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

Alternative Report of FIACAT and ACAT-France for France's third Universal Periodic Review

Third Cycle of the Universal Periodic Review
29th session, January-February 2018

June 2017

Fédération internationale de
l'Action des chrétiens pour l'abolition de la Torture
Délégation Permanente auprès des Nations Unies
1 rue de Varembé
1202 Genève, Suisse
Mobile : 00 41 78 74 99 328
www.fiacat.org

ACAT-France
7 rue Georges Lardennois
75019 Paris
France
Tél + 331 40 40 42 43
www.acatfrance.fr

Authors of the report

ACAT-France

The Action by Christians for the Abolition of Torture (ACAT) is a Christian human rights NGO, based in Paris, created in 1974, and recognized as being of public utility. Basing its action on international law, and calling for action for all, without any ethnic, ideological or religious distinction, ACAT-France fights against torture, for the abolition of the death penalty, the protection of the victims, and for the defense of the right of asylum, thanks to a network of nearly 39,000 members and donors. In particular, it exercises vigilance with regard to the work of sensitive institutions such as the police, the gendarmerie, the justice system or the penitentiary administration.
This action is based on testimonies and in-depth research. In 2015, ACAT-France conducted an investigation into the use of force by law enforcement officials. ACAT-France also conducts an action for the right of asylum by bringing since 1998 a legal aid to the asylum seekers and by acting within associative collectives for the respect of this fundamental freedom. On the basis of the information it collects, ACAT-France carries out information and awareness-raising activities and offers campaigns relayed by members and supporters. ACAT-France is a member of the French Coalition for the International Criminal Court and has been actively working for 15 years to guarantee victims of crimes against humanity a right to an effective remedy under French law with regard to extraterritorial jurisdiction.

www.acatfrance.fr

FIACAT

The International Federation of Action by Christians for the Abolition of Torture, FIACAT, is an international non-governmental human rights organisation, set up in 1987, which works towards the abolition of torture and the death penalty. The Federation brings together some thirty national associations, the ACATs, present in four continents.

FIACAT – representing its members in international and regional organisations

It enjoys Consultative Status with the United Nations (UN), Participative Status with the Council of Europe and Observer Status with the African Commission on Human and Peoples' Rights (ACHPR). FIACAT is also accredited to the International Organisation of *la Francophonie* (OIF).

By referring the concerns of its members working on the ground to international bodies, FIACAT's aim is to encourage the adoption of relevant recommendations and their implementation by governments. FIACAT works towards the application of international human rights conventions, the prevention of torture in places of detention, and an end to enforced disappearances and impunity. It also takes part in the campaign against the death penalty by calling on states to abolish capital punishment in their legal systems.

To give added impact to these efforts, FIACAT is a founding member of several campaigning coalitions, in particular the World Coalition against the Death Penalty (WCADP), the International Coalition against Enforced Disappearances (ICAED) and the Human Rights and Democracy Network (HRDN).

FIACAT – building up the capacities of the ACAT network in thirty countries

FIACAT assists its member associations in organising themselves, supporting them so that they can become important players in civil society, capable of raising public awareness and having an impact on the authorities in their country.

It coordinates the network by promoting exchanges, proposing regional and international training events and joint campaigns, thus supporting the activities of the ACATs and providing them with exposure on the international scene.

FIACAT – an independent network of Christians united in fighting torture and the death penalty

FIACAT's mission is to awaken Churches and Christian organisations to the scandal of torture and the death penalty and convince them to act.

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International Federation of Action
by Christians for the Abolition of Torture
Permanent Delegation to the United Nations
1 rue de Varembé
1202 Genève, Suisse
Mobile : 00 41 78 74 99 328

ACAT-France
7 rue Georges Lardennois
75019 Paris
France
Tél + 331 40 40 42 43

Follow-up of recommendations from the second cycle of the UPR

Regarding previous recommendations accepted by France during its second review in 2013, our organisations hope to carry to the Council their observations concerning t***he use of force by the police and gendarmerie***, as well as their observations on ***the situation of asylum seekers and refugees.*** They also hope to attract the attention of the Council on the current obstacles to the fight against ***the impunity of international crimes.***

I. The use of force by French law enforcement officials

1. In March 2016, ACAT published a report sanctioning the use of force by law enforcement officials in France. Titled "L'ordre et la force", this document is the result of a large-scale inquiry conducted throughout eighteen months, throughout the course of which ACAT examined 89 cases of alleged police violence and questioned about sixty parties involved in the issue. From the observations and scrupulously cross-checked and reviewed analyses from this inquiry, ACAT has compiled a certain number of recommendations that it brings before the relevant authorities. The observations hereunder are based on this expert assessment.

1. Recourse to the rubber flash ball guns (Flashball and LBD 40)

2. In its **recommendation in 2013, India**[1] encouraged France to prohibit the use of dangerous equipment, such as rubber bullets or stun guns. This equipment is a serious matter of concern for ACAT.

3. Supposedly non-lethal or "less lethal" as opposed to fire arms, the weapons called "intermediates" were very much developed these last ten years in order to provide law enforcement officials with a wide range of means allowing them to regulate the use of force. If the United Nations recommends the use of non-lethal incapacitating weapons, it is nonetheless with the aim of " increasingly restraining the application of means capable of causing death or injury to persons".[2] Amongst the weapons most greatly used in France throughout the last decade, are rubber flash ball guns.

1.1. Widely used weapons

4. French law enforcement officials currently utilises two types of rubber flash ball guns: the Flash-Ball Superpro® and the LBD 40x46 ®. Initially intended for extreme situations, these weapons are used daily nowadays[3]. They were used an average of seven times per day in 2012[4]. They are particularly used on the occasion of maintaining order during protests.

5. According to the response issued by the French government, the rubber flash-ball guns or tasers could allow first and foremost "*for the avoidance of the use of the service pistol*". However, no official figure supports this argument. The only figures that ACAT could find, indicate the contrary. While the use of rubber flash ball guns has considerably increased, the use of firearms has not, for its part, been diminished.

1.Recommendations by India in the Working Group report on the UPR, para. 120.103
2.United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (September 1990), articles 2 and 3
3.The proper use of flash ball guns is determined by a directive from 2 September 2014. The use of these weapons is only theoretically possible in the case of self-defense of persons or property, state of necessity, violence, or assault committed against law enforcement officials or if they cannot defend by other means the ground which they hold, and for the gendarmerie only, in the case of the escape of an arrested person. These weapons can also be used within the framework of operations to maintain order, when "circumstances render it absolutely necessary".
4.The Defender of Rights, Report on the three means of intermediate force, May 2013,p.32

1.2. Flashball and LBD 40: More than 44 victims in 10 years

6. According to the response issued by the French government, intermediate weapons subsequently allow for "minimising the risks of injuries for both arrested persons and law enforcement officials". However, ACAT observes the contrary, that these weapons aggravate the risk of injuries.

7. Several serious injuries have been recorded following the use of flash ball guns (Flashball and LBD 40) particularly upon **impact with the head.** The data is striking: the growth of irreversible ocular injuries. Several persons have lost an eye or vision. Additionally, the likelihood of death arises in the case of shooting at the level of **the abdomen and chest**, particularly when it is taken at a short distance[5].

8. The French authorities have the greatest difficulty recognising the challenges caused by these weapons. The number of injured persons is regularly underestimated. Therefore, it continues to increase. Since 2004, ACAT France has identified at least 43 persons seriously injured, for the most part to their eye sight. 21 have been blinded or have lost the use of an eye. Additionally, a man suffered a shot to the thorax at close range and died in December 2010 [6]. The victims of these weapons are often very young: a third were minors when they were disabled. Amongst them, were two children aged nine years old.

Amine, 14 years old, disabled after a shot to the genital area

On 14th July 2015, after leaving the mosque at the end of prayer, Amine was having fun with his friends throwing firecrackers, when a scuffle broke out further afield between some youths and the police. While the teenager claims to not have been involved with this group, Amine's father testifies that his son had "*seen a police officer point his gun before receiving a shot from the flashball at the level of his lower abdomen. He has a ruptured testicle*". The young boy would have been "*left on the ground, dying, by the police*" and was reportedly transported to his home by his friends. The shot left the boy in a serious state. The medical report noted several injuries on his right testicle. The family has filed a complaint, and the Defender of Rights has taken up this case. The inquiry is still ongoing.

Yann Zoldan, 26 years old, serious injury to his face

On 21st April 2014, Yann Zoldan was seriously injured to his face after a shot from a LBD 40x46®during the evacuation of a squat site. He testifies: *"The [Anti-crime Brigade] charged at us without reason, I sought refuge behind a bin. A BAC police officer saw me and told me to get out of there, raising his baton to hit me. I left, raising my hands and at that moment I was knocked down. I was really stunned, so much so that at the beginning, I did not understand what had happened to me. At the hospital, the doctor told me that only three centimetres closer, and I was dead...I had all the bones in my cheek broken or crushed, and part of a nerve damaged. A nerve where I have not recovered feeling after almost a year. It was necessary to wait for my swelling to go down before they could operate on me. They had to put me in a cast to help the bone reset. I woke up from the operation with five casts on my face".* A judicial inquiry is still ongoing.

5.Amongst the medical literature on the subject, see in particular P. Wahl, N. Schreyer and B. Yersin, Injury pattern of the Flash-Ball, a less-lethal weapon used for law enforcement: report of two cases and review of the literature (2006); Joao Rezende-Neto, Fabriccio DF Silva, Leonardo BO Porto, Luiz C Teixeira, Homer Tien and Sandro B Rizoli, Penetrating injury to the chest by an attenuated energy projectile: a case report and literature review of thoracic injuries causes by "less-lethal" munitions, World Journal of Emergency Surgery, 26 June 2009; Masahiko Kobayashi, MD, PhD and Paul F. Mellen, MD, Rubber Bullet Injury. Case report with autopsy observation and literature review, Am J Forensic Med Pathol, September 2009

6.The police officer responsible for the shooting was sentenced in March 2017 for involuntary manslaughter, to a six months deferred sentence of imprisonment.

Recommendations:

- **Prohibit the use of rubber flash ball guns and proceed with their immediate withdrawal.**

2. Requirements of effective inquiries

9. **In 2013, New Zealand, the Russian Federation, Spain, and Switzerland** recommended that France ensure that the allegations of ill-treatment are promptly, independently, transparently and effectively investigated [7].

10. International law requires states to conduct an effective inquiry when there is probable cause to believe that ill-treatments or acts of torture have been committed, or when the use of force results in loss of life. The inquiries must particularly be lead independently from the executive branch and without hierarchical or institutional link[8]. They must moreover be comprehensive and in- depth[9], be led briskly[10], include the victim throughout the entire process and be transparent vis-à-vis the public[11].

11. During its research work, ACAT examined these criteria one by one. In fact, it has proven to be extremely difficult, within the cases in which an illegal use of force is alleged, to obtain a fully effective inquiry.

2.1. A relative independence

12. Within the French judicial system, if the inquiries fall within the jurisdiction, according to the case, of the Public Prosecutor's Office or the examining magistrate, they are nevertheless, in practice, appointed to the investigative services. When cases implicate law enforcement official, there are two possibilities:

- In certain cases (generally the most serious) the inquiries are entrusted to the services of internal affairs: General Inspectorate of the National Police (IGPN) or the National Gendarmerie (IGGN).
- In the vast majority of cases, the investigations are entrusted to the services of the police or the gendarmerie themselves.

13. In either case, there is no complete institutional independence. In the case of IGPN and IGGN, they are internal inspection bodies composed of police officers or gendarmes placed directly under the supervision of police management or national gendarmeries whose impartiality is in question. In July 2010, a serious report from the Court of Auditors denounced accordingly the absence of external intervention in the review process and critiqued the IGPN's lack of independence and transparency[12].

14. In the second case, the question of independence is evidently more problematic, seeing as in fact, police or gendarmerie officers can be asked to inquire facts implicating their own colleagues, this is what ACAT was able to note in certain cases.

7.Recommendations by New Zealand, the Russian Federation, Spain, and Switzerland in the Working Group Report of the UPR, A/HRC/23/3, para. 120.93 to 120.96

8.ECHR, El Masri c. the Former Yugoslav Republic of Macedonia, 13 December 2012, § 91-92 and § 184 ; see also CPT, 14th General Report [CPT/Inf (2004) 28], § 32

9. CEDH, Ghedir and others c. France, n° 20579/12, 16 October 2015. See also Mustafa Tunç c. Turquie, n° 24014, 14 April 2015 § 169; Ramsahai and others c. Pays-Bas [GC], no 52391/99, § 324, ECHR 2007-II ; Giuliani and Gaggio c. Italie [GC], no 23458/02, § 301, ECHR 2011 ; See also CPT, CPT, 14th General Report [CPT/Inf (2004) 28], § 33

10. ECHR, Al-Skeini and others c. United Kingdom [GC], no 55721/07, §167, ECHR 2011; CPT, 14th General Report on the CPT's activities § 35

11.ECHR, Hugh Jordan c. United Kingdom, no 24746/94, § 109, ECHR 2001-III; CPT, 14thGeneral Report on the CPT's activities, §36

12."La police des polices épinglée par la Cour des comptes", L'Express, 17 January 2012.

The case of Ali Ziri. A very internal...inquiry

Ali Ziri, aged 69 years old, died on 9th June 2009 following a roadside check. Having had access to the entire judicial report of this case, ACAT was able to observe that a considerable portion of judicial investigations had initially been carried out by police officers serving within the same police station as the implicated officers. They have notably conducted hearings of some witnesses and examined the main physical evidence, namely the police station's video surveillance. It is on the basis of their analysis and this recording that the entire judicial trial then unfolded. IGPN would only be, for its part, responsible for the investigations four months later. In this case, the examining magistrate did not carry out himself, any act of inquiry, despite the repeated requests of civil parties. The French Judiciary closed this case with a definitive dismissal of the charges in February 2016. The case is henceforth taken before the European Court of Human Rights. The family reported a violation of articles 2 and 3 of the Convention on the substantive and procedural aspects (excessive and disproportionate use of force, absence of an effective inquiry).

2.2. Disputable and shallow inquiries

15. ACAT observes next that the investigations led by the interrogators in this type of case are regularly perceived as dubious and lacking in detail. Thus, the conditions in which they are carried out do not allow them always to identify the perpetrators of violence, to establish the facts, to determine the origin of injury or death, to shed light on the grey areas or highlight the contradictions. Several factors are involved here. Sometimes they are done by law enforcement officers themselves: **corporatism**, under-reporting, **standardised statements,** sometimes even, false declarations, and **false and forged documents** in the reporting of proceedings[13].

16. Other factors are more the concern of the judicial authority. ACAT observed that law enforcement officers often benefit from an **additional credibility** in the eyes of magistrates and investigators, and the plaintiffs sometimes have the greatest difficulty in attaining the completion of some acts of inquiry which seem necessary in the establishment of the facts. In several cases thus, **refusals to request acts of inquiry** such as the on-site reconstruction of events, examinations of witnesses, and the viewing of security camera footage, etc., are noted.[14]

Refusal of requests for acts of inquiry

In the case of **Ali Ziri**, deceased in June 2009, the examining magistrate systematically refused, for example, to carry out all the acts of inquiry requested by civil parties. The latter wished for the questioning police officers to be examined, for a re-enactment of events to be carried out and for the video surveillance images of the arrival of Ali Ziri to the police station to be viewed in the presence of witnesses, police officers, the prosecutor, civil parties and medical examiners. These requests have all been refused by the examining magistrate on the basis that they "*are not likely to provide clarification on the cause of death of Mr. Ziri*". In June 2017, ACAT published a report concerning this case, in which it concludes that the inquiry was not thorough enough and was carried out without any guarantee of independence, contrary to the requirements of international law[15].

In the **Lamine Dieng** case, deceased due to asphyxiation during his arrest in 2007, his family requested, for its part, a recreation of events at the site of the death, which occurred on a crowded street in Paris. According to Ramata Dieng, the sister of the victim, this request was refused in favour of a recreation carried out in the judge's chamber, with chairs then functioning as cars. Seven years after the events, the case was dismissed.

Finally, concerning the fatal shooting of **Lahoucine Ait Omghar** in March 2013, it took two years and several hearings for a re-enactment of events to at last be carried out on the site of the tragedy. It is on appeal, after a first refusal from the examining magistrate, that this request was authorised. The recreation took place in July 2015.

13.For more details on the related cases, see ACAT's report,"L'orde et la force", p.76 to 78.
14.For more details on the related cases, see ACAT's report,"L'orde et la force", p.79 to 80.
15.ACAT,"AffaireAli Ziri: autopsie d'une enquête judicaire", June 2017

Recommendations:

- **To ensure that detailed and effective inquiries are systematically led by a completely independent body for events implicating police officers or gendarmerie.**

3. Rare and weak convictions

17. In 2013, Uzbekistan recommended that France take all measures to prevent all unlawful conduct on the part of law enforcement officials[16].

18. The prevention of ill-treatment presupposes in the first place that the observed acts are duly sanctioned, in order to prevent impunity. However, based on ACAT's observations, the cases implicating an illegal use of force rarely result in convictions. Amongst the 89 cases examined by ACAT, the majority have resulted in dismissals or acquittals.

19. Additionally, it is observed that the convictions are rarely proportionate to the gravity of the acts when dealing with police violence. There is, from this point of view, a clear difference from the treatment between the police officers prosecuted for violence and other persons answerable to the law. In the cases examined by ACAT, when convictions are pronounced, they rarely exceed a suspended sentence of imprisonment. Amongst 89 cases examined by ACAT and covering a period of ten years, only 10 have, to this day, led to convictions. It deals uniquely with suspended prison sentences, even when the officers were convicted of manslaughter, or intentional aggravated assault with forgery and fraud.

20. No further available information allows ACAT to know which disciplinary sanctions were eventually taken by the higher authorities. In the cases which it examined during its inquiry, those for which the disciplinary sanctions are known to the public are rare. Where this is the case, the sanctions imposed on intentional acts of violence are sometimes very weak in respect to the gravity of the harm caused and the faults noted. Several examples can be given. The first concerns the **Nassuire Oili** case, a 9 year old child who was blinded after receiving a shot from a flashball right in the face, on 7 October 2011 in Mayotte. In July 2012, the Defender of Rights recommended disciplinary proceedings for the disproportionate use of this weapon and for the lack of diligence in the care provided[17]. The perpetrator of the shooting was only the subject of an official reprimand,, the Interior Minister indicated to the Defender of Rights that "*bearing in mind the gravity of events, the military was reprimanded by the Minister*". Likewise, concerning the death of **Abdelhakim Ajimi** during his questioning in 2008. The Defender of Rights recommended that the officers implicated be the subject of disciplinary hearings for the disproportionate use of force. In this case, two officers were suspended effectively from service for a month (temporary suspension for 12 months, of which 11 suspended for one, and 18 months of which 17 supended for the other).

Recommendations:

- **Take measures to guarantee that all perpetrators of police violence are convicted to sentences proportionate to the gravity of the act.**

16.Recommendations by Uzbekistan in the Working Group Report on the UPR, A/HRC/23/3, para. 120.97
17The Defender of Rights, MDS decision 2011-246, 3 July 2012

II. Status of asylum seekers and refugees

21. The fundamental freedom of asylum guaranteed by the Geneva Convention on 28 July 1951 relating to the Status of refugees, as well as other international documents, involves the protection of persons having fled their country due to the potential risk of persecution.

22. On 29 July 2015, a law was adopted reforming the right of asylum (act no. 2015-925). If certain recommendations previously formulated by the different international bodies for the protection of human rights seem to have been taken into consideration within the framework, several issues remain on the subject of access to international protection in France. These are as much linked to the contents of this reform as the conditions of its implementation, which are guided above all by an imperative to control the migration flow.

23. Contrary to France's frequently defended position to justify the several failures denounced by civil society, it has not been confronted by a "migration crisis" in recent years. In fact, the application for asylum in France has seen a very relative increase between 2014 and 2016 (+25% for 2014/2015, and +5% for 2015/2016), compared to other European countries such as Germany where this increase has exceeded +100% for each of these years. France is ranked firmly at 6th then 3rd place amongst the European countries welcoming the most asylum seekers in 2015 and in 2016 respectively[18]. But in proportion with its population, it only ranks 14th place in Europe throughout these two years. In 2016, France thereby only counted 5.3 refugees and asylum seekers for every 1,000 residents.

1. Access to the right of asylum

24. The asylum reform of July 2015 had the aim of improving the treatment of asylum seekers and the reception conditions of asykum seekers, as France announced during the second cycle of the Universal Periodic Review in May 2013[19]. Two years after its adoption, these objectives are however, still far from being attained.

1.1 A very limited access to the asylum procedure

25. The act of 2015 sought to facilitate access to the asylum procedure in France, by eliminating the prerequisite requirement of domiciliation and by requiring the administration to check all asylum applications within three to ten days. However, because it had not provided the aforementioned administration with the necessary financial means and human resources, it is unable to fulfil its obligations. Throughout the country, asylum seekers are consequently obliged to wait between several weeks and several months, depending on the area, in order to register their request.

26. The administration is thus frequently condemned by the administrative courts for the violation of the right of asylum. Despite this, the government does not take the appropriate, long term measures so as to implement the act of 2015 and guarantee access to the asylum process to all.

27. This situation is extremely worrying to the extent where, as long as they have not filed their application for asylum, the individuals concerned cannot benefit from a living allowance, health insurance, accommodation, and accompanying measures for asylum seekers. Thousands of asylum seekers, among which are several vulnerable persons including women and families with children, are consequently left to fend for themselves. A certain number amongst them live on the street in terrible conditions, the ordinary emergency shelter measures being saturated. They depend then,

18.Source: Eurostat. In 2015, France received 74,468 asylum seekers, behind Germany (441,800), Hungary (174,435), Sweden (156,110), Austria (85,505), Italy (83,245). In 2016, it received 78,371 applicants, versus 722,265 in Germany and 121,185 in Italy.
19.A/HRC/23/3 para.118.

completely on associations and citizen's organisations for the fulfilment of their basic needs: food, hygiene, health, clothing and bedding.

28. Furthermore, asylum seekers who have still not registered their request are deprived of authorised residency and are therefore exposed to the constant risk of being held by the police and sent back to their country of origin, before even having been able to present their concerns in the event of a return, before an administration or a specialist court on asylum.

Recommendations:

- **Provide the administration with the necessary financial and human resources, to guarantee access to proceedings to all asylum seekers within the legal time limit.**

1.2 Undignified material reception conditions

29. The reform of July 2015 envisaged moreover that once the asylum application made, an accommodation solution must be proposed to the asylum seeker according to hisneeds, taking into consideration his personal situation and the capacity of available shelters. France has thus intended to comply with the directive 2013/33/UE of the European Parliament and the Council of 26 June 2013 stipulating that "*member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health*". Additionally, during its second review in May 2013, France declared that the strengthening of shelter capacities would be one of three aspects on which French asylum policy would be reformed.

30. Significant efforts were made by the government between 2014 and 2017, with the creation of more than 30,000 dedicated shelter spaces. Nevertheless, the delay taken by France for ten years was such, that only 50% of asylum seekers today have access to the shelter arrangements intended for them, often following long months of waiting in the street or in informal and unsanitary camps, such as in Paris or in Calais.

31. The authorities announced that this system will include 80,000 places by the end of 2017. However, by way of comparison, almost 100,000 persons (accompanied minors included) [20] have filed a request for asylum in France throughout only 2016, while tens of thousands more still waited on the fate of their request for protection to be established once and for all. From year to year, we therefore observe an overcrowding of dedicated shelter spaces, faced with an increasing, in a gradual but continuous manner since 2007, number of requesst for asylum.

32. If they cannot be assisted in a dedicated shelter, asylum seekers who are not authorised to work, receive financial aid paid by the State of around 360 €/month for a single person. This allocation remains very insufficient for reasonable living in France.

33. Nevertheless, the material conditions in which the asylum seekers live throughout their process directly affect their ability to exercise their rights and to address their concerns before the authorities responsible for asylum. In fact, the accessibility and character of the accommodation depends on the quality of social and legal assistance from which asylum seekers benefit. This assistance is vital for foreign persons having suffered serious trauma and finding themselves suddenly faced with the administrative labyrinths and legal complexities of France's asylum process. However, all the planned shelters by the asylum seeker reception system are not equal, some being particularly precarious, and the degree of support varies substantially from one organisation to the other. By extension, having to engage in the asylum process while being forced to live in the street, clearly jeopardises the chances of obtaining protection, the support proposed by the State being even more limited in this case.

20.French Office for Immigration and Integration (OFII), Activity Report 2016.

Recommendations:

- **Heighten the efforts made to increase the number of places in Reception Centres for Asylum Seekers (CADA) and guarantee that asylum seekers benefit from high quality social and legal support.**

2. Equal treatment of asylum requests

34. Following the unanimous recommendations of all human rights bodies from the Council of Europe and the United Nations as well as civil society, France has undergone reform of its asylum process, with the law of 29 July 2015. In 2013, **Mexico** called for France to ensure that any decision to expel asylum seekers, including those subject to the priority procedure, not be executed until a competent judge has ruled on the matter[21].

35. France has therefore modified its "priority procedure", now called "a fast track procedure", by providing it with a suspensive appeal in the event of rejection of the request for asylum in the first instance. However, if this aspect of the reform has mitigated the risks of flagrant violation of the principle of non-refoulement, the use of the fast-track procedure to differentiate the treatment of asylum requests on the basis of extraneous conditions to the merits of these requests, has been maintained and even exacerbated.

2.1 The increasing number of reasons for placement on the fast-track procedure

36. The asylum reform of 2015 has still broadened the requirements for the fast-track procedure application to such a point, that it concerned 39% of asylum requests filed by the French Office for Protection of Refugees and Stateless Persons (OFPRA) in 2016, the highest historical rate [22]. Although in the previous version of the reform, the legislation relating to asylum provided three criteria for the application of the priority procedure [23], there are no less than ten reasons which can henceforth be invoked by the administration to justify the placement of a request for asylum on the fast-track procedure[24], and they are reflective of a quasi-systematic suspicion of fraud from applicants.

21.Recommendations by Mexico in the Working Group Report on the UPR, A/HRC/23/3 para. 120.163

22.OFPRA, Activity Report 2016.

23.According to article L. 741-4 of the Code of the Entry and Stay of Foreigners and Asylum Law (CESEDA) in its previous version of 29 July 2015, this procedure was applied to:

- nationals from countries of origin considered as safe, according to a set list by OFPRA and expanded on numerous occasions despite worrisome human rights situations in some of these countries;
- asylum requests considered as abusive or dilatory or presented by persons threatening public order.

24. Article L. 723-2 of CESEDA. The ten criteria provided by this article for the application of the fast- track procedure are the following:

1) The applicant originates from a country considered as safe.
2) The applicant presented a request for reconsideration which is not admissible.
3) The applicant presented false identity or travel documents, made false claims or dissimulated information or documents concerning his/her identity, nationality or the ways and means of his/her entry into France in order to mislead or presented several requests for asylum under different identities;
4) The applicant has only supported his/her request with irrelevant issues;
5) The applicant has made clearly inconsistent and contradictory, manifestly false or implausible statements which dispute verified information relating to the country of origin.
6) The applicant refuses to oblige with the requirement of providing his/her fingerprints in compliance with regulation (EU) n° 603/2013 of the European Parliament and the Council, of 26 June 2013,
7) During the application of his/her request, the applicant presents false identity or travel documents, misleads, or dissimulates information or documents concerning his/her identity, nationality or ways and means of his entry into France so as to mislead the administrative authority or presented several

37. The imprecise wording of some of these reasons, which cover a very large spectrum, leaves the administration an important margin of discretion for the triggering of this procedure and therefore comprises a very strong risk of arbitrariness. In this regard, it is significant to note that from one department to the other, in 2016, the proportion of fast-track procedures amongst the requests for asylum was able to fluctuate from 15% to 100%[25].

38. The placement on the fast-track procedure is even automatic in two instances: requests for re-examination and requests for asylum from persons originating from "safe countries" are placed on the fast-track procedure "by the determination of the law". The concept of "safe countries of origin" in particular must be removed because it undermines the principle of non-discrimination of article 3 of the Geneva Convention of 1951, by allowing France to arbitrarily assume a less well-founded character of an individual asylum request on only the basis of the applicant's nationality. The list of "safe countries of origin", which is established by OFPRA itself, includes countries for which the risks of violation of the physical and psychological integrity of the asylum seeker cannot be reduced to a minimum a priori[26].

39. Also included amongst the reasons for placement on the fast-track procedure is the registration of the request for asylum more than 120 days after the asylum seeker's unlawful entry into France. However, within the context of a continuously undersized administration in comparison to a regular increase in asylum requests, numerous asylum seekers have despite themselves, the greatest difficulties accessing services responsible for registering the requests (see 1.1 above). Not only are they thereby deprived of all access to the request for asylum and to their social rights for weeks, but they are therefore still penalised once their request is registered and placed on the fast-track procedure because they are wrongly regarded as late.

40. Nevertheless, placement on the fast-track procedure cannot be the subject of a different judicial review than what will eventually be presented by the asylum seeker before the National Court of the Right of Asylum (CNDA) in the event of rejection of his/her request by OFPRA in the first instance. It is therefore only once the final stages of the asylum procedure are reached that an applicant could claim an error had been committed by the administration during the initial qualification of his/her procedure.

41. The law of 29 July 2015, additionally authorises OFPRA to reclassify a fast-track procedure to a normal procedure when it judges that it is necessary to carry out an appropriate examination of the file or to take account the vulnerable situation of the asylum seeker. This vulnerability can be related to serious violence suffered thereby, or assessed on the basis of criteria such as age, state of health or a status of disability. However, this faculty is extremely underutilised by OFPRA: in 2016, only 15 of 27,654 requests for asylum presented to OFPRA on the fast-track procedure, have been returned to a normal procedure[27]. The possibilities of reclassification for vulnerable persons are therefore quite unrealistic.

Recommendations :

- **Eliminate the list of safe countries of origin**

requests for asylum under different identities;

8) Without legitimate reasons, the applicant has unlawfully entered France or remained there unlawfully, and did not present his/her request for asylum within the period of one hundred and twenty days upon his/her entry into France;

9) The applicant only presents a request for asylum in order to counter a deportation order;

10) The presence in France of an applicant constitutes a serious threat to public order, public safety or the security of the state.

25.From the overseas department. V. OFPRA, Activity Report 2016.

26.OFPRA's list of safe countries of origin dated from 9 October 2015, include: Albania, Armenia, Benin, Bosnia-Herzegovina, Cape Verde, Georgia, Ghana, India, Kosovo, Macedonia (FYROM), Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia.

27.OFPRA, Activity Report 2016, p. 39.

2.2 Expeditious and discriminatory processing

42. The generalisation of suspensive appeals to fast-track procedures has not removed however, the discriminatory and expeditious character of these procedures. In fact, their processing remains manifestly inequitable in comparison to so-called normal procedures, by imposing a processing time of only 15 days in the first instance to OFPRA then 5 weeks in the case of an appeal before the CNDA, instead of 3 months then 5 months in the case of normal procedures. In addition, in the fast-track procedure, the appeal will be examined by a single judge, and not by a mixed panel of three judges including an assessor named by the United Nations High Commissioner for Refugees.

43. In these conditions, France cannot assure that the examination of asylum requests on the fast-track procedure offers the same legal guarantees as in a normal procedure. An investigation in 15 days does not manifestly allow for the examination of an asylum request in a comprehensive and individualised manner. This analysis is all the more marked when it deals with complex individual history or when the applicants have suffered serious trauma, not very compatible with such rapid processing. Not to mention, as discussed above, only a limited number amongst them benefits from high quality legal and social support. It follows that the current procedures for the handling of asylum requests on the fast-track procedure do not sufficiently protect the applicants from risks of refoulement.

Recommendations:

- **Ensure that all the requests for asylum are made the subject of an individual in-depth examination.**

III. Fight against the impunity of international crimes

44. During the last UPR, Armenia recommended that France continue its efforts to contribute to the prevention of crimes against humanity and genocide[28]. France accepted this recommendation, and renewed this acceptance in its follow-up of implementation in 2016, by reiterating its commitment to international criminal justice and the prevention of crimes against humanity.

45. Yet, ACAT noted that France's support on these questions has been significantly reclusive. In the interests of budgetary restrictions, France has advocated for several years a "zero growth" policy of the ICC budget, thereby hampering the capacity of the Court to deal with inquiries and carry out new work.

46. Additionally, concerning extraterritorial jurisdiction, the act adopted in August 2010 [29] adapting French law to the statute of the International Criminal Court, introduced four cumulative barriers which make the initiation of proceedings against the presumed perpetrators of the most serious international crimes, namely war crimes, genocide, and crimes against humanity, practically impossible in France. The former relies on the requirement of "habitual residency" of the suspect in France, the second reserves the monopoly of prosecutions to the public prosecutor's office, the third concerns the necessity of dual criminality, in France and in the countries of the alleged crime, and the last requires a prior rejection of jurisdiction from the ICC (inversion of the principle of complementarity).

47. Article 689-11 of the Code of Criminal Procedure, emerging from this act, thereby deprived the victims of these crimes of an effective recourse to justice, a major obstacle in this fight against impunity and the prevention of these offences. It further establishes an inconsistent differentiation of system according to the crimes, and is especially contrary to international conventions which simply require the presence of the perpetrator of the act within the territory in order to initiate criminal proceedings regarding torture and enforced disappearances.

48. In light of the complexity and number of cases handled by the Central Office to Combat Crimes and the Judicial hub specialised in these offences, it is indispensable to strengthen their human and financial resources to accomplish their mission.

Recommendations:

- **Support the budget of the International Criminal Court;**
- **Amend its legislation so as to eliminate the four conditions provided for the purpose of applying extraterritorial jurisdiction so as to guarantee the victims of crimes against humanity the right of an effective recourse before French judicial authorities;**
- **Determine legal proceedings by the mere presence of the perpetrator within French territory, in accordance with international law and the recommendations of UN bodies in compliance with treaties;**
- **Allocate the necessary resources to the gendarmes, police officers, examining magistrate and prosecutor consolidated into the centre specialising in international crimes.**

28.Recommendations by Armenia in the Working Group report on the UPR, A/HRC/23/3, para. 120.41
29.The act adapting criminal law to the establishment of the International Criminal Court (n° 2010- 930 of 9 August 2010) published at the Official Journal n°183 from 10 August 2010.