, presented as proof that the French administrative authorities function properly, reveal on the contrary that illegal decisions are repeatedly made by OFPRA when it comes to safe home countries, raising questions about the decision-making process and the very concept underpinning this process. As far as we are aware, neither the Interior Ministry nor OFPRA has taken any steps to address the problems raised in these decisions.

49. <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2723506&SecMode=1&DocId=2256640&Usage=2>.

50. OFPRA activity report 2014, https://ofpra.gouv.fr/sites/default/files/atoms/files/rapport_dactivite_2014.pdf.

51. Article L 741-4 (paras. 1 to 4) of the CESEDA, www.legifrance.gouv.fr/affichCode.do?sessionId=E21871B819B95BAA1C558710058C8140.tpdila15v_2?idSectionTA=LEGISCTA000006147803&cidTexte=LEGITEXT000006070158&dateTexte=20150525.

The priority procedure is also applied for reasons of public order and in cases of fraud. In many cases, the decision to invoke the PP is made even where the presence of the applicant in France poses no immediate or serious threat to public order and where the asylum application is not confirmed but rather presumed to be abusive in nature. The notion of a serious breach of public order is not defined under law. Like the notion of fraud, it is used to apply the PP to any individual who has had an administrative procedure rejected in the past. This means it is applied to asylum seekers who have previously been deprived of their liberty, placed in administrative detention or in a holding zone, or to those who have been the subject of a readmission and transfer procedure in application of the Dublin II and III regulations, solely on the basis that they rejected the OFII's offer of voluntary departure.

This priority procedure is made all the more reproachable by the fact that PP asylum seekers are more exposed to the risk of dangerous returns. Although the PP does not automatically deprive asylum seekers of a hearing before OFPRA, it is nonetheless perceived by the administration as less worthy of interest and is treated more quickly and with fewer material resources, thereby effectively depriving asylum seekers of the opportunity to present their case and paint an accurate picture of their fears of persecution in their home country. An individual placed in a PP is twice as unlikely to obtain international protection. In 2014, out of 64,811 applications filed with OFPRA, 33.4% were placed in priority procedures. This figure is on the rise. The rate of favourable decisions was just 6% of PP applications in 2014, compared to 12.6% of the 69,255 applications processed that year by OFPRA (including asylum applications filed in previous years).⁵²

10.2.2 ASYLUM REFORM BILL CURRENTLY BEING ADOPTED BY THE FRENCH PARLIAMENT, DUE TO COME INTO EFFECT IN JULY 2015

Article 7 of the asylum reform bill⁵³ would extend the scope of priority procedures, now known as "expedited" procedures. Priority procedures currently affect 33.4% of asylum seekers (88% of which are applications for re-examination). The application of the expedited procedure is likely to affect more than half of asylum seekers in the future. It will come into effect as follows:

- automatically for all asylum seekers from so-called safe home countries, as well as for all asylum seekers applying for re-examination and for those unable to prove that they entered France less than three months prior to filing their asylum application.
- OFPRA will be required to process asylum seekers as part of the expedited procedure based only on the "observations" of the administrative authorities, who will have considerable room for interpretation when determining to whom this expedited procedure should apply. All asylum seekers who do not file their application within 90 days of arriving in France will be sanctioned, as well as those whose previous administrative procedures (authorised or unauthorised arrival in France, date of arrival, previous administrative rejections, fingerprints usable or not) are deemed by the prefecture to be indicative of intentions "other than relating to the need for protection".
- without examining the grounds for the validity of the application, OFPRA will also have the discretion to apply the expedited procedure to those whose identity it cannot determine with certainty (broad and dangerous presumption of fraud), those whose application it deems insufficiently "pertinent", and those whose "manifestly incoherent and contradictory, manifestly false or implausible declarations (...) contradict verified information about their home country". These provisions are not accompanied by any guarantee relating to the transparency and verification of the "information" referred to above.

10.2.3 LACK OF JUDICIAL MONITORING

The proposed reform, which generally grants asylum seekers the right to remain in France at this stage of their dealings with OFPRA, nonetheless deprives them of the right to contest decisions to place them in an expedited procedure. The text explicitly provides that there is no remedy to contest such decisions. It also provides that the CNDA has full administrative jurisdiction (*plein contentieux*), which means that it can only rule on the grounds for the decision to deny international protection but cannot pass judgement on the legality of the administrative process that preceded the decision.

The possibility for OFPRA to "re-assign" to a normal procedure an asylum seeker who is part of an expedited procedure invoked by the government is illusory given that there is no possible remedy against this decision and that the asylum seeker is likely to be informed of the decision after his hearing before OFPRA, i.e. after the procedural treatment which he would like to contest, when the only available remedy is with the CNDA. In the absence of sufficient guarantees, the Council of Europe's Commissioner for Human Rights has warned the French authorities against expediting any additional asylum procedures.⁵⁴

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- **Bring an end to priority or expedited procedures and all other mechanisms designed to speed up the asylum procedure which restrict the full review of asylum requests;**
- **Abolish the list of safe home countries or at least ensure that it is not drawn up by OFPRA but rather according to a transparent adversarial procedure.**

52. https://ofpra.gouv.fr/sites/default/files/atoms/files/rapport_dactivite_2014.pdf.

53. www.senat.fr/petite-loi-ameli/2014-2015/426.html.

54. <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2723506&SecMode=1&DocId=2256640&Usage=2>, pp. 23-25 and para. 115 in particular.

10.3. RIGHT TO LEGAL REMEDIES AGAINST REJECTIONS OF ASYLUM REQUESTS AND PROTECTION FOR FOREIGN NATIONALS AGAINST ARBITRARY EXPULSION (ARTICLES 2, 7, 13 AND 14)

10.3.1 LACK OF LEGAL REMEDIES AGAINST CERTAIN ADMINISTRATIVE DECISIONS

The asylum reform bill creates two types of decisions that leave no possible legal remedy: OFPRA will be able to take decisions of “inadmissibility” and “closure” when examining the grounds for validity of fears of persecution.⁵⁵ The first type of decision can be compared to a dismissal of asylum applications deemed by OFPRA to be abusive or unfounded. The proposed bill raises a legal presumption of the inadmissibility of all applications for re-examination. The second type of decision amounts to terminating the application of any asylum seeker deemed not sufficiently “cooperative” by OFPRA or the administration. In particular it will affect asylum seekers who have failed to fulfil the obligation (one which is disproportionate and itself a breach of the freedom to choose one’s residency) of remaining in an imposed dwelling and seeking administrative authorisation to leave it.

These two decisions imply that OFPRA will not pronounce on the validity of applicants’ fears of persecution. They directly impose upon asylum seekers the risk of a return to a country in which they could suffer from torture or cruel, inhuman or degrading treatment. There is no legal remedy against these decisions in themselves. The bill provides that no administrative or common law judge or one who specialises in asylum can rule at any stage of the procedure on the appropriateness or legality of the administrative deprivation of the right to present one’s fears of persecution.

10.3.2 LACK OF SUSPENSIVE NATURE OF CERTAIN REMEDIES

As things stand, asylum seekers in a priority procedure as well as those in detention are deprived of the right to a suspensive remedy. These applicants are unable to effectively protect themselves against the risk of dangerous returns. The asylum reform bill will extend the suspensive legal remedy to “all” asylum seekers, but, contrary to statements issued by the Interior Ministry, a large number of asylum seekers will continue to be deprived of this right⁵⁶ :

- those whose application is closed or deemed inadmissible by OFPRA;
- those whose right to residency is repealed under the new discretionary powers of the administration, especially those who are part of the so-called Dublin procedure and on whom the decision to readmit them into another member State has been imposed, resulting in a high risk of dangerous returns to their home countries;
- and as a knock-on effect, asylum seekers in overseas French territories.

10.3.3 INEFFECTUAL RIGHT TO AN EFFECTIVE REMEDY FOR LARGE NUMBERS OF ASYLUM SEEKERS

The suspensive nature of a legal remedy is just one of the conditions – necessary but not sufficient – for it to be effective. A remedy is ineffective if in practice the resources (material, legal or procedural) do not enable asylum seekers to defend themselves effectively and as part of an adversarial procedure against decisions that put them in danger. Several factors necessary for an effective remedy are clearly lacking, thus increasing the risk that asylum seekers will be exposed to the threat of torture or inhuman, cruel or degrading treatment:

- interpreter and comprehensive information provided to applicants;
- timeframe needed for the courts to examine the remedy.

10.3.4 RIGHT TO AN INTERPRETER

The possibility for asylum seekers to understand the challenges involved in the procedure and get across the serious nature of their fears of persecution and torture in the event that they are returned to their home country is a fundamental condition for effective protection against the persecution they identify. The right to an interpreter is an essential corollary of this condition. This right is not sufficiently safeguarded in France.

Although crucially important, applicants do not benefit from free linguistic aid in their dealings with the prefecture, which determines whether they will be granted access to the asylum-seeking procedure and which, once the proposed reforms have been adopted in the summer of 2015, will also be responsible for the observations that will determine whether an applicant is placed in an expedited procedure. The asylum application form to be handed into OFPRA is written in French and must also be completed in French. In the absence of free linguistic aid, many asylum seekers complete this form incorrectly and make errors of meaning that harm their application. They are obliged to have their stories translated by amateur or volunteer translators, most of whom have no specific training and are often unscrupulous, invoicing their services per page translated. As a result, the stories included in the initial asylum application are often littered with errors and sometimes contain additional information or omissions. Lacking the necessary resources, asylum seekers limit their stories to one or two pages, making their efforts to justify their fear of persecution succinct and unconvincing; this is then used against them by OFPRA.

During the interview with OFPRA, asylum seekers are not categorically allowed – and this remains unchanged despite the

55. Asylum reform bill, Article 7, www.senat.fr/petite-loi-ameli/2014-2015/426.html

56. www.acatfrance.fr/public/contre_dossier_presse_asile_acat.pdf.

proposed legislative reforms – to choose the language in which they feel they can best express themselves. Their case may be heard in a language other than their native language if OFPRA decides “that they have sufficient knowledge thereof”.⁵⁷ In some cases, the protection officer chooses to act as the interpreter.

Following notification that an application has been rejected, except in the case of deprivations of liberty, the right to an interpreter is not guaranteed in France. A decision to grant legal aid before the CNDA means that the applicant is entitled to free legal aid but not to the assistance of an interpreter during the hearing before the CNDA itself. Given the rates applied by private interpreters and the fees of legal aid lawyers⁵⁸, having an interpreter, although a key factor in presenting a comprehensive and coherent narrative of one’s fears of persecution in support of a legal remedy, is a luxury that most applicants and legal aid counsellors cannot afford. In the case of deprivation of liberty (detention or holding zones) between notification of the decision and right to a legal remedy and the hearing, asylum seekers who try to effectively contest negative decisions relating to asylum applications do not have access to an interpreter free of charge.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- Guarantee access to a professional interpreter free of charge for all asylum seekers at all stages of the procedure.

10.3.5 LEGAL AID

Asylum seekers who are deprived of their liberty by being placed in detention or in holding zones are not granted the same procedural guarantees as those who are free.

Remedies against the rejection of an asylum application by OFPRA where the applicant is in detention and against a decision by the Interior Ministry to deny admission to French soil based on asylum must be presented in French within 48 hours and in accordance with formal rules that will determine their admissibility.

Asylum seekers are left completely at a loss at the most crucial stage of the procedure, when they must understand the meaning of the decision imposed upon them and draft their appeal in French in an extremely short timeframe which in practice is almost impossible to respect.

The association Anafé has signed an agreement that gives it permanent access to the only holding zone at the Roissy CDG airport in Paris. This does not mean that it has a permanent presence there, and its vocation is in no way to make up for the absence of free legal aid in holding zones. This association is also physically absent from all of the other holding zones in France. Similarly, the presence in detention centres of associations such as La Cimade does not make up for the lack of procedural guarantees such as quick access to a lawyer free of charge. One of the main requests by associations present in these places of deprivation of liberty is to offer the services of a lawyer in order to provide free access to a legal adviser who is in a position to draft an appeal from within detention centres or holding zones.

The only chance of being seen by a lawyer in these two contexts is to obtain the contact details of a lawyer and personally pay for his services. The assistance of a lawyer in the context of legal aid is only possible during the hearing. It is provided by a lawyer who is present in the administrative court and who is made aware of the files and meets with the applicants no more than a few hours and in some cases a few minutes before the hearing.

This lack of free legal aid at the time of drafting and submitting one’s appeal is all the more damaging to the right to an effective remedy for asylum seekers given that their appeals must be submitted under strict conditions of admissibility. They must be drafted in French using the format prescribed by administrative law and must be made in writing. Failure to adequately support them both with the facts and points of law means they are likely to be rejected by order of the court without any hearing or examination of their substance.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- Offer the services of a lawyer free of charge in administrative detention centres and holding zones.

57. Asylum reform bill, Article 7, ^{ibid}. Draft of new Article L723-6 (para. 2) of the CESEDA.

58. For information purposes: total legal aid before the CNDA = 16 units = 520 euros incl. (the lawyer then deducts his fees) / interpreter session with ISM (main service provider) = 110 euros incl. for 3 hours or 30 euros incl. for 15-minute session by telephone.

10.3.6 TIMEFRAMES FOR ASYLUM PROCEDURES

The timeframes governing the admissibility of appeals against rejections of asylum applications are very difficult to respect and make certain rights to a legal remedy ineffectual if not illusory. Both in administrative detention and in holding zones, appeals against rejections must be filed within 48 hours, which directly places applicants at risk of dangerous returns.

The asylum reform bill provides that recourse against a transfer decision based on the Dublin regulations, which has the knock-on effect of generating a risk of dangerous returns (not to mention that certain asylum seekers fear persecution in certain member States within the Schengen Area, as in the case of many Chechens in Poland), will be limited to 7 days.

The CNDA has drastically reduced the timeframes for examining and hearing appeals against negative decisions by OFPRA. Return requests, albeit legitimate, can in some cases be automatically disallowed by this body at its own discretion. In concrete terms, this means asylum seekers do not have enough time to meet with their lawyer, especially if providing legal aid, or to develop their narrative and arguments with a view to drafting an appeal that has any chance of success. It also leaves both lawyers and CNDA magistrates with too little time to acquire full knowledge of the dossier, the often complex problems involved, and the psychological aspects which in many cases are subtle.

The asylum reform bill breaks with equality between asylum seekers, with differential treatment accorded to those in normal and expedited procedures. Not only will asylum seekers on an expedited procedure only be heard by a judge sitting alone rather than collegially, but their appeal will be examined within a five-week period instead of three months in the case of other applicants. Combined with the large number of files that magistrates must deal with, this reduced timeframe makes it impossible for asylum seekers to speak out effectively and be listened to in detail.

One case monitored by ACAT (together with La CIMADE) illustrates these concerns in relation to effective legal remedies and dangerous returns.

Ali Sher was born in March 1995 in the Punjab province of Pakistan. When his brothers and sisters were killed, he fled the country and arrived in France at the age of 15, when he was recognised as an isolated minor and placed in the care of the child protection services. When he reached the age of 18, he applied for residency at the prefecture of Dordogne, the jurisdiction where he lived. On 24 July 2014, the prefect of Dordogne rejected his application and ordered his removal to Pakistan. In the absence of legal advice, Mr Sher did not contest the legality of this decision within the 30-day timeframe, and so the order was put into effect.

On 10 March 2015, the young man was arrested in the streets of Bordeaux by police. On the same day, the prefect of Gironde ordered that he be placed in administrative detention. While in detention, Mr Sher drafted an asylum application. His case was heard by an OFPRA protection officer on 27 March 2015. On 30 March 2015, OFPRA issued a highly circumstantial decision recognising the current threat of inhuman and degrading treatment in the event of the young man being returned to Pakistan and granted him the benefit of auxiliary protection. Mr Sher was freed the same day. On 10 April 2015, Mr Sher was summoned by the prefect of Gironde to an appointment on 20 April with a view to granting him a residency permit as a beneficiary of auxiliary protection. The summons clearly indicated the purpose of the appointment at the prefecture and listed the documents required. This summons annulled the removal order dated 24 July 2014.

On 20 April 2015, when he arrived at the desk of the Gironde prefecture, Mr Sher was informed that a decision by OFPRA dated 4 April 2015 had “withdrawn his auxiliary protection”. The prefect then had him arrested by police on the premises of the prefecture and informed him of an order to place him in administrative detention. Mr Sher was immediately transferred to the administrative detention centre in Mesnil-Amelot, in the Paris region. While in administrative detention, the young man tried to contest the legality of the treatment to which he had been subjected. He saw a lawyer free of charge “on call” for no more than a few minutes prior to his hearing at the administrative court in Melun, which rejected his appeal without outlining the reasons for its decision (as is customary in such cases). Appeals against such rulings are not suspensive under French administrative law. On 23 April 2015 at 4 PM, the administrative authorities tried to remove the young man from French soil. In the face of protests from the staff on board the aeroplane, the flight was cancelled and Mr Sher was escorted back to the detention centre. Upon his return, he complained that he had been subjected to physical violence by his escort at the time of boarding.

It is best practice to notify the JLD on the eve of the hearing by faxing the documents associated with the case so that the lawyers and the JLD’s court registrar can familiarise themselves with the file and to allow the applicant to prepare himself for the hearing. Because such due diligence is not mandatory, it was not respected in this case. On the morning of 25 April, the case had still not been brought before the JLD, and he had not received any of the procedural documents relating to Mr Sher’s detention. A few hours or even minutes before the legal deadline for bringing the case before the JLD, Mr Sher was forcibly boarded onto a flight of which he had not been previously informed.

Neither the exact itinerary nor the name of the airline was provided. Mr Sher was unable to contest his removal a second time. As well as the risk identified by OFPRA in its ruling on 27 March 2015, there is now a further risk of inhuman or degrading treatment given that he was arrested by Pakistani police as he disembarked from the aircraft. At the time of writing, the Interior Ministry, which was contacted by telephone, by letter and by email at the beginning of the procedure and again urgently at the time of the incident, had not responded to the questions or concerns raised by ACAT-France and La Cimade.

10.3.7 INEQUALITY BETWEEN ASYLUM SEEKERS REGARDING ACCESS TO ASYLUM JUDGES WHO ARE SPECIALISED, TRAINED AND SIT COLLEGIALLY

The CNDA currently has competence to hear appeals against decisions by OFPRA (with no suspensive effect for applications filed while in detention), whereas the administrative courts have competence to hear appeals filed in holding zones against ministerial decisions to deny entry to the French territory. While it has announced the creation of a suspensive remedy for asylum seekers in detention, the French government plans to transfer asylum-related disputes involving detainees to the administrative courts (in almost all cases, the competence of the administrative courts will be the rule and that of the CNDA will be the exception). The delegate magistrates of the administrative courts, sitting alone, will therefore not only hear appeals filed in holding zones against ministerial decisions to deny asylum entry to France, but also appeals against rejections of asylum applications filed while in detention. The competence of general administrative judges sitting alone, already in place in the case of holding zones, does not provide a sufficient guarantee of the right to an effective remedy. Only at the time of the hearing are magistrates made aware of complex cases involving specific geopolitical details which they are not trained to fully understand. Hearings take place within three days following receipt of the application, and judgements are issued as soon as the hearing ends, which means that magistrates neither have the time to fully examine the files nor to carry out detailed research when reaching their decision. They are not specialised or adequately trained to deal with such complex and delicate questions. The training provided for magistrates in the administrative courts is limited, optional and mainly made available to young magistrates who in practice usually sit collegially.

The problems associated with asylum should not be amalgamated with all of the other legal issues associated with the right of foreign nationals to residency in France. Remedies against orders to leave French soil made following the rejection of asylum applications, although they are suspensive before the administrative courts, do not represent the same legal challenge as in asylum cases. The scope of the Convention against Torture and the Geneva Convention extends beyond the interpretation by the French administrative courts of what constitutes a breach of Article 3 of the European Convention on Human Rights, which is considered alone – often under rushed circumstances – by the administrative magistrates.

10.3.8 RIGHT TO COLLEGIALLY

Except in the case of deprivation of liberty, the proposed asylum reforms break with the principle of equal access to justice and effective remedies by providing that asylum seekers on expedited procedures and those who have seen their applications closed or deemed inadmissible have their asylum applications judged before the CNDA by a judge sitting alone, while other asylum seekers will continue to benefit from a collegial panel of judges.

Collegiality provides asylum seekers with an additional guarantee of an effective remedy. Judges sitting collegially in the CNDA include one representative of the High Commissioner for Refugees (HCR), whose independence and knowledge of geopolitics and cultural diversity are invaluable in understanding the cases brought before the court. Judges sitting collegially also rely on a detailed study of each case by a rapporteur. By granting the right to a suspensive remedy in the case of priority procedures, the French government proposes to have such remedies judged by CNDA magistrates sitting alone, without the above-mentioned guarantees and with shorter examination periods (one month instead of five), which means that applicants and their lawyers will be unable to effectively prepare their defence.

10.3.9 MATERIAL CONDITIONS OF HEARINGS (PUBLIC HEARINGS, THEORY OF APPEARANCE, REMOTE HEARINGS AND VIDEO CONFERENCES)

In the list of issues relating to torture and ill-treatment in France presented to the Human Rights Committee for the July 2014 session, ACAT referred in points 23 and 24 to the loss of equality before the justice system inherent in the use of video-conference and remote hearings in asylum cases. These concerns remain unchanged for the same reasons identified in 2014. Indeed, they have been exacerbated by the stated intention of the French government to extend these practices in the future.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- Take the necessary steps to guarantee in practice an equal right to suspensive and fully effective remedies for all asylum seekers.

10.4 PROTECTING FAMILY LIFE: DIFFICULTIES BRINGING TOGETHER REFUGEE FAMILY MEMBERS (ART. 23)

The families of refugees are made to wait an abnormally long time in precarious and dangerous situations, both in their home countries and in transition countries.

Waiting times before visas are granted to the family members of refugees, often lasting several years, are rarely due to the actions of the refugees themselves or even the poor state of the documents at their disposal to prove their identity. Instead they are mainly the result of delays by the French administrative authorities in providing two types of administrative documents which are legal prerequisites before the application procedure for long-term visas to bring family members together can begin: the definitive residency permit of the refugee family member and the civil status documents transcribed by the relevant department in OFPRA. The average waiting time before these civil status documents are provided by OFPRA is almost 10 months according to the body itself. Residency permits (residency card for refugees and a temporary one-year residency permit for those benefiting from auxiliary protection) are provided on average 6 to 9 months after notification of the decision to grant international protection.

The consular authorities, who are responsible for verifying the authenticity of the national civil status documents of family members, lack diligence in their work. Access to consulates is difficult in practical terms, involving several telephone conversations in French between consulate staff and family members with poor French. As a result of the misinformation associated with this oral and unverifiable communication and the lack of understanding on the part of the families, in the absence of letters sent to the refugee family member located in France – who often speaks French, is in a better position to respond and could act as an intermediary –, some appointments are not honoured and some documents are not communicated.

In many cases visas are rejected implicitly, whereby the consulate has failed to examine the application with due diligence. This leads to a legal dispute that is made all the more fastidious by the fact that cases must be brought before the appeals commission before the procedure can begin, further delaying the final decision.

The Interior Ministry regularly reaches a favourable decision shortly before the hearing at the administrative court in order to prevent its decision being annulled by the administrative judge.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- Take the necessary steps to expedite procedures to bring family members together.

10.5 PROTECTION OF PRIVACY AND DATA (ART. 17)

Mandatory provision of information, record-keeping and breaches of the confidentiality of asylum applications in the asylum and immigration bills.

In its recommendations at the end of the fourth universal periodic review of France, the Committee expressed concerns about the proliferation of various databases, which could raise questions in relation to Articles 17 and 23 of the Covenant. These concerns continue to apply, particularly in relation to foreign nationals and especially asylum seekers.

The proposed reforms of the asylum and residency laws (the first of which is in the final stages of adoption by Parliament, while the second is on the National Assembly's agenda for July 2015) introduce new requirements to record the personal data of foreign nationals and asylum seekers. Personal data (civil status, filiation, means of entry to France, civil status documents, state of health and "vulnerability"), much of which should be covered by the principle of confidentiality applied to asylum applications, will have to be recorded by associations that manage accommodation centres for asylum seekers. They will be required to provide this information, as well as information relating to the asylum application procedure, which will prove problematic for asylum seekers whose presence in such centres is no longer "justified" in the eyes of the public authorities.

Furthermore, Article 25⁵⁹ of immigration bill no. 2183 stipulates that a long list of administrative bodies and both public and private entities will be obliged to provide personal data at their disposal at the request of the "competent administrative authority" where said authority deems such information necessary in order to "verify the sincerity and exactitude of declarations made or the authenticity of documents produced with a view to securing or verifying a residency permit". Such an obligation is extremely broad and vague and, we feel, carries a serious risk of violating the provisions of Article 17 of the Covenant.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:
- Revise the immigration bill in order to remove the provisions on the communication of private information outside of the criminal procedures governed by law.

59. www.assemblee-nationale.fr/14/projets/pl2183.asp.

10.6 FREEDOM TO CHOOSE RESIDENCY (ART. 12 (1)) AND THE PRINCIPAL OF LEGALITY IN SENTENCING (IMPOSED RESIDENCY AND TERMINATING APPLICATIONS, ART. 14 (7))

The asylum reform bill⁶⁰ will impose “directive” housing solutions (with no available choice) on asylum seekers in accommodation centres for asylum seekers. Those who refuse to accept this “offer of directive housing” may be denied any further material assistance. The decision to make the payment of an allowance – a minimum requirement to preserve the dignity of such highly disadvantaged members of society – conditional on their acceptance of a mandatory housing solution is contrary to the provisions of Article 12 (1) of the Covenant.

Furthermore, added to this obligation will be a requirement to be present in one’s place of residency. In the event of an unjustified absence, asylum seekers will be at risk of seeing their asylum application terminated by OFPRA, based on the information relayed by the prefecture. Also in this regard, the termination of an asylum application by OFPRA in the event of failure to respect this requirement constitutes a disproportionate and unacceptable sanction as it deprives asylum seekers of the right to have their fears of persecution in their home country examined. This sanction is a punishment that does not relate to any identifiable offence with an associated sentence set out under criminal law.

This provision is all the more open to criticism given the fact that asylum seekers may have perfectly legitimate reasons, albeit difficult to demonstrate in writing, for wishing to reside in a particular place, perhaps to stay close to their family or community or access the assistance made available by certain associations, the majority of whom are located in the capital. Confining them to a “directive” place of residency not only limits their right to freely choose their residency and their right to privacy, but also undermines their capacity to look for psychological, medical, social or legal aid. The requirement of a written justification in the event of their absence is a breach of their right to privacy and potentially of the principles of confidentiality associated with asylum applications and medical secrecy.

ACAT-France and FIACAT call on the Human Rights Committee to recommend that the State party:

- Revise the asylum reform bill in order to guarantee asylum seekers the right to freely choose their place of residency, whether in the home of a private individual or managed by the public authorities, and to enjoy free movement and be able to act freely without interference in their private lives.**

60. *Ibid*, Article 7 section 3.

