
ALTERNATIVE REPORT BY ACAT-FRANCE AND FIACAT ON TORTURE AND CRUEL, INHUMAN OR DEGRADING PUNISHMENT OR TREATMENT IN FRANCE

Submitted to the Committee against Torture in the context of reviewing
France's seventh periodic report

57th session, 18 April – 13 May 2016





NOTE INTRODUCTIVE

ACAT-France and FIACAT are honoured to submit for your consideration their concerns and recommendations pertaining to the prevention of torture and cruel, inhuman or degrading punishment or treatment in France. This report is submitted during the review of France's seventh periodic report, to take place during the Committee's 57th session held from 18 April to 13 May 2016.

ACAT-FRANCE.

The *Action des chrétiens pour l'abolition de la torture* (Action by Christians for the Abolition of Torture, or ACAT) is a Paris-based Christian NGO for the defence of human rights that was founded in 1974 and has been recognised as being of public use. Basing its action on international law and acting for the benefit of all, without prejudice to ethnicity, ideology or religion, ACAT-France fights against torture and for the abolition of the death penalty, the protection of victims and in defence of the right to asylum, drawing on a network of almost 39,000 members and donors. In particular, it plays a supervisory role with regard to action taken by responsive institutions such as the police, the gendarmerie, the justice system or the prison administration system. This role relies on affidavits and in-depth research. In 2015, ACAT-France conducted an inquiry into the use of force by law enforcement. ACAT-France also acts to promote the right to asylum, and has been providing asylum seekers with legal aid since 1998, acting within associations and collectives to fight for this fundamental freedom. Based on the information it collects, ACAT-France leads educational and awareness-building initiatives, and runs campaigns supported by members and sympathisers.

www.acatfrance.fr

FIACAT.

The *Fédération internationale de l'Action des chrétiens pour l'abolition de la torture* (the International Federation of Action by Christians for the Abolition of Torture, or FIACAT) is an international NGO for the defence of human rights that was founded in 1987 and fights for the abolition of torture and the death penalty. The Federation governs around thirty different national associations and the ACATs spread over four continents.

FIACAT works to consolidate the capacities of its network

FIACAT helps its member associations in terms of structure and organisation. It supports the initiatives led by the ACATs, lending them weight in civil society and transforming them into bodies capable of shaping public opinion and having an impact on the authorities in their respective countries. It helps stimulate the network by encouraging debate and exchange, offering regional and international training programmes as well as joint intervention initiatives. In doing so, it supports ACAT action by developing on-the-ground projects alongside them and providing them with a voice on the international stage.

FIACAT represents its members in dealing with international and regional bodies and organs

By conveying on-the-ground concerns expressed by its members before international bodies, FIACAT aims to ensure relevant recommendations are adopted and implemented by governments. FIACAT contributes to ensuring the application of international conventions on the defence of human rights, the prevention of acts of torture in places of detention and the fight against forced disappearance and against impunity. It also participates in the fight against the death penalty by encouraging States to abolish this provision in their legislation.

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EXECUTIVE SUMMARY

This report is an assessment of how the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is implemented by France and is a joint submission by ACAT-France and FIACAT.

1. NATIONAL PREVENTIVE MECHANISM AND DÉFENSEUR DES DROITS (DEFENDER OF RIGHTS) (ARTICLE 1)

IMPLEMENTING THE CGPDL'S RECOMMENDATIONS

Among the measures recommended by the *Contrôleur général des lieux de privation de liberté* (Inspector-General of Places of Deprivation of Liberty), around twenty are still awaiting implementation despite the inexpensiveness and easiness of doing so.

With respect to measures aimed at protecting individuals who reach out to the Inspector, a number of cases of individuals who have faced reprisal have been recorded. However, the law of 26 May 2014 provides a more protective legal framework for these individuals.

ACAT-France and FIACAT invite the Committee to recommend that the State party ensure the effective protection of detainees who reach out to the Inspector-General of Places of Deprivation of Liberty from any risk of reprisal by ensuring compliance with the law of 26 May 2014 in particular.

REFERRALS TO THE DEFENDER OF RIGHTS

Although the process of referring to the Defender of Rights has been made easier for individuals, the former's recommendations are not always followed through and the disciplinary measures taken are not always in proportion to the severity of the facts.

ACAT-France and FIACAT invite the Committee to recommend that the State party take all necessary measures to ensure that the Defender of Rights' recommendations are effectively implemented.

2. PROTECTION AGAINST DANGEROUS RETURNS (ARTICLE 3)

GENERAL CONTEXT AND STATISTICS

The asylum procedure in France is extremely complex, which impacts on asylum seekers exercising their rights. This is reinforced by the fact that most asylum seekers are denied legal aid throughout the process. The number of applications successfully processed by France is significantly lower than the European average. While citizens of some countries enjoy a high level of protection, others who face a serious risk of torture, cruel, inhuman or degrading treatment, are only afforded a low level of protection.

UNEQUAL ACCESS TO APPLICATION FOR ASYLUM

The law of 2015 requires that all requests for asylum made to the administration first be reviewed by a pre-assessment office. Yet these offices struggle with a high number of applications that exceeds their capacity and results in long waiting times, which in turn creates a risk of deportation for the individuals in question. In addition, the material and physical conditions experienced by some asylum seekers throughout the process are highly vulnerable, which also impacts on their ability to exercise their rights.

ACAT-France and FIACAT invite the Committee to recommend that the State party: Take all necessary measures to ensure that all asylum seekers are granted access to the asylum application procedure within a reasonable time frame, notably by equipping the pre-assessment offices with the financial means and human resources required;

**Protect all individuals seeking to access the asylum application procedure from dangerous returns;
Ensure that all asylum seekers are granted access to decent accommodation;
Ensure that all individuals placed in waiting areas have access to the asylum application process in practice.**

UNEQUAL AND DISCRIMINATORY ASYLUM APPLICATION PROCEDURES THAT REDUCE APPLICANTS' PROTECTION FROM DANGEROUS RETURNS

INADMISSIBILITY, TERMINATION AND REASSESSMENT DECISIONS

The inadmissibility and termination decisions established by the asylum reform do not ensure that the individuals affected are guaranteed a full and thorough assessment of their application for asylum. As it stands, they do not protect them from returns to countries in which they run the risk of being subjected to torture or cruel, inhuman or degrading treatment.

FAST-TRACK PROCEDURES

French legislation regarding foreign nationals' admission to, and residency in, the country requires that in some cases asylum seekers be processed as part of a fast-track procedure. The criteria used to determine which individuals are placed in the fast-track procedure system do not provide for effective protection against the risk of deportation and afford the OFPRA (Office français de protection des réfugiés et apatrides, or the French Office for the Protection of Refugees and Stateless Persons) and Prefectures significant flexibility. Citizenship of a country included in the OFPRA's list of safe countries is a questionable criterion, as this list encompasses countries in which the risk to individuals' mental and physical well-being is undeniable. In addition, the system applicable in the context of this procedure does not allow asylum seekers to demonstrate and express all of the contributing factors to their fears, nor does it allow for a thorough assessment of their case to be conducted.

**ACAT-France and FIACAT invite the Committee to recommend that the State party:
Ensure that all applications for asylum undergo an in-depth individual assessment;
Remove the list of safe countries.**

THE INSUFFICIENT EFFECTIVENESS OF THE RIGHT TO PROTECTION AND APPEALS AGAINST NEGATIVE DECISIONS RESULTING IN A RISK OF DEPORTATION

THE RIGHT TO APPEAL NEGATIVE DECISIONS RELATING TO ASYLUM AND THE PROTECTION OF FOREIGN NATIONALS AGAINST ARBITRARY DEPORTATION

Some decisions made as part of the asylum application procedure cannot be appealed, such as the decision to place an applicant in the fast-track procedure system and termination and inadmissibility decisions. Furthermore, not all of the appeals provided for by law have a suspensive effect that allows for the effective protection of the asylum seeker. In addition, appeals made against a negative decision from the OFPRA by a person placed in detention can only have a suspensive effect if this appeal is not made with the intention to prevent deportation measures, which in effect is synonymous with preventing all appeals made by persons in detention from having any suspensive effect at all.

THE INEFFECTIVENESS OF THE RIGHT TO APPEAL FOR A LARGE PROPORTION OF ASYLUM SEEKERS

In addition to a lack of suspensive effect in appeals in a certain number of cases, many factors also impact on its effectiveness. Of particular note is the fact that asylum seekers are not granted free language support throughout the process, with interpretation only provided for their interview with the OFPRA and the hearing before the CNDA (the Cour nationale du droit d'asile, or French National Court of Asylum). Regarding free legal aid for asylum seekers in detention, the aid is only partial as it is only provided when the asylum seeker appears before an administrative judge. Furthermore, the time frames applicable to the admissibility of appeals against negative asylum decisions are difficult to comply with and make asylum seekers' right to appeal ineffective in some cases. Finally, inequalities between asylum seekers exist depending on the procedure system within which they are placed, in terms of access to specialised, trained judges operating as part of a specialised court panel.

ACAT-France and FIACAT invite the Committee to recommend that the State party ensure that every unsuccessful asylum applicant be granted the right to make an effective suspensive appeal against the OFPRA's decision to reject their application before a specialised judicial panel.

FAILED ASYLUM APPLICANTS AND THE RISK OF DANGEROUS RETURNS. LATEST LEGISLATIVE DEVELOPMENTS

As it currently stands, French legislation does not protect rejected asylum applicants from dangerous returns. This risk is exacerbated by the reform law on foreign nationals voted in on 18 February 2016.

ACAT-France and FIACAT invite the Committee to recommend that the State party take all necessary measures to ensure that no individual is returned to a country in which they risk being subjected to torture or cruel, inhuman or degrading treatment.

3. FRENCH JURISDICTION OVER CRIMES COMMITTED ABROAD (ARTICLES 5 AND 6)

UNIVERSAL JURISDICTION

A reform that aims to facilitate the application of universal jurisdiction is currently being examined, but remains in suspension in the French National Assembly and has still not been placed on the agenda. Furthermore, the reform is limited in that it upholds the public prosecutor's monopoly with respect to initiating proceedings based on universal jurisdiction.

ACAT-France and FIACAT invite the Committee to recommend that the State party change its legislation to remove the four conditions that apply to exercising universal jurisdiction for acts of torture committed in the context of war crimes or crimes against humanity.

THE ADDITIONAL PROTOCOL TO THE CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE GOVERNMENT OF FRANCE AND THE GOVERNMENT OF MOROCCO

The protocol signed by France and Morocco stipulates that the French authorities are required to alert Morocco to any proceedings initiated in France for offences committed in Morocco for which a Moroccan national is the suspect, and that they are required to pass on or close the case should the Moroccan authorities decide to start their own proceedings. This provision is problematic in light of reported cases in which partiality and lack of independence by the Moroccan judicial system in cases related to acts of torture involving agents of the State have been demonstrated.

ACAT-France and FIACAT invite the Committee to recommend that the State party terminate the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters between the Government of France and the Government of Morocco.

A RESTRICTED UNDERSTANDING OF THE CONCEPT OF VICTIMHOOD

The French legal system's understanding of the concept of victimhood is too restricted and does not include the loved ones of individuals who have been subjected to physical and psychological torture, in contrast to the victims of other crimes.

ACAT-France and FIACAT invite the Committee to recommend that the State party legislate to ensure the concept of victimhood is extended to the loved ones of victims of torture.

JURISDICTIONAL IMMUNITY

France has developed an extensive definition of the concept of jurisdictional immunity granted to a public agent of a third-party State which contravenes the provisions of Articles 5 and 6 of the Convention regarding the obligation to establish its jurisdiction in cases of torture and in cases where the alleged perpetrator is in the country, as well as the obligation to take all legal measures required to ensure the presence of the individual in question and to investigate the facts.

ACAT-France and FIACAT invite the Committee to recommend that the State party amend its Criminal Code to guarantee that no immunity may be opposed in cases of allegations of torture

TORTURE CRIMES COMMITTED ABROAD BY FRENCH SOLDIERS

The law on military programming of 18 December 2013 reserves the right to initiate a public inquiry for the prosecutor of the Republic when the case pertains to acts committed by a soldier in completing their tasks outside of the French territory, thus resulting in a diversion to military action and favouring the impunity of the soldiers.

ACAT-France and FIACAT invite the Committee to recommend that the State party amend Article 698-2 of the Criminal Procedure Code to remove the public prosecutor's monopoly in proceedings against French soldiers as part of operations carried out abroad.

4. PRISON CONDITIONS AND PENAL POLICY (ARTICLE 11)

Prison overpopulation has continued to worsen over the last ten years in France and continues to have a negative impact on material detention conditions. The buildings are dilapidated and some establishments do not comply with respecting the physical and mental well-being of detainees. While renovation and rebuilding works are necessary, the architectural structures chosen when building new prisons lead to a dehumanising effect on relationships in detention.

Body searches, despite being strictly governed by legislation, create situations that violate detainees' right to dignity.

ACAT-France and FIACAT invite the Committee to recommend that the State party rehabilitate and redesign French prisons to put an end to the inhuman and degrading treatment observed.

ACAT-France and FIACAT invite the Committee to recommend that the State party carry out an assessment of prison real estate programmes, both past and present, involving all stakeholders in question.

ACAT-France and FIACAT invite the Committee to recommend that the State party put a definitive end to the practice of full body searches, replacing them with other means that ensure prison establishments remain secure while respecting detainees' right to human dignity.

ACAT-France and FIACAT invite the Committee to recommend that the State party take all necessary measures to ensure that the prison act of 24 November 2009 is strictly complied with in practice, and that all strip searches be monitored.

5. IMPARTIAL INQUIRY (ARTICLE 12)

THE INDEPENDENCE OF THE INVESTIGATORS IN QUESTION

The abusive and disproportionate use of force displayed by the police and gendarmerie forces which may constitute inhuman or degrading treatment has been demonstrated in France. Putting an end to acts that contravene the law and ethics requires that all necessary precautions be taken to ensure a neutral and independent inquiry be carried out, resulting where applicable in disciplinary or court-ordered sanctions. The fact that the direct hierarchy, the IGPN (*Inspection générale de la police nationale*, or National Police General Inspectorate) and the IGGN (*Inspection générale de la gendarmerie nationale*, or National Gendarmerie General Inspectorate) exercise jurisdiction over this type of inquiry does not seem to fully satisfy criteria of impartiality and independence.

ACAT-France and FIACAT invite the Committee to recommend that the State party form a fully independent body tasked with conducting inquiries into acts committed by agents of the police and gendarmerie forces.

SANCTIONS

DISCIPLINARY SANCTIONS

There is a lack of transparency regarding disciplinary sanctions used against agents of the security forces following allegations of mistreatment. No public data exists concerning allegations made against gendarmes and the disciplinary sanctions handed down. Furthermore, figures on disciplinary sanctions issued to members of the security forces do not allow for an assessment of the number of cases in which allegations of mistreatment are made, nor the sanctions handed down. Finally, when disciplinary sanctions handed down to members of the security forces are known, they are not in proportion to the severity of the offence.

COURT-ORDERED SANCTIONS

In France, the principle of opportunity grants the Prosecutor of the Republic the power to decide whether or not to process the complaints it receives. The law provides for the possibility of appealing against a decision to take no further action, but in reality the victims and their families do not always have the (particularly financial) means to engage in this process. The figures concerning convictions of police officers and gendarmes are not published, which contributes to a general lack of transparency on the matter. Based on the cases collected by ACAT-France, few cases feature allegations of an excessive use of force resulting in a conviction, and when sanctions are effectively handed down, they are rarely proportionate to the seriousness of the act.

INQUIRIES CONCERNING ACTS OF TORTURE COMMITTED ABROAD

The passive jurisdiction exercised by the French courts for acts of torture committed abroad is lacking. Inquiries are not carried out within a reasonable time frame and are often impeded by the political authorities when they involve diplomatic complications, as the cases followed by ACAT-France demonstrate.

ACAT-France and FIACAT invite the Committee to recommend that the State party:

Publish figures concerning allegations of mistreatment and court-ordered and disciplinary sanctions issued as a result of these allegations;

Ensure that disciplinary and court-ordered sanctions handed down to members of the security forces for acts of mistreatment are in proportion to the severity of the offences;

Ensure that inquiries into torture take place within reasonable time frames and involve no intervention from the political powers.

6. THE RIGHT TO COMPLAIN (ARTICLE 13)

DIFFICULTIES RELATED TO FILING COMPLAINTS AGAINST SECURITY FORCES

According to information received by ACAT-France, many victims give up on the idea of filing a complaint because they do not want to embark on a long, expensive process that they assume will be in vain. Furthermore, ACAT-France has noted that it is sometimes members of the security forces who refuse to file complaints or who encourage victims to let complaints go. Fear of reprisal also works to dissuade victims and particularly foreign nationals in detention, who fear that their deportation may come sooner.

PROTECTION OF THE COMPLAINANT

Proceedings for resisting arrest and contempt are regularly used in cases where the police forces themselves are implicated. This practice dissuades victims from filing a complaint, or works to discredit them. Furthermore, a two-track legal system exists in this regard, as it has been noted that in the same case, complaints of contempt and resisting arrest have been processed much more quickly than those made against security forces for police violence, and the sentences handed down are much harsher.

ACAT-France and FIACAT invite the Committee to recommend that the State party alter its legal proceedings so that complaints of resisting arrest and contempt and complaints of excessive use of force filed at the same time may be handled within the same time frame.

DIFFICULTIES RELATED TO FILING COMPLAINTS OF MISTREATMENT IN DETENTION

The CGLPL has deplored the impediments and reprisals detainees face as a result of the legal proceedings they may embarked upon. In effect, many cases of refusals to pass on complaints, pressure and punishment have been recorded.

ACAT-France and FIACAT invite the Committee to recommend that the State party take concrete and immediate measures to guarantee that all detainees are free to exercise their rights without the risk of any impediment of any kind. It recommends in particular that precautions be taken to ensure that no detainee who enters into contact with the CGLPL suffers reprisal (see above).

7. CRUEL, INHUMAN OR DEGRADING TREATMENT INFLICTED BY LAW ENFORCEMENT AGENTS (ARTICLE 16)

TRANSPARENCY IN THE USE OF FORCE

Data pertaining to the use of force by law enforcement agents is sparse, incomplete and difficult to access, which prevents light from being shone on this phenomenon.

ACAT-France and FIACAT invite the Committee to recommend that the State party publish the following on an annual basis:

- The number of uses of each type of weapon made available to the security forces;**
- The number of people hurt or killed in police or gendarmerie interventions;**
- The number of complaints filed with the courts for violence inflicted by the security forces;**
- The number of convictions and the number of sentences handed down in cases;**
- The number and type of disciplinary sanctions handed down to the police or gendarmerie authorities for acts of violence.**

INTERMEDIARY WEAPONS

Two types of intermediary weapons exist in France, rubber bullet guns and electroshock weapons. The use of these weapons is deeply questionable due to the manner and frequency with which they are used, and the wounds they cause. ACAT-France has recorded numerous victims of these intermediary weapons, some of whom are now suffering lasting damage and scars.

ACAT-France and FIACAT invite the Committee to recommend that the State party prohibit the use of rubber bullet guns and immediately remove them from the list of equipment weapons.

ACAT-France and FIACAT invite the Committee to recommend that the State party:

- Restrict the use of ESWs to cases where they are absolutely necessary, when other less coercive means have failed and when they are the only possible alternative to using another method with a greater risk of injury or death;**
- Prohibit the use of ESWs in contact mode in all circumstances;**
- Commission reliable and independent studies into the real effects of using Tasers X26®, particularly against individuals in an agitated state;**
- Suspend all use of Tasers X26® against individuals who are clearly in a state of confusion pending the results of the aforementioned study;**
- Use ESWs with sound and video recording exclusively.**

METHODS FOR RESTRAINT AND POSITIONAL ASPHYXIA

ACAT-France wishes to inform the Committee of two techniques of restraint ('pliage', or 'folding', and prone positioning) that can lead to suffocation and have already resulted in a number of deaths in France.

ACAT-France and FIACAT invite the Committee to recommend that the State party explicitly prohibit the use of the techniques known as 'folding' and 'ventral decubitus'.

OTHERS VIOLENT MEANS THAT MAY CONSTITUTE MISTREATMENT

A number of cases have been recorded in which individuals have allegedly been beaten when arrested, placed in custody, transported in police vehicles or transferred to the border. In this context, a number of serious injuries have been reported, inflicted during police operations against migrants in Calais.

SECURE DETENTION

Secure detention remains part of French criminal law and was not repealed by the law of 15 August 2014 despite the recommendations of the United Nations and French civil society.

ACAT-France and FIACAT invite the Committee to yet again recommend that the State party repeal the secure detention provision.

8. OTHER ISSUES

ACAT-France and FIACAT invite the Committee to recommend that the State party take all necessary precautions to ensure that the provisional measures and decisions issued by the Committee regarding communication from individuals be complied with.

GLOSSARY

ACAT	Action by Christians for the Abolition of Torture
CAT	United Nations Committee against Torture
ECHR	European Court of Human Rights
CNCDH	French National Consultative Commission for Human Rights
CNDA	French National Court of Asylum
CNDS	French National Commission on Security and Ethics
CGLPL	Inspector-General of Places of Deprivation of Liberty
CPT	European Committee for the Prevention of Torture
ADC	Administrative detention centre
HPP	High Profile Prisoners
DGST	Moroccan Directorate of General Security
FIACAT	International Federation of Action by Christians for the Abolition of Torture
IGPN	French National Police General Inspectorate
IGGN	French National Gendarmerie General Inspectorate
IGS	General Services Inspectorate
RBG	Rubber bullet guns
OFPRA	French Office for the Protection of Refugees and Stateless Persons
IPO	International Prison Observatory
ESW	Electroshock weapon
SC	Safe countries
DB	Disciplinary block

1. NATIONAL PREVENTIVE MECHANISM AND DEFENDER OF RIGHTS (ARTICLE 2)

1.1. IMPLEMENTATION OF THE CGPDL'S RECOMMENDATIONS

1.1.1. FOLLOW-UP TO THE CGLPL'S RECOMMENDATIONS

CAT concluding observations, § 24 (CAT/C/FRA/CO/4-6)

The Committee further recommends that the State party provide details about specific action taken regularly to implement the recommendations issued by the Inspector-General of places of deprivation of liberty following visits.

List of issues in relation to the seventh periodic report of France § 3 (CAT/C/FRA/Q/7)

Please indicate the action taken to give effect to the recommendations made by the Inspector-General of Places of Deprivation of Liberty to the State party in the light of the findings of her visits and in particular of the Act of 26 May 2014 strengthening her mandate.

1. In its concluding observations following the assessment of the fourth and sixth periodic reports of France, the Committee noted with approval the establishment of the Inspector-General of Places of Deprivation of Liberty (CGLPL). ACAT-France commends the implementing of this institution, which represented a big step forward in preventing torture and mistreatment in French detention premises.

2. A law passed on 26 May 2014 heightened the Inspector's powers in order to improve the scope of their responsibilities and to ensure increased protection of the individuals who call on them. The Inspector's jurisdiction was therefore extended to encompass measures pertaining to the transporting of foreign nationals to borders. The institution's means for control and inspection were also strengthened: the Inspector is now granted access to custodial reports and, subject to the individual in question's permission, medically-classified information. Finally, the law introduces penal provisions aimed at protecting individuals who contact the Inspector-General. Any act that aims to obstruct this communication is a crime punishable by a €15,000 fine. These developments are commendable.

3. ACAT-France nevertheless wishes to remind readers that while some of the CGLPL's opinions and recommendations have indeed been taken on-board by the administration and legislative powers, some have remained unacknowledged. In their activity report for 2013, the Inspector provided a list of 20 measures that have yet to be applied, despite the fact that while inexpensive and easy to implement, they would drastically improve conditions for individuals deprived of their liberty. For a number of years now, the Inspector has been recommending access to mobile phones and monitored availability of the internet in penal institutions, as well as registers allowing for better tracking of solitary confinement in psychiatric hospitals and permission for women in custody to be able to keep their bras.¹

1.1.2. DETAINEES WHO CONTACT THE INSPECTOR AND REPRISAL

4. Upon submitting the activity report for 2013, the CGLPL expressed a concern for allegations of reprisals faced by detainees who contacted him². The Inspector-General recounted the case of a male detainee he visited in detention. This individual had contacted the Inspector for the first time after his computer was confiscated by the authorities. The CGLPL at the time stated: "*After I left, he was brought in. He spent eight days in a disciplinary block (DB), this man who had never caused any problems in detention. Detainees are ordinarily not sent to DB during the Christmas period. He was sent there on 23 December. He committed suicide on the 24th. The prison Inspector's visit to the prison had manifestly been used to inflict a disproportionate punishment on a man who was a nuisance. A disciplinary inquiry is currently under-way.*"³

1. CGLPL, Activity report 2013, pages 91 and 92.

2. Jean-Marie Delarue's hearing before the Law Commission of the National Assembly, 12 February 2014.

3. Idem

5. Protecting those who appeal to the Inspector is a safeguard that is absolutely crucial to the effectiveness of maintaining this system of preventing torture. The same applies to the pertinence of this institution. In light of this, the provisions of the law of 26 May 2014 provide a legal framework that is more protective of all individuals who enter into contact with the Inspector. In addition to creating the offence of obstructing the CGLPL's mission, the law rules that no sanctions may be taken against a person (deprived of their liberty, as well as any person working in places of deprivation of liberty) as a result of the dialogue they may have opened with the Inspector, excepting proceedings for false allegations. The French authorities must, however, ensure its effective application.

ACAT-France and FIACAT invite the Committee to recommend that the State party ensure the effective protection of detainees who reach out to the Inspector-General of Places of Deprivation of Liberty from any risk of reprisal by ensuring compliance with the law of 26 May 2014 in particular.

1.2. REFERRALS TO THE DEFENDER OF RIGHTS

List of issues in relation to the seventh periodic report of France § 3 (CAT/C/FRA/Q/7)

Please provide information on the powers of the new Defender of Rights in the areas covered by the Convention following the dissolution of the National Commission on Security Ethics. Please specify the conditions under which individual complaints of torture may be lodged with the Defender of Rights and the procedures for dealing with such complaints. Lastly, please inform the Committee of the number of individual complaints of torture received by the Defender of Rights and of their outcome.

6. The Committee recommended that the State party take all necessary measures to ensure that any individual claiming to have suffered torture or cruel, inhuman or degrading treatment may be referred to the CNDS (Commission nationale de déontologie de la sécurité, the National Commission on Security Ethics) directly. The CNDS created the role of Defender of Rights in 2011, and may now be referred to directly by any individual, which constitutes some progress. In 2015, the Defender of Rights was appealed to 910 times on issues pertaining to security ethics. The primary motives for referrals were: violence (28%), non-compliance with procedure (17%), refusal to intervene (13%) and inappropriate comments (12%).

7. ACAT-France nevertheless wishes to inform the Committee of its concerns regarding follow-up of the Defender of Rights' recommendations. It emerged from ACAT-France's inquiry that most of the Defender of Rights' recommendations requesting that disciplinary proceedings be initiated against agents of the security forces are not followed.

8. When these recommendations are applied, ACAT-France questions the proportionality of the sanctions handed down. In a number of cases in which the Defender of Rights has recommended disciplinary proceedings for the disproportionate use of force, while sanctions have been issued, they seem light in contrast to the facts. A number of examples may be provided. The first concerns the case of **Nassuire Oili**, a 9-year-old child who was blinded after being shot in the face with a flashball on 7 October 2011 in Mayotte. In July 2012, the Defender of Rights recommended that disciplinary proceedings be initiated for the disproportionate use of this weapon and for a lack of care in the treatment provided⁴. The individual responsible for this shooting was however only reprimanded. Similar facts concern the death of **Abdelhakim Ajimi** when he was brought in for questioning in 2008. The Defender of Rights recommended that the agents involved be prosecuted for disproportionate use of force. In this case, two agents were effectively suspended from service for a month (temporary exclusion for 12 months with 11 months of conditional suspension for one of them, and 18 months of which 17 were conditional suspension for the other). Finally, in the case of **Geoffrey Tidjani**, the 16-year-old secondary school student was seriously injured in the eye by a bullet from a rubber bullet gun used during a protest in October 2010. The Defender of Rights recommended disciplinary prosecution of the agent in question for disproportionate use of force as well as false statements⁵. In this case, the disciplinary council suggested that the perpetrator of the shooting be sentenced to a 5-day temporary exclusion. To date, neither the Defender of Rights nor ACAT-France have any knowledge of any sanction that may have been issued.

4. Defender of Rights, decision MDS 2011-246, 3 July 2012

5. Defender of Rights, decision MDS 2010-142, 7 February 2012

ACAT-France and FIACAT invite the Committee to recommend that the State party take all necessary measures to ensure that the Defender of Rights' recommendations be effectively implemented..

2. PROTECTION AGAINST DANGEROUS RETURNS (ARTICLE 3)

2.1. GENERAL CONTEXT AND STATISTICS

9. Torture abolishes language, it reduces humanity to silence. A system that affords foreign nationals no voice cannot fully protect them from returns to places where they may suffer torture or mistreatment.

10. France's ineffectiveness in protecting individuals from dangerous returns is a product of the overall structure of the asylum-seeking procedure, the accumulation of a plethora of technical rules that obscure the shortcomings of the national system in its duty to protect. For reasons unrelated to the requirements of human protection, such as management of immigration and the fight against terrorism or a certain perception of maintaining public order, the French system nurtures a breach in the equality of how individuals are treated with respect to protecting them from dangerous returns. By 'sorting' applicants from the very moment they begin the asylum-seeking process based on considerations that are estranged from their individual suffering, administrative procedures and practices determine who "deserves" more or less attention from the governmental bodies in advance, and thus deprives them of any chance of protection. In principle, all asylum seekers and persons awaiting deportation enjoy an individual assessment of their situation, yet in reality, the procedural system and circumstances of those the system has predefined as being less credible, tend to undermine the effectiveness of this assessment, meaning they have less chance of receiving effective protection from the very start.

11. Safeguarding national security is used as political justification for the disproportionate use of the concept of legal security. The executive power's administrative decision and the arbitrary risk that is inherent to it, run the risk of taking precedence over the requirements of the rule of law and jurisdictional control.

12. France was unable to provide the committee with disaggregated and sufficiently specific figures regarding the number of foreign nationals who are returned, sent back or deported to foreign countries and who were at particular risk of torture. The effectiveness of the protection afforded to foreign nationals against dangerous returns as a whole must now be called into question, particularly with regard to how asylum applications are processed.

List of issues in relation to the seventh periodic report of France § 7 (CAT/C/FRA/Q/7)

Please provide updated statistics disaggregated by age, sex and nationality on the number of asylum applications that the State party has received since the consideration of its last periodic report in April 2010. Please indicate the number of applications granted, including those accepted on the grounds that the applicants had been tortured or would face a risk of torture if they were sent back to their country of origin, as well as the number of return orders rescinded by the administrative court owing to a risk of torture.

13. The only figures provided by France indicate that positive decisions to grant asylum reached 28% in 2014 and 31.5% in 2015⁶. These percentages are below the European average for protection rates, which stands at 44.8% despite the fact that it includes the shockingly low rates of countries such as Hungary or Greece (9.3% for the former and 14.8% for the latter, data provided by Eurostats⁷). Most importantly, these figures must be put into perspective and disaggregated by nationality.

6. France's responses to the list of issues, paragraph 49

7. [http://ec.europa.eu/eurostat/statisticsexplained/index.php/File:First_instance_decisions_on_\(nonEU\)_asylum_applications,_2014_\(number,_rounded_figures\)_YB15_III-fr.png](http://ec.europa.eu/eurostat/statisticsexplained/index.php/File:First_instance_decisions_on_(nonEU)_asylum_applications,_2014_(number,_rounded_figures)_YB15_III-fr.png)

In effect, the OFPRA prioritised applications for asylum from exiled individuals from Sudan and Syria over the last two years, which constitute the majority of asylum applications. Syrian exiles were granted international protection at a rate of 46% in 2014⁸ and 97% in 2015.⁹ In contrast, some other nationals for whom the risk of cruel, inhuman or degrading treatment is patent are only afforded a low level of protection. As an example, nationals of the Democratic Republic of Congo are the fourth highest represented nationality in applications for asylum. The risk of torture upon being returned to this country is patent for many asylum-seekers. Despite this, only 13.7% were granted protection in 2014.¹⁰

14. The information collated by ACAT-France in the context of its legal aid advice service for asylum seekers as well as via its initiatives designed to end torture and the death penalty reveal the endemic nature of torture in detention premises in Guinea, the Democratic Republic of Congo and Bangladesh, countries which are highly represented among asylum-seekers in France. Studies have also demonstrated a high risk of treatment that contravenes the Convention in cases of returns or rejected applications in a number of countries which have nevertheless signed readmission agreements with France or in States to which foreign nationals have recently been deported by France (Algeria, Pakistan, Cameroon, etc.).¹¹

15. Asylum seekers are confronted with an array of difficulties linked to the complexity of the legal framework, the precariousness of their situation tied to shortcomings in their material care, and a lack of linguistic and legal support and aid. All of these elements combine to greatly threaten the chances of securing potentially serious requests for protection. Yet the work carried out by ACAT-France shows how essential individualised legal aid is, from the moment application for protection is initiated and throughout the process. The figures speak for themselves: the rate of protection afforded to those supported by ACAT-France's legal aid service is almost 70% (whether at the OFPRA stage or at the appeal before the French National Court of Asylum). Yet ACAT-France supports a number of individuals deemed 'non-credible' by the public authorities, who are subjected to face-track procedures, as well as asylum-seekers who are having their applications reassessed and whose fears are only acknowledged by the administrative and jurisdictional asylum decision-makers at the last hour. ACAT-France wishes to draw the Committee's attention to two points: the difficulties inherent to the process of applying for protection and the conditions in which these applications are made, and the lack of equality both in terms of accessing and processing applications. The report takes a detailed look at both of these factors.

2.2 UNEQUAL ACCESS TO REQUESTS FOR PROTECTION

Not all asylum seekers are granted access to the asylum application process. Before the process begins, they are left unprotected from deportation.

16. The reform act of 29 July 2015 on the right to asylum abolished the requirement of administrative residency as a prerequisite to registering an application for asylum, and now requires that administrative bodies (the Prefecture, responsible for the general administration and monitoring of foreign nationals) register all applications for asylum within a three-day period. Yet registration of asylum applications by the administrative bodies now requires that all requests for asylum first be reviewed by a pre-assessment office. These platforms are nothing more than the offices previously used for 'residency', and are already overwhelmed, particularly in the Paris region where most asylum seekers are to be found. Waiting times for an appointment can be as long as three months.

During this waiting period, potential applicants for asylum do not enjoy the legal status of 'asylum-seeker'. Instead, they are considered by the administrative bodies as 'irregular migrants', and may therefore be deported and run the direct risk of being subjected to a dangerous return, in violation of the principle of non-refoulement.

8. OFPRA, Activity report 2014, April 2015, accessible at https://www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport_dactivite_2014.pdf see Annex 1

9. Source OFPRA, Initial figures on asylum in France in 2015, accessible at <https://www.ofpra.gouv.fr/fr/l-ofpra/actualites/premiers-chiffres-de-l-asile-en>

10. OFPRA, Activity report 2014, April 2015, accessible at https://www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport_dactivite_2014.pdf see Annex 1

11. ACAT France, *La sanction de l'échec : la répression des migrants dans le pays d'origine (The punishment of failure: the repression of migrants in their home countries)*, October 2015, accessible at <http://www.acatfrance.fr/actualite/la-sanction-de-lechec---la-repression-des-migrants-dans-le-pays-dorigine> and International Refugee Rights Initiative, *Rights in Exile Programme*, accessible at: <http://www.refugeelaidinformation.org/post-deportation-monitoring-network>

The case of M.P:

Mr P. enjoys the legal aid support service provided by ACAT-France for asylum seekers. He is a national of the Democratic Republic of Congo, where his entire family was assassinated, with the exception of his older brother, who is a statutory refugee in France and who he finally managed to join. This young man arrived in France in early 2015. Because he wanted to apply for asylum, he went to the 'pre-assessment' office in the town of Melun on 27 March 2015. Despite the fact that he had his certificate of residency as an asylum-seeker, a document which clearly stated his intention to apply for asylum and should have afforded him rights under the principle of non-refoulement, Mr P was arrested by the police a few hundred metres away from the office. He was taken to a police station and was issued a prefectorial order refusing him residence and informing him of his obligation to leave France, with the Democratic Republic of Congo stated as his country of return. Despite the administrative and legal tools used and the support of ACAT-France, this decision to return him to the DRC is still legally enforceable and clearly puts the asylum seeker in danger, despite his formal and unequivocal request for protection.

17. In addition to deprivation of liberty, which in itself limits an individual's ability to have their voice heard, extreme material precariousness can also impact procedural rights. Thus, most of the foreign nationals seeking protection from dangerous returns (whether using the legal channels or whether expressing their need for protection in another sense) live in physical insecurity that renders the exercise of any other rights extremely unreliable. In effect, only a third of registered asylum seekers are afforded housing paid for by the government. In November 2015, when the law governing the pooling of public aid came into force (now ADA, Allocation de *Demandeurs d'Asile*, or asylum seeker grant)¹², deferred payments made to asylum seekers in CADAs (*Centre d'Accueil de Demandeurs d'Asile*, or asylum seeker intake centre) were noted, resulting in a worsening of material conditions for the asylum seekers in question, who were left with no concrete means by which to support themselves for the first fortnight of November. Those forced to wait for an appointment at the pre-assessment office in order to register their asylum application at the Prefecture are not afforded any of the material conditions reserved for asylum seekers, as they do not yet have this official status.

18. In addition, some asylum seekers enjoy different access conditions granted upon application, with no transparent or precise reasons provided for this difference the government bodies. Access to the asylum application procedure is therefore unequal despite situations being identical, and would appear to be arbitrary in some cases¹³.

19. The OFPRA refers to foreign national appraisal missions¹⁴ in particular, but provides no information concerning the criteria for registering applications for asylum in these delocalised and divergent contexts. It would appear that foreign nationals whose applications for asylum have been registered and processed as exemptions and priorities are nationals from an over-represented state, depending on the area. These missions were carried out in Calais or Paris in particular, near the migrant camps that were simultaneously subjected to coercive or intimidating security measures. These practices lack transparency and call into question the principle of the equal treatment with respect to protection against dangerous returns.

20. On 21 May 2015, the Ministry of the Interior and the Director General of the OFPRA held an official meeting in Calais, where 120 asylum seekers from Sudan were registered and processed with favourable results in a single day¹⁵.

List of issues in relation to the seventh periodic report of France § 8 (CAT/C/FRA/Q/7)
Please provide information on the provisions of the bill on asylum reform relating to the procedural safeguards that will apply to asylum seekers in waiting areas.

12. Since the ADA was set up, grants are paid based on the following progressive scale: For those housed in CADAs: €6.80 per person per day, €10.20 for two people per day and €13.60 for 3 people per day. The State provides an extra €4.20 per person per day for those who have not been allocated CADA accommodation.

13. ACAT France, *Contre l'arbitraire et la violence à l'égard des migrants*, July 2015, accessible at: <http://www.acatfrance.fr/actualite/france---contre-larbitraire-et-la-violence-a-legard-des-migrants>

14. Asylum applicants' interviews outside the OFPRA's premises.

15. L'express, *Calais : 120 migrants obtiennent l'asile dans une opération éclair*, May 2015, accessible at: http://www.lexpress.fr/actualite/societe/calais-120-migrants-obtiennent-l-asile-dans-une-operation-eclair_1681833.html

21. According to the Anafé (*Association Nationale d'Assistance aux Frontières pour les Étrangers*, or the French National Association for Border Assistance for Foreign Nationals), with respect to applications for asylum filed in waiting areas: "The number of applications for asylum in 2014 is lower than it has ever been over the past ten years". It shows that in 2014 1,126 asylum applications were filed in waiting areas, compared to 10,364 in 2001, despite the fact that the total number of applications for asylum has continuously risen over the last five years.¹⁶ According to the Anafé, this decrease is due to the difficulty inherent in reaching Europe.¹⁷

ACAT-France and FIACAT invite the Committee to recommend that the State party:

- > **Take all necessary measures to ensure that all asylum seekers are granted access to the asylum application system within a reasonable time frame, notably by equipping the pre-assessment offices with the financial means and human resources required;**
- > **Protect all individuals seeking to access the asylum application process from dangerous deportation;**
- > **Ensure that all asylum seekers are granted access to decent accommodation;**
- > **Ensure that all individuals placed in waiting units have access to the asylum application process in practice.**

2.3 DUNEQUAL AND DISCRIMINATORY ASYLUM APPLICATION PROCEDURES THAT RESTRICT APPLICANTS' PROTECTION FROM DANGEROUS RETURNS

Committee against Torture concluding observations, § 17 CAT/C/FRA/CO/4-6

The Committee reiterates its recommendation that the State party take appropriate measures to ensure that applications for asylum by persons from States to which the concepts of "internal asylum" or "safe country of origin" apply are examined with due consideration for the applicant's personal situation and in full conformity with the provisions of article 3 of the Convention.

22. In paragraph 17 of its concluding observations, the Committee alerted France to the risks of sorting requests for protection without individual in-depth assessment of the application for asylum itself, relying instead on concepts such as safe countries of origin and internal asylum. The Committee expressed its concerns once again on this subject in paragraph 7 of its list of issues to be considered.¹⁸

2.3.1. INADMISSIBILITY, TERMINATION AND REASSESSMENT DECISIONS

23. The asylum reform created two types of negative decisions resulting from a lack of in-depth assessment, neither of which can be appealed. The OFPRA can now decide to make 'inadmissibility' or 'termination' decisions before any thorough assessment of how well-founded the fear of persecution is¹⁹.

24. The first type of decision blocks admissibility to applications for asylum deemed to be abusive or without basis by the OFPRA.²⁰ The OFPRA may deem the application inadmissible if the applicant enjoys protection as an asylum seeker in another European Union member state, or the status of refugee and effective protection in a third-party state, and is re-admissible there. Yet the OFPRA can also take an inadmissibility decision in cases of reassessment if, following a preliminary examination in which the OFPRA is not obliged to interview the applicant²¹, it emerges that the application does not meet the conditions for reassessment.²²

16. Ministry of the Interior, Directorate General for Foreign Nationals in France: <http://www.immigration.interieur.gouv.fr/Info-ressources/Statistiques/Tableaux-statistiques/Les-demandes-d-asile>.

17. Anafé, *Observation report, "Des zones atteintes aux droits", December 2015*, p.22, accessible at: http://www.anafe.org/IMG/pdf/anafe_-_rapport_des_zones_d_atteintes_aux_droits.pdf

18. Committee against Torture, *List of issues in relation to the seventh periodic report of France § 8 (CAT/C/FRA/Q/B)*

19. Accessible at <https://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000006335318&idSectionTA=LEGISCTA000006147794&cidTexte=LEGITEXT00006070158&dateTexte=20160225>

20. Article L723-13 2° and 3° of the CESEDA (*code de l'entrée et du séjour des étrangers et du droit d'asile*, or Code of Entry and Residence of Aliens and the Right to Asylum).

21. Article L723-16 of the CESEDA.

22. Article L723-11 of the CESEDA.

25. The second type of decision is essentially a termination of the asylum application. The OFPRA may take this decision if the applicant has not submitted their application by the given deadline, and this without legitimate motive, or if the applicant does not attend their interview at the office, if they deliberately refuse to provide information that is crucial to assessing their application or if they do not inform the office of their place of residence within a reasonable time-frame, and cannot be contacted for examination purposes.²³

26. These two decisions imply that the OFPRA refuses, whether at the beginning or in the middle of the procedure, to examine whether or not the applicant's fear of persecution is well-founded. The decisions force the asylum seekers into directly confronting the possibility of being returned to a country where they may suffer torture or cruel, inhuman or degrading treatment.

2.3.2. FAST-TRACK PROCEDURES²⁴

27. In its seventh periodic report, France states that applicants are placed into the fast-track application procedure by OFPRA decision only, in cases strictly stipulated by the law. A number of comments are pertinent in this respect. Firstly, a significant proportion of applications are automatically placed in the fast-track system, "by application of the law", meaning via the application of legal presumption (legally this is a rebuttable presumption, but in practice is very difficult to reverse). These cases discriminate by nationality and concern all asylum seekers from safe countries of origin, and all individuals who apply for reassessment.

28. The decision to place an applicant in the fast-track system can also be taken by the administrative body tasked with registering applications in cases where applicants refuse fingerprinting, provide false documents or conceal information pertaining to their identity, nationality, or the means by which they entered France, arrive at the Prefecture to register their application for asylum more than 120 days after they first entered the country, when the application is made solely as a means by which to obstruct the deportation process or when the presence of the applicant in France constitutes a serious threat to public order, public security or the security of the State.

29. Finally, the decision to place an applicant in the fast-track system may be taken upon the OFPRA's initiative when false documents or false information or concealed information is provided, if the applicant has filed several applications under different names, if the application is supported only by issues that are not pertinent to an application for a asylum or in cases that include manifestly incoherent and contradictory statements that are false or implausible or that contradict the OFPRA's information.

30. It should be noted that unaccompanied minors cannot be placed in the fast-track procedure system.

• PLACEMENT IN THE FAST-TRACK PROCEDURE SYSTEM BY APPLICATION OF THE LAW: SAFE COUNTRIES: :

List of issues in relation to the seventh periodic report of France § 9 (CAT/C/FRA/Q/7)

Please provide information on the provisions of the asylum reform bill relating to the improvement of the modalities for drawing up and reassessing the list of "safe" asylum countries.

31 Referring more specifically to safe countries, in paragraph 62 of its seventh periodic report, the French government stated that the law has "extensively revised the concept of safe countries by adopting a more stringent definition of the term and ensuring in-depth assessment of the prerequisites for inclusion on the list". This statement is contradicted in practice.

32. In 2013 the preparatory parliamentary report on the asylum reform, whose recommendations and approach are largely reflected in the law voted in in July 2015, acknowledged that: "It is not contestable that it is essential to take into consideration the intrinsic merits of an application for asylum, above and beyond the general situation of the country. Similarly, it is true, and the announcements pronounced by the State Council on numerous

²³ Article L723-13 of the CESEDA.

²⁴ Article L723-1 of the CESEDA.

occasions confirm this, that this tool may have been used excessively, without sufficient consideration given to the real situation in terms of rights afforded to an applicant in their country of origin. However, experience shows that this tool has a powerful dissuasive effect on applications that are clearly made with no need for protection."²⁵

The use of the concept of safe country of origin, under its new legal definition, perpetuates this goal of collectively dissuading citizens of a same country, ensuring they are collectively presumed to have less basis on which to request protection from violations of their basic rights.

33. On 9 October 2015, when the new law had already been voted in and the European directives it was closely based on were already irrevocable, the OFPRA's administration council removed the earlier list and made the decision to establish a new one. All of the former safe countries featured on this list, with the addition of Kosovo for a third time, despite it having been previously removed by the State Council twice before. The minutes of the OFPRA administration council's deliberation reveal that the documents required in order to assess human rights in these countries were only provided very briefly before the Council met, that the vast majority of the countries had not been discussed prior to being re-included on the list, considered as a block and not on a country-by-country basis, and that, particularly in the case of Kosovo and Senegal, human rights conditions in these countries had not been examined in light of the new definition and its more stringent criteria. While the State Council's judge rejected interim application of associations based on motives related to urgency (as was the case in 2011 and 2014), it came as no surprise that he annulled the decision of 9 October 2015 in the coming months, ruling on merit.²⁶

34. In 2011, the OFPRA registered 3,246 applications for asylum submitted by Kosovo nationals. From the second quarter of 2011, Kosovo was added to the list of safe countries. Consequently, 57% of Kosovo asylum seekers were placed in the fast-track system in 2011, almost 100% of applications registered after the country's addition to the list. Just 5.2% were protected by the OFPRA. These decisions to place them in the fast-track procedure system were deemed implicitly illegal by the State Council, which annulled the decision to include Kosovo on the list of safe countries. The same occurred in 2014: 1,951 applications for asylum filed by Kosovo nationals were registered by the OFPRA in 2014, accounting for 9% of 'priority' procedures. The second decision to include Kosovo on the list of safe countries was annulled by the State Council in March 2014. According to the OFPRA's data, the number is rising at a rapid pace for 2015/2016. It is highly likely that the State Council will retract Kosovo's new inclusion on the list of safe countries for a third time. All of these asylum seekers are facing a well-documented loss of their chances of protection against dangerous returns, despite the fact that they are neither recorded nor compensated by the administrative bodies.

• PLACEMENTS OF APPLICATIONS IN THE FAST-TRACK PROCEDURE SYSTEM BY THE ADMINISTRATIVE AUTHORITY TASKED WITH REGISTERING APPLICATIONS FOR ASYLUM OR THE OFPRA

35. Furthermore, the cases specified by the law cover a broad spectrum of common human situations, sometimes out of the asylum seekers' control such as the date on which the asylum application was received and the applicant's administrative history. In addition, some cases of applications placed in the fast-track system and the 'findings' of the administrative bodies are not clearly defined by the law, which affords the administrative bodies a wide margin of discretion, with insufficient procedural or jurisdictional safeguards. At the Prefecture offices, asylum seekers are afforded no confidentiality in their exchanges with officials, nor sufficient information required on the consequences of their exchange with the member of staff behind the desk. They receive no interpretation support or legal aid. The office administration staff receive no training in asylum law.

36. Practice shows that most applications are placed in the fast-track system at the Prefecture, which is a general administrative body for monitoring foreign nationals and is not a body responsible for the determination of international protection, based on elements that are unrelated to the nature of the application. This is illustrated by the prefectorial certificates of asylum application that specify the type of procedure (standard or fast-track) from the very beginning, issued to exiled persons from their very first appointment.

37. Finally, the law blurs the line between cases of refusal and withdrawal of subsidiary forms of protection, based on the exclusion or cessation clauses laid down by the 1951 Geneva Convention and the interests of protecting public order. The 'administration', without this entity being defined by law, can request that

25. GISTI (Groupe d'information et de soutien des immigrés, Immigrant Information and Support Group), *Rapport sur la réforme de l'asile*, November 2013, p. 53 accessible at: http://www.gisti.org/IMG/pdf/pd_asile_2013-11-27_rapport_letard_et_touraine_sur_la_reforme_asile.pdf

26. See annexes.

the OFPRA (which it may also appeal to autonomously) withdraw a subsidiary form of protection or refugee status from any foreign national whose threat in their safe country is not contested, if the individual commits a criminal offence (excluding all allegations of exclusion clause under the Geneva Convention or if they "represent a serious threat to State security" or if "their presence represents a serious threat to society").²⁷

38. Thus, based on suspicions, presumptions or appraisals of risks that threaten a concept of State security that is not defined under law, individuals who are acknowledged as being at risk of serious persecution, the death penalty or torture if returned to their country of origin, may be deprived of their protection and returned with no real adversarial procedure to a country in which their life is known to be at risk. Article L724-2 of the CESEDA provides that the OFPRA may summon an individual to interview, but this is not a requirement.

THE CASE OF MR M.:

Mister M. is a Sudanese national. He enjoyed the legal aid support service provided by ACAT-France for asylum seekers. He arrived in France in June 2015. He went straight to the Coallia pre-assessment office in Nanterre (the greater Paris region) to request residency as an asylum seeker (at the time compulsory). He was asked to wait several months until December before being given an appointment at the office, with no protective documentation being issued to him. In December 2015, Coallia denied him an appointment "due to the reform", and told him he would have to go back in January 2016. In January 2016, Mr M was received in the offices of the FASEM, a private legal firm that had been allocated a segment of the public services market tasked with 'pre-assessing' asylum seekers. He was then finally given an appointment to appear before the Hauts de Seine Prefecture on 22 January 2016. This Prefecture registered his application for asylum more than six months after he first arrived in France and after he began taking the necessary steps to obtain protection. He was given an asylum application form to send back to the OFPRA. Because he was applying for asylum more than 120 days after he first arrived in France (one of the cases targeted by Article L723-1 III of the CESEDA), his application was fast-tracked by the Prefecture, as shown by the "fast-track system" stamp on his application for asylum certificate, issued to him at the office that same day, with no explanation and no option to appeal against this disadvantageous treatment.

• PLACING APPLICATIONS IN THE FAST-TRACK SYSTEM CONSTITUTES DISADVANTAGEOUS PROCEDURAL TREATMENT AND LOWERS THE CHANCES OF BEING PROTECTED.

39. France uses highly positive terms to describe the progress made using the new fast-track placement system as set out by the asylum reform. However, through the legal aid service it provides to asylum seekers and via the shortened deadlines applicable to the fast-track system, ACAT-France witnesses on a daily basis how this negatively impacts on applicants' chances of being protected from dangerous returns. Concretely, asylum seekers' chances rely on the extent to which they are able to verbalise their fears, their ability to express past persecution they have suffered, to render their stories credible and to prove with words what they are unable to prove materially. Although all asylum seekers are given the same amount of time to send back their forms and are granted an interview with the OFPRA, the question of their credibility, so crucial in their application for asylum, plays a highly significant role. The law allows the OFPRA just 15 days to assess an application for asylum in the fast-track system, thus forcing the asylum seeker to submit a flawless written application that cannot be edited. Asylum seekers who are reassessed have just eight days to return their form to the OFPRA, which must then assess the admissibility of the application within eight days. The application for asylum form must be completed in French, with no linguistic or legal aid or support provided at this stage.

40. In 2014, the overall rate of international protection granted by the OFPRA was 17% and 7% for priority procedures. Applications placed in the priority procedure system have their chances of protection cut by over 50%. Almost a third of asylum seekers were placed in the priority procedure system in 2014. The OFPRA's 2015 statistics have still not been published on the day this report was submitted. The fast-track system, particularly under its new, broader legal definition, still affects the majority of asylum seekers.

27. Articles L711-6, L712-2, and L712-3 of the CESEDA.



ACAT-France and FIACAT invite the Committee to recommend that the State party:
> Ensure that all applications for asylum undergo an in-depth individual assessment;
> Remove the list of safe countries.

2.4 THE INSUFFICIENT EFFECTIVENESS OF THE RIGHT TO PROTECTION AND APPEALS AGAINST NEGATIVE DECISIONS RESULTING IN A RISK OF DEPORTATION

Committee against Torture concluding observations 14 and 18 CAT/C/FRA/CO/4-6

14. *The Committee recommends that the State party introduce an appeal with suspensive effect for asylum applications conducted under the priority procedure. It also recommends that situations covered by article 3 of the Convention be submitted to a thorough risk assessment, notably by ensuring appropriate training for judges regarding the risks of torture in receiving countries and by automatically holding individual interviews in order to assess the personal risk to applicants.*

18. *The Committee reiterates its recommendation that the State party take the necessary steps to guarantee at all times that no person is expelled who is in danger of being subjected to torture if returned to a third State.*

2.4.1. THE RIGHT TO APPEAL NEGATIVE DECISIONS RELATING TO ASYLUM AND THE PROTECTION OF FOREIGN NATIONALS AGAINST ARBITRARY DEPORTATION

41. Despite conveying its intention to establish contentious appeal with suspensive effect in its seventh periodic report for all asylum seekers, France established a number of disadvantageous administrative decisions that expose foreign nationals to the risk of being returned to torture, and which are not subject to appeal.

• THE LACK OF RECOURSE AGAINST SOME ADMINISTRATIVE DECISIONS

• Decisions of termination and inadmissibility

42. Decisions of inadmissibility and termination cannot be appealed in themselves. The law places responsibility for appeals following decisions of inadmissibility with the CNDA, which deals only with full remedy action, meaning on the facts of the case and not on the validity of the decision of inadmissibility. While asylum seekers in the standard procedure system enjoy a thorough examination of the facts of their case by an administrative body before a jurisdiction, individuals who are issued a decision of inadmissibility are only granted an emergency remedy before a single-judge formation by the CNDA. Regarding terminations, the law provides for no administrative judge, no common law or asylum-specific law, and does not intervene at any moment of the procedure with respect to the opportunity nor legality of this administrative deprivation of the right to express a fear of persecution.

• Decisions to place an application in the fast-track procedure system

43. Decisions to place applications in the priority procedure system prior to the reform deprived asylum seekers of appeal with suspensive effect, but were contestable in themselves via appealing to the administrative courts. The reformed law explicitly states that placement in the fast-track procedure system cannot be appealed.

Possibilities of reclassification by the administrative body itself appear to be merely theoretical and unrealistic. When questioned by the State Council judge during the hearing pertaining to the SCs and Kosovo on 11 February 2016 (ACAT-France was present at both meetings), the OFPRA, represented by its lawyer at the council and by its legal affairs manager, was unable to cite a single occasion on which a fast-track procedure application had been reclassified as a standard procedure application.

In addition, on several occasions the OFPRA stated its intention not to intervene in monitoring the procedural legality of Prefectures' decisions to place an application in the fast-track procedure, claiming it was content to only replace in the standard procedure asylum seekers who were identified as being 'vulnerable' due to the persecution they had already suffered. This approach skews the notion of protection, as it favours torture that has already been experienced, rather than seeking to prevent the torture that may yet be inflicted.

• **THE LACK OF SUSPENSIVE EFFECT IN SOME FORMS OF APPEAL:**

44. France announced that the asylum reform would extend jurisdictional appeal with suspensive effect to "all" asylum seekers. Contrary to statements issued by the Ministry of the Interior, a number of asylum seekers remain deprived of this right before the CNDA, under Articles L743-2 and L743-4 of the CESEDA. The following categories of people may be deprived of their right to residency during the procedure and before the final verdict:

- asylum seekers having received a decision of termination or inadmissibility from the OFPRA;
- asylum seekers whose right to residency was revoked under the administration's new discretionary powers, in particular those who fell under the 'Dublin' procedure, and whose applications were diverted towards another Member State, with a high risk of a dangerous return to their country of origin as a consequence;
- asylum seekers in the overseas territories.

• **ASYLUM SEEKERS IN DETENTION :**

List of issues in relation to the seventh periodic report of France § 9 (CAT/C/FRA/Q/7)

Please indicate to what extent the bill on asylum reform extends the period of five days currently provided for in Article L. 551-3 of the Code on the Entry and Residence of Aliens and the Right of Asylum during which an asylum seeker being held in a detention centre may lodge an appeal with the National Court on the Right of Asylum following the refusal of his or her application by the French Office for the Protection of Refugees and Stateless Persons. Please indicate whether such an appeal would have a suspensive effect.

45. In its responses to the Committee, France stated that the asylum reform would remove the automatic nature of maintaining asylum seekers in detention by establishing jurisdictional appeal with suspensive effect against detention. However, Articles L556-1 et seq. of the CESEDA provide that an appeal against a negative OFPRA decision made by a person in detention is not automatically suspensive. The suspensive nature of the appeal is left to the discretion of the administrative court judge and will be refused if the judge considers the application for asylum to have been filed with the sole aim of obstructing removal measures. Yet by its very essence, an application for asylum made in detention aims to obstruct removal, as it aims to protect the applicant from being returned to their country of origin. Thus, in light of the law and the lack of legal aid available in detention, most cases of appeals risk not being deemed suspensive. Asylum seekers in detention therefore find themselves in a difficult position when seeking to convince the judge that their application is valid.

2.4.2 THE INEFFECTIVENESS OF THE RIGHT TO APPEAL FOR A LARGE PROPORTION OF ASYLUM SEEKERS

46. The suspensive nature of an appeal is necessary yet insufficient in ensuring its effectiveness. An appeal is ineffective if the means (material, legal, procedural) do not allow asylum seekers in practice to effectively defend themselves against decisions that may place them in danger. A number of factors related to the effectiveness of the appeal are in effect lacking and heighten the risk of placing the asylum seeker in a situation where they risk torture or cruel, inhuman or degrading treatment. In its responses to the questions asked by the Committee (paragraph 49, note 49), France states that the CNDA is an administrative jurisdiction that has exercised appellate jurisdiction over the OFPRA. Yet the CNDA is a first instance jurisdiction and the only one to rule in first and last instances on the facts of applications for protection. The State Council, a court of cassation that only rules in the event an application is rejected by the CNDA, means that asylum seekers in France have just one level of jurisdiction.

• THE RIGHT TO AN INTERPRETER

47. Affording asylum seekers the ability to understand the challenges and issues inherent to the procedure and to communicate the seriousness of their fears of persecution and torture were they to be returned to their country of origin is a fundamental condition of the effectiveness of the protection from persecution that they are applying for. Access to an interpreter is a necessary corollary to this. This right is not sufficiently safeguarded in France. The only free language assistance that asylum seekers are granted by the State occurs when their application is examined by the OFPRA and in the event of an appeal made before the CNDA. Asylum seekers therefore receive no assistance when writing their accounts or if they are placed in the fast-track procedure system. The application for asylum form is written in French and must be filled in in French. As a result, many asylum seekers make mistakes that can then be used against them. They are forced to have their accounts translated by non-professional or volunteer translators who are often unscrupulous and unspecialised, and who invoice their translations by the page. The accounts attached to the initial asylum applications are therefore often littered with errors, as well as additions or omissions. A lack of means results in asylum seekers often restricting their accounts to one or two pages. Accounts of their fears of persecution therefore appear succinct and unconvincing, which is in then held against them by the OFPRA. The decision to grant them jurisdictional assistance before the CNDA grants them access to legal aid, but not the services of an interpreter before the CNDA hearing. In light of the prices of private interpretation services and the fees applied by jurisdictional assistance lawyers²⁹, despite the fact that interpretation is key to a full and coherent account of the fears of persecution that would support an appeal, it is often lacking. In cases of deprivation of liberty (in detention or waiting areas) between notification of the decision to reject the application for asylum and of the right to appeal and a hearing, asylum seekers who attempt to contest negative decisions in terms of asylum do not have access to an interpreter free of charge either.

• LEGAL AID IN DEPRIVATION OF LIBERTY

48. Asylum seekers are left ill-equipped at the stage when it is crucial they understand the consequences of the decision issued to them, and when they are required to formulate their appeal in French in an extremely short and virtually untenable window of time. Contrary to France's statements in its seventh periodic report, the Anafé association enjoys a convention that grants it permanent access to the only waiting area at the Roissy Charles de Gaulle airport in Paris, yet despite this maintains no permanent presence and makes no effort to remedy the lack of free lawyers in the waiting area. The association is physically absent from all other waiting areas in France. Similarly, the presence of associations such as the Cimade in detention centres cannot make up for the lack of procedural safeguards such as timely access to a lawyer free of charge. The establishing of lawyer drop-in surgeries with a view to providing free legal advice and the ability to formulate an appeal from inside the detention centres and waiting areas remains one of the major shortcomings of the associations that are nevertheless present within these detention premises. The only opportunity an individual has of meeting with a lawyer in these two settings is by acquiring contact details for a lawyer and having them come to the premises at their own expense. Legal aid provided by a lawyer as jurisdictional assistance is only provided at the hearing by a lawyer from the administrative court, who is only given the case files and allowed to meet with the applicant a few hours, and sometimes even just a few minutes, prior to the hearing.

• PERIODS ALLOWED FOR APPEALS

49. The time frames applicable to the admissibility of appeals against negative asylum decisions are difficult to comply with and make asylum seekers' right to appeal ineffective in some cases. In administrative detention centres and waiting areas alike, the time-frame for appealing a negative decision that puts the asylum seeker at a direct risk of a dangerous return is 48 hours. The right to appeal a transfer decision made under the Dublin Regulation, which generates a risk of dangerous return indirectly (in addition to the fact that some asylum seekers fear persecution in some Schengen member States, as is the case for Chechen nationals in Poland), is restricted to 15 days. The sole judge of the administrative court is obliged to rule within a 15-day period. If the asylum seeker is placed in detention, the court rules in emergency proceedings in just 48 hours.

50. Some of the CNDA's time-frames leave too little time for asylum seekers to effectively defend themselves against a negative decision. An asylum seeker who has been rejected by the OFPRA has just 15 days to request the services of a lawyer under legal aid to help them formulate their appeal. Considering the practical realities of asylum seekers housed in 'platforms' receiving their post, this time-frame is often reduced to mere days.³⁰

28. OFPRA, *Activity report 2014*, April 2015, accessible at: https://www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport_dactivite_2014.pdf (Annexes)

29. As an indication: Total legal aid before the CNDA = 16 UV= 520 euros all inclusive (the lawyer then deducts his or her fees)/an interpreting session using ISM, the primary service provider = 110 incl. per three-hour session or

30 incl. phone interpreting per 15-minute session.

51. The deadlines given to formulate and complete an appeal with the help of a lawyer, especially when provided through legal aid, are also too short for the appeal to have any real chance of being successful. The Court must now rule in five weeks (including inquiry, hearing and ruling) on appeals made by individuals who have been the victims of decisions made under the fast-track, inadmissibility and termination procedure systems, compared to five months for all others.³¹ This leaves the lawyers, and the magistrates of the CNDA, too little time to become fully familiar with the case, its often complex issues and the frequently subtle psychological implications and issues. The reduced inquiry time combined with the high number of cases to be handled by the magistrate, render the possibility of parole and a full hearing of the asylum seeker unrealistic.

• **INEQUALITIES BETWEEN ASYLUM SEEKERS REGARDING ACCESS TO SPECIALISED, TRAINED JUDGES OPERATING AS PART OF A SPECIALISED COURT PANEL.**

• **The right to a judicial panel**

52. In addition to deprivation of liberty, the asylum reform reduces access to the justice system and the effectiveness of appeals by pushing asylum seekers into the fast-track procedure. Those who are issued termination and inadmissibility decisions find their applications for asylum heard by a single-judge panel before the CNDA, while other asylum seekers continue to enjoy a judicial panel. Yet a judicial panel provides the asylum seeker with an additional safeguard to the effectiveness of their appeal. The CNDA's judicial panels include the presence of a representative of the High Commissioner for Refugees (HCR), whose independence and knowledge of geopolitical issues and cultural diversity are crucial to understanding the applicant. The panels also base their decisions on a thorough examination of a case file compiled by a rapporteur.

• **Magistrate formation**

53. The administrative court's delegate magistrates rule in single-judge formations and handle appeals against ministerial refusals concerning entry into France under the asylum system and made in waiting areas, as well as appeals against rejected asylum applications made in detention. This jurisdiction of a general administrative judge ruling in a single-judge formation which already applies to waiting areas does not sufficiently safeguard the right to effective appeal. Magistrates are only provided with the complex case files that include highly specific geopolitical contexts they are not trained in at the hearings themselves. Required to rule in the three days following the submission of the applications and to deliberate at the end of the hearings themselves, they are not afforded sufficient the time to thoroughly examine the case and to carry out in-depth research into the applicant's situation.

54. The administrative judge formations that France mentions in its seventh report are not necessarily obligatory, they sometimes only last a few hours and handle foreign national rights in general, meaning issues related to residency, deportation, asylum, detention, as well as naturalisation and family reunification. Cases relating to risks of dangerous returns and the prevention of torture can therefore only be handled superficially.

• **Material conditions of hearings (public hearings, 'theory of appearance', delocalised hearings, video conference)**

55. In the list of issues related to torture and mistreatment in France presented to the Committee for the July 2015 session, ACAT-France rose the question of the inequalities inherent to video conference hearings on asylum issues and delocalised hearings. In effect, during these hearings pertaining to asylum, where feelings and experiences play a crucial role and where the applicant must be able to express themselves freely, communication is fragile and proximity between the judges and the individual whose fate hangs in the balance is by definition absent. These concerns remain intact and are all the more heightened by the government's plans to extend these measures and by the new legal provisions that will allow this extension every time "technical reasons" are invoked. These video conference hearings notably affect asylum seekers in the overseas territories who already experience a disadvantageous regime of derogations.

• **Equality of arms and publicising sources**

56. The French administration and jurisdictions continuously consider fears of persecution and torture expressed by foreign nationals as unfounded due to their allegations being contrary to the "informational available" to the administration. This information is not always published and made public, however.

31. Article L723-2 of the CESEDA.

Sources are not always provided or available to verify. Reports issued by the OFPRA mission are based on incomplete on-the-ground observations and on meetings with local authorities. During these missions, the OFPRA also includes a member of the CNDA in its delegation, who acts as both judge and party, which renders the validity of these "reports" very difficult to contest as part of an appeal before the CNDA.

M. K is originally from the DRC. He enjoys the legal aid support service provided by ACAT-France. For political reasons, he was arrested and arbitrarily detained at the central Makala prison in Kinshasa, where he was subjected to torture and sexual violence. Scarred and verbally disabled by the suffering he endured, he nevertheless managed to provide the OFPRA with a thorough account of his experience and his fears of persecution, and to speak during an interview. He described in detail the layout of his cell, the number of people in it, and the violence inflicted on him. These descriptions are corroborated by a number of other witness accounts provided by asylum seekers and refugees.

The OFPRA rejected his application for asylum, noting that *"it cannot be said for certain that he was detained in the Makala central prison in light of the many contradictions found between his explanations and the information available to the Office"* (DIDR DRC mission report June July 2013, OFPRA 2014). The OFPRA *"notes in particular that the block in which he alleges to have been detained is the women's block, and contrary to his statements, detainees are permitted to leave their block during the day, surveillance is provided within the prison walls by prisoners themselves, visits are permitted and detainees have access to telephone booths."* This mission report that the OFPRA draws on was not attached to the decision to reject his application for asylum. Without legal aid, it is practically impossible to find it on the OFPRA's website. Reading this report, it would seem that the OFPRA never visited the Makala central prison during its mission. On page 71, on the subject of this particular prison, the report states: *"Despite numerous requests for authorisation, the delegation was denied access to the PCM (central Makala prison) by the Congolese authorities. The refusal is a result of the situation that was occurring inside the prison during the delegation's trip to Kinshasa. Mutiny broke out in Makala on 2 July 2013."* The OFPRA looked no further than an interview with two Kinshasa generals, Jean de Dieu Oleko and Roger Nsimba and anonymous information, neither of which were attached to the report and neither of which are verifiable, to dismiss all of the verifiable statements of this ex-detainee and victim of torture, and to ultimately reject his request for protection against a dangerous return.

57. Article L733-4 of the CESEDA, a new provision that entered into force with the Asylum Reform in July 2015, has enabled the OFPRA to present information to the CNDA without revealing this information to the opposing party, the asylum seeker, under the pretext of protecting the confidentiality of its sources. This infringement of the equality of arms the concept of *alteram partem* is unjust and detrimental to the effectiveness of appealing against negative decisions that engender the risk of dangerous returns.



ACAT-France and FIACAT invite the Committee to recommend that the State party ensure that every failed asylum applicant be granted the right to make an effective suspensive appeal against the OFPRA's decision to reject their application before a specialised judicial panel.

2.5. THE FATE OF FAILED ASYLUM SEEKERS AND THE RISK OF DANGEROUS RETURNS. LATEST LEGISLATIVE DEVELOPMENTS

58. The asylum reform heightens the risk of deportation for an individual who has had their application for asylum rejected, despite the fact that they will continue to face the risk of torture or mistreatment in the event of a forced return to their country of origin. While the spectrum covered by Articles 3 of the ECHR, 5 of the Universal Declaration of Human Rights, 3 of the Convention against Torture and 7 of the International Covenant on Civil and Political Rights is broader than that of Article 1 of the 1951 Geneva Convention, in that they protect all individuals against torture and cruel, inhuman and degrading treatment inflicted by all perpetrators,

the French administrations and administrative jurisdictions tend to amalgamate a definitive rejection of an asylum application and the absence of risk in the event of a return. Parliamentary work on drafting the asylum reform bill intended to put the burden of proof of legal presumption of non-violation of Article 3 of the ECHR in countries of origin on all rejected asylum seekers who appealed to the administrative court against deportation measures resulting from a failed application for asylum.

59. The foreign nationals' rights reform bill voted in on 18 February 2016 contains a worrying provision that increases the risk of dangerous returns, with no fair judicial review. Article L. 214-4 of the CESEDA enables the administration to obtain judicial authorisation to request that the police or gendarmerie intervene in the homes of foreign nationals whose applications for asylum have failed, in order to transport them to the border or administrative detention premises while waiting for forced return plans to be organised. These interventions are permitted between 6:00am and 11:00pm, even in the presence of children. Forced to rule within a 24-hour period, the judge handling such an application cannot imagine the real consequences of such processes, especially since the presence of foreign nations is not a requirement, the procedure not adversarial and the appeal against such a court order not suspensive.

**ALI SHER: ONE CASE HANDLED BY ACAT-FRANCE ILLUSTRATES
THE ASSOCIATION'S CONCERNS SURROUNDING THREATS TO EFFECTIVE
APPEAL AND DANGEROUS RETURNS.**

Ali Sher, was born in March 1995 in the province of Punjab in Pakistan. After his brothers and sisters were assassinated, he fled the country and arrived in France at the age of 15, where he was identified as an unaccompanied minor and taken into care by social services. Upon turning 18, he applied for a residence permit at the Prefecture of Dordogne, in the French region he had been living in. On 24 July 2014, the Prefecture of Dordogne rejected his application and issued him with a decision to return him to Pakistan. Due to a lack of legal advice, Ali Sher did not appeal the legality of this decision within the 10-day time-frame, and the order became legally enforceable.

On 10 March 2015, the young man was arrested by the police on the street in Bordeaux. That same day, the Prefecture of Gironde issued him with an order to be taken into administrative detention. Once in detention, Ali Sher applied for asylum. He was heard by one of the OFPRA's officers of protection on 27 March 2015. On 30 March 2015, the OFPRA produced a highly detailed decision, recognising the current risk of inhuman and degrading treatment that would arise should the young man be returned to Pakistan, and granting him a subsidiary form of protection. Ali Sher was released that same day. On 10 April 2015, Ali Sher received a summons from the Prefecture of Gironde for 20 April, stating that he would be issued with a residence permit enjoying subsidiary protection. The summons clearly mentioned the reason for his appointment at the Prefecture and listed the documentation he would be required to bring. This summons repealed the deportation measure of 24 July 2014.

On 20 April 2015, at the front desk in the Prefecture of Gironde, Ali Sher was notified of a decision taken by the OFPRA dated 4 April 2015, concerning the "withdrawal of his subsidiary form of protection". The Prefecture of Gironde then had the police arrest Ali Sher on the Prefecture's premises and issued him with an order to be placed in administrative detention. Ali Sher was immediately transferred to the Mesnil-Amelot detention centre in the greater Paris area. Once in administrative detention, the young man attempted to contest the legality of his treatment. He was only granted access to a free "drop-in" lawyer for a few minutes before his hearing at the Melun administrative court, which rejected his application, providing no reasons for this decision (as is customary in these cases). Appealing such a ruling has no suspensive effect in French administrative law. On 23 April 2015, with the help of ACAT-France and the Cimade, Ali Sher made calls and wrote emails to formulate an appeal before the French National Court of Asylum to request that the decision to withdraw his international protection be repealed. This appeal does not have suspensive effect, but was shared with all competent authorities for information purposes.

On 23 April 2015 at 4pm, the administrative attempted to proceed to deport the young man. Faced with protests led by the flight crew, the flight was cancelled and Mr Sher was taken back to the detention centre. Back at the centre, Ali Sher says he suffered physical violence inflicted by the escort team upon disembarking. Good practice requires that the JLD (Juge des Libertés et de la Détention, or Liberties and Detention Judge) be provided with faxed copied of the documents pertaining to the case the day before the hearing so that the JLD's office and lawyers may familiarise themselves with the case ahead of time, and that the applicant may prepare for the hearing. Because this practice is not compulsory, it was not carried out. On the morning of 25 April, the JLD had still not been contacted

and no piece of documentation relating to the case had been sent with regard to Mr Sher's detention. A few hours before the final legal deadline for seizing the JLD, Ali Sher was taken by force by police escort to board a flight he had had no prior knowledge of. He was given just enough time to call ACAT-France's head of asylum programmes before the police escort physically seized him. ACAT-France had been powerless to prevent his deportation.

Neither the exact itinerary nor the name of the airline was provided. Mr Sher was unable to prevent being forced to board a second time. In addition to the risk already acknowledged by the OFPRA in its decision of 27 March 2015, an additional risk of inhuman or degrading treatment being inflicted on the young man exists, related to the application for asylum in a third-party country, insofar as Mr Sher may have been arrested by the Pakistani police upon disembarking from the plane. From the beginning, the Ministry of the Interior was contacted by telephone, email and post as a matter of urgency, yet did not respond. To this date, as this report goes to print, the Ministry has remained silent in the face of the concerns and questions expressed by ACAT-France and the Cimade.

The young man has not been in contact with ACAT-France to date, at a time when objective information points to a serious risk of mistreatment in Pakistan. Neither has the Ministry of the Interior replied to the questions or calls for an independent inquiry made by ACAT-France. The administrative procedure shows serious shortcomings.

Young Ali Sher's appeal was heard by the CNDA on 9 December 2015. The hearing took place without the applicant present, and during the process, the OFPRA invoked its general right to unilaterally withdraw its own decisions within a 4-month period beginning on the date on which the original decision as issued, as justification for the withdrawal of the subsidiary form of protection granted to Mr Sher. The administration's self-awarded right in this matter is not stipulated in the CESEDA's provisions.

The case was pushed back to a later hearing before the French National Court of Asylum on 25 March 2016.



ACAT-France and FIACAT invite the Committee to recommend that the State party take all necessary measures to ensure that no individual is returned to a country in which they risk being subjected to torture or cruel, inhuman or degrading treatment

3. FRENCH JURISDICTION OVER CRIMES COMMITTED ABROAD (ARTICLES 5 AND 6)

3.1. UNIVERSAL JURISDICTION

List of issues in relation to the seventh periodic report of France, § 10 (CAT/C/FRA/Q/7)

Please provide information on the measures taken to harmonize the conditions for prosecuting individuals for torture set out in articles 689-1 and 689-2 with those set out in article 689-11 of the Code of Criminal Procedure, which make it difficult to prosecute cases of torture as an international crime. In this connection, please also provide information on the deadline for the consideration and adoption by the National Assembly of the bill to amend article 689-11 of the Code of Criminal Procedure on the territorial jurisdiction of French courts over the crimes referred to in the Rome Statute of the International Criminal Court (the "Sueur Bill"), which was approved by the Senate in 2013 in order to make it possible to prosecute a person suspected of having committed an international crime on the basis of just the fact of his or her presence in French territory. Similarly, please indicate whether the State party intends to remove the four legal conditions set out in article 689-11 of the Code of Criminal Procedure to allow the exercise of universal jurisdiction over the international crimes, including torture, referred to in the Rome Statute.

60. 60. Despite the Committee's Observation n°19 of May 2010, in August 2010, France introduced Article 689-11 to the Code of Criminal Procedure which created impunity for perpetrators of acts of torture committed in the context of war crimes or crimes against humanity. It provides for four cumulative and restrictive conditions (the suspect being habitually resident in France, double jeopardy for the crime of torture in France and in the suspect's home State; the application of the International Criminal Court's jurisdiction; the public prosecutor's monopoly in initiating prosecutions). Thus, in practice it is impossible for French courts to prosecute foreign perpetrators of torture if the acts of torture were committed in the context of war crimes or crimes against humanity. As a result, no prosecutions based on this Article have been initiated since 2010.

3.1.1. REFORM OF ARTICLE 689-11 POSTPONED INDEFINITELY

61. On 26 February 2013, a draft law that aimed to facilitate the application of universal jurisdiction was adopted by the Senate at first reading. As soon as it was adopted, the text was filed with the National Assembly but was never placed on the Assembly's agenda. The French government has been obstructing its adoption out of fear that implicating foreign dignitaries may harm diplomatic interests.

3.1.2. MAINTAINING THE PUBLIC PROSECUTOR AS A FILTER

62. The draft law initially submitted for the Senate's consideration provided for the lifting of the four conditions inherent to referrals to the French courts. The draft law aimed to facilitate referrals by harmonising its conditions and the conditions of referrals to the courts for acts of torture that do not constitute war crimes or crimes against humanity. In the case of the latter, the only requirement a foreign victim of torture must fulfil in order to file a complaint in France is that the alleged perpetrator of the crime must be present in French territory when the complaint is lodged.

63. Upon being examined by the Senate, the text was amended to re-establish the prosecutor's monopoly in initiating proceedings. In its report (§297 and 298), France states that the principle of discretionary prosecution, meaning the prosecutor's decision to launch a public inquiry, complies with Article 12 of the Convention "when French law offers all alleged victims of an offence (including acts of torture) the possibility to directly file a civil suit before the chief investigating judge, thus launching a public and the appointment of an investigating judge."

64. It is precisely this point that has been contested for many long years by the Committee⁹ and French civil society. Within the framework of universal or extraterritorial jurisdiction, victims of acts of torture that may constitute war crimes or crimes against humanity cannot file a civil law suit. Prosecutions may only be initiated by the public prosecutor, meaning that the victims have no direct access to a judge and are therefore deprived of the right to effective appeal. None of the cases of extraterritorial jurisdiction of the French jurisdictions listed in Articles 689-2 to 689-13 of the Code of Criminal Procedure are subject to the conditions laid down in Article 689-11 for the gravest of international crimes. With respect to crimes of torture and forced disappearance (Articles 689-2 and 689-13 respectively) in particular, it is contradictory to have a different procedural system for these two crimes, depending on whether or not they are committed in the context of a crime against humanity or a war crime.

ACAT-France and FIACAT invite the Committee to recommend that the State party change its legislation to remove the four conditions that apply to exercising universal jurisdiction for acts of torture committed in the context of war crimes or crimes against humanity.

32. Draft bill aimed at **modifying Article 689-11 of the Code of Criminal Procedure relative to the territorial jurisdiction of French judges concerning offences covered by the statute of the International Criminal Court**, <http://www.senat.fr/leg/pp11-753.html>.

3.2. THE ADDITIONAL PROTOCOL TO THE FRANCO-MOROCCAN CONVENTION ON COOPERATION IN CRIMINAL MATTERS

List of issues in relation to the seventh periodic report of France, § 11 (CAT/C/FRA/Q/7)

Please provide information on the impact of the application by the State party of the provisions of article 5 of the Convention, the fight against impunity for acts of torture and the bill authorizing the adoption of the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters between the Government of France and the Government of Morocco, which would give Morocco primacy of jurisdiction over crimes committed on its territory by a Moroccan national even if the victim is French.

65. ACAT-France currently defends a number of victims who were tortured in Morocco and on whose behalf the association has filed complaints in France³³. In February 2014 as part of one of these complaints, a French investigating judge requested a hearing with the Moroccan director of the Moroccan Directorate of General Security (DGS), Mr Abdellatif Hammouchi, who was present in France at the time. This simple request for a hearing led to Morocco suspending all judicial cooperation between the two countries.

66. Seeking to re-establish good relations with Morocco, the French government announced that Mr Hammouchi would be awarded the French Legion of Honour award, despite his implication in allegations of torture. Worse still, on 6 February 2015, France and Morocco signed an Additional Protocol to the Convention on Mutual Assistance in Criminal Matters between the two countries³⁴. The draft bill concerning the ratification of the Protocol was put on the parliament's agenda, and was then adopted on 10 July 2015. As a result, it was incorporated into the Convention on Mutual Assistance in Criminal Matters as Article 23a.

67. This Protocol raises some serious questions concerning its legality and its compatibility with the current Convention³⁵. The Convention requires that the State party conduct an inquiry into acts of torture committed abroad when one of the alleged perpetrators is present in its territory and as long as it does not extradite the perpetrator upon request made by the State in which the crime was committed or the State of which the alleged perpetrator is a national (Article 5). The inquiry must be immediate and impartial (Article 13). The Convention does not require the State party to conduct an inquiry into crimes committed abroad against one of its nationals. However, if the State recognises its jurisdiction in acknowledging such crimes, as is the case in French criminal law³⁶, the inquiry conducted by the courts must meet the criteria of immediacy and impartiality (Article 13).

68. The Protocol signed between Morocco and France stipulates that each country must immediately inform the other of any criminal proceedings open in its territory which may involve the responsibility of a foreign national of the other country. This requires that French authorities inform Morocco of any proceedings initiated in France for acts committed in Morocco when a Moroccan national is likely to be implicated. Yet when a crime or offence is being investigated, the work carried out by the French investigating judge or public prosecutor is covered by the obligation of inquiry and investigation confidentiality (Article 11 of the Code of Criminal Procedure). This condition is crucial to the effectiveness and smooth proceeding of inquiries that protects judges from any potential pressure and other manipulations that may hinder them from arriving at the truth.

69. The consequences of this unprecedented requirement to provide information may be serious. Effectively, if the crime or offence covered by the inquiry is deemed by Morocco to be of a sensitive nature – such as in cases of torture implicating agents of the Moroccan security forces or for financial crimes that French investors may be the victims of in Morocco – the Moroccan authorities, informed of the French inquiry, could interfere with the proceedings of the case, including by intimidating the victims and witnesses, destroying evidence or preventing Moroccan suspects of their implication.

33. ACAT-France, *Nos plaintes pour torture et la convocation de l'ACAT par la justice marocaine en 7 questions*, 26 February 2015, accessible at [HTTP://WWW.ACATFRANCE.FR/COMMUNIQUE-DE-PRESSE/PLAINTES-POUR-TORTURE-ET-CONVOCACTION-DE-LACAT-PAR-LA-JUSTICE-MAROCAINE](http://www.acatfrance.fr/COMMUNIQUE-DE-PRESSE/PLAINTES-POUR-TORTURE-ET-CONVOCACTION-DE-LACAT-PAR-LA-JUSTICE-MAROCAINE)

34. Draft bill published on the National Assembly's website, <http://www.assemblee-nationale.fr/14/projets/pl2725.asp>.

35. ACAT-France, *La France, nouvelle alliée du système tortionnaire marocain*, 4 March 2015, accessible at <http://www.acatfrance.fr/communique-de-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, accessible at http://www.acatfrance.fr/public/questions_reponses_france-maroc-27-avril-2015.pdf

36. Under Article 113-7 of the French Criminal Code: "French criminal law applies to all crimes and all offences punishable by imprisonment committed by a French national or foreign national outside the French Republic when the victim is a French national at the time at which the crime was committed."

70. The text is made all the more dangerous by a lack of specific detail concerning the types of information to be shared with Morocco. If the magistrate communicates personal data such as the victim's name, the place of the offence or the name of the Moroccan national who may be implicated, the Moroccan authorities will have enough information to take measures to obstruct the inquiry or acquit the alleged perpetrator.

71. The Protocol provides for the judicial authority of each country collecting observations or information from the judicial authority of the other. Based on this information, the other country may decide to initiate their own proceedings, and in this event, the judicial authority of the first country will be required to either send the case file to the other country or close the case. Therefore as an example, a French judge tasked with investigating acts of torture committed in Morocco by a Moroccan national, and including a French victim, will be required to defer to the Moroccan courts, should Morocco decide to conduct an inquiry into the same case, or else drop the case entirely.

72. In adopting the Protocol, France has made it extremely difficult to conduct inquiries in its own territory concerning acts of torture committed in Morocco by Moroccan nationals. Thus, France has contravened its obligation to guarantee victims the right to seek compensation (Article 14), a right that is not conditional on the crime having been committed in France. This right to compensation includes the victim's satisfaction and the guarantee of non-repetition, which requires the sanctioning of the perpetrators³⁷.

73. Furthermore, if the complaint lodged by the victim is sent back to Morocco, it will not be afforded an impartial, prompt and serious inquiry. Numerous reports deplore the lack of impartiality and independence of the Moroccan judicial system in case files related to acts of torture and repression committed against individuals who express positions that contradict or implicate agents of the State, thus breaching victims' right to an effective and useful appeal³⁸. Thus, as an example, although Moroccan judges are regularly appealed to for allegations of torture made by victims who have suffered violence at the hands of the security forces, rare are the cases in which an inquiry is conducted, and rare still the cases in which an independent and impartial inquiry leads to a prosecution and sentencing³⁹, with too few prosecutions and sentences handed down. The result is de facto impunity for crimes committed by agents of the State.

74. Finally, sending files of allegations of torture to Morocco engenders risks for both victims and witnesses. In effect, since February 2014, the Moroccan justice system has attracted attention on a number of occasions in proceedings against victims of torture that would appear to be primarily initiated with a view to intimidating them following the filing of their complaints. Thus, on 20 October 2014, Wafaa Charaf, member of the Moroccan Association for Human Rights, was sentenced to two years imprisonment by the Tangiers Court of Appeal for "*false allegations and assaulting an officer*" after having filed a complaint of torture. She had lodged a complaint against X on 30 April 2014 for torture and kidnapping with the Tangier public prosecutor. On 27 April, after having taken part in a demonstration to support unionists who had lost their jobs in Tangier, she was kidnapped by two men on her way home. The men blindfolded her and then took her by force to a car, and drove her outside of the city. She was beaten, insulted and threatened for several hours before being dumped. She then went to a doctor to have her injuries recorded. Following her complaint, she was arrested on 8 July 2014, placed in provisional detention and prosecuted for false allegations and assaulting an officer.

75. ACAT-France and two victims of torture supported by the association, Adil Lamtalsi and Naâma Asfari, also saw inquiries against them conducted by the Moroccan justice system. An investigation was opened with the District Court of Rabat following a complaint lodged by the Ministry of the Interior for defamation, false allegations, assaulting public bodies, the use of manipulation and fraud to incite to give false testimonies, complicity and public abuse⁴⁰.

37. Committee against Torture, *General comment n°3*, 2012.

38. Human Rights Watch, "*Just Sign Here*": *Unfair Trials Based on Confessions to the Police in Morocco*, June 2013; United Nations Special Rapporteur Report on torture in Morocco, 28 February 2013; FIDH Maroc: *La justice marocaine en chantier: des réformes essentielles mais non suffisantes pour la protection des droits humains*, November 2014.

39. In its 2014-2015 annual report, Amnesty International reports that very often courts do not take into consideration complaints established by defence lawyers concerning violations of the Code of Criminal Procedure and draw instead on confessions obtained through torture or mistreatment inflicted in provisional detention. In some case, courts have refused to allow defence lawyers to proceed with a cross-examination of the accused witnesses, or to quote defence witnesses.

40. Amnesty International, Human Rights Watch, FIDH et al., *10 ONG inquiètes des mesures d'intimidation exercées contre les victimes de torture et les ONG qui les représentent*, Press release, 9 February 2015.

76. Following the adoption of the Protocol, a circular was sent to the director of criminal affairs and pardons to magistrates, reminding them that the Ministry for Foreign Affairs was to be informed before a foreign official is summoned. This unofficial requirement is not mentioned in legislation and can hinder the smooth proceeding of the inquiry in that the ministry may then forewarn the accused party at its leisure, with the latter then being able to leave the country before any convocation is issued.

ACAT-France and FIACAT invite the Committee to recommend that the State party terminate the Additional Protocol to the Franco-Moroccan Convention on Mutual Assistance in Criminal Matters.

3.3. A RESTRICTED UNDERSTANDING OF THE CONCEPT OF VICTIMHOOD

77. Article 5 of the Convention requires that all State parties take "take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases [...] c) When the victim is a national of that State if that State considers it appropriate". In its general comment n°3, the Committee elaborates on the definition of the term "victim" as it is to be understood by the State parties: "The term "victim" also includes affected immediate family or dependants of the victim".

78. The French justice system contradicts this definition by maintaining a restricted definition of the concept of victimhood in its case law - a definition that excludes family or friends of the victim who may have suffered physical and psychological torture at the hands of the State authorities. Conversely, in respect to cases of sexual assault or physical assault and injuries committed in France, the country's consistent jurisprudence recognises that a victim's friends or family may suffer direct and personal consequences of the crime committed against their loved one.

79. It is contestable that the French justice system should grant the status of victim and the ability to open a civil law suit to the families of victims of violence while simultaneously denying this right to the families of victims of acts of torture.

The Saharan human rights' defender **Naâma Asfari** was arrested in Laayoune, in Moroccan-occupied Western Sahara, on 7 November 2010, the day before the Gdeim Izik was dismantled. The camp had been set up a month earlier by thousands of Saharans to protest against the economic and social discrimination they believed themselves to be victims of at the hands of the Moroccan government. When the camp was dismantled by the security forces, clashes broke out between security agents and the protesters. According to the Moroccan authorities, nine Moroccan soldiers were killed. In retaliation, the security forces carried out waves of arrests alongside acts of torture.

Naâma Asfari was with friends in Laayoune when police officers broke into the house. They brought him into custody without a warrant and assaulted him, to the point where he lost consciousness. In the five days that followed, Naâma Asfari was interrogated and tortured, first at the police station and then at the gendarmerie in Laayoune. On 12 November 2011, he was briefly brought before the court and forced to sign a register under duress, before being transferred with other fellow Saharan detainees to the Salé prison in Rabat, to be prosecuted by the military court, despite their civilian status.

On 16 February 2013, Naâma Asfari and his 23 fellow detainees were sentenced by the military court after nine days of an unfair trial characterised by confessions obtained through torture. No medical expertise or inquiry were conducted into the allegations of violence made repeatedly by almost all of the accused. Naâma Asfari was sentenced to 30 years in prison.

His wife, Claude Mangin, is French. She was in France when her husband was arrested and had spoken to him on the phone just a few minutes before his arrest. She was scarred by the arrest and torture of her husband. She did not hear from him for several weeks. She was never officially informed of his arrest and lived in the justified fear that he would be tortured. A political activist like her husband, Claude Mangin was well aware of the fate that awaits Saharan activists. When she was finally allowed to visit him in prison, Naâma Asfari was able to tell her what he underwent during his interrogation, which caused his wife a great deal of mental suffering. This suffering is revived every single day because her husband is being kept in detention as a result of forced confessions obtained through torture.

The moral suffering inflicted on Claude Mangin is undeniable. And yet, the French justice system rejected the complaint she filed in France with the support of her husband and ACAT-France, on grounds that Naâma Asfari is not French and does not hold victim status.

ACAT-France and FIACAT invite the Committee to recommend that the State party legislate to ensure the concept of victimhood is extended to the loved ones of victims of torture.

3.4. JURISDICTIONAL IMMUNITY

**List of issues in relation to the seventh periodic report of France,
§ 11 (CAT/C/FRA/Q/7)**

Please provide information on the regime for granting and applying immunity to public officials of another State who are present in French territory when they are suspected of having committed acts of torture. Please explain how the State party reconciles granting and applying such immunities with the provisions of articles 5 and 6 of the Convention on the exercise of universal jurisdiction.

80. Over the last few years, France has developed an extensive conception of the immunity from jurisdiction that may be granted to a public agent of a third-party State to release them from prosecution for torture or complicity of torture.

In August 2014, the French government granted diplomatic immunity to the Bahraini Prince Nasser bin Hamad al Khalifa, who was in France to attend the World Equestrian Games in Normandy. Known for his involvement in repressing the civic and political rights movement of the Bahraini people, Nasser bin Hamad al Khalifa was accused by numerous victims of having directly participated in acts of torture inflicted on political dissidents. A complaint of torture was lodged against him in the United Kingdom, and another in France based on universal jurisdiction on the day on which he arrived to take part in the World Equestrian Games. The objective of the immunity granted by French diplomacy was to render the complaint of torture inadmissible and to thus prevent Nasser bin Hamad al Khalifa's prosecution in France.

81. Similar immunity was granted in 2008 to Donald Rumsfeld, the former US Secretary of Defence, following a complaint of torture filed in France based on universal jurisdiction concerning his involvement in the violence inflicted in detainees in the Guantanamo and Abu Ghraib detention centres.

82. Through its extensive conception of the application of immunity from jurisdiction, France avoids its obligation in establishing its jurisdiction over the offences of torture in cases where the alleged perpetrators of the torture are in their territory (Article 5). It also contravenes its obligation to ensure that it takes the person in question into custody or take other legal measures to ensure their presence and to immediately open a preliminary inquiry (Article 6).

83. The 1961 Vienna Convention on Diplomatic Relations and International Custom only provides for a restricted number of beneficiaries of immunity from jurisdiction. Immunity is more or less absolute and long-lasting depending on the functions. For example, according to the Vienna Convention, a Minister of Foreign Affairs such as Donald Rumsfeld may only be granted immunity from jurisdiction for as long as they exercise their responsibilities. In any event, immunity of this kind may not be maintained in the event of an allegation of a serious international crime, such as the crime of torture. This exception to the system of immunity was already adopted by the Rome Statute, which was ratified by France and which states that in no event may official titles exonerate individuals from criminal responsibility for crimes that fall under the jurisdiction of the International Criminal Court. This approach also applies to crimes of torture, which are included in the category of serious international criminal crimes, the prohibition of which is a peremptory norm.

ACAT-France and FIACAT invite the Committee to recommend that the State party amend its Criminal Code to guarantee that no immunity may be opposed in cases of allegations of torture

3.5. TORTURE CRIMES COMMITTED ABROAD BY FRENCH SOLDIERS

84. Victims of crimes of torture committed by French soldiers abroad are deprived of their right to effective appeal. In its judgement in the Uzbin case⁴¹ on 10 May 2012, the Court of Cassation removed the public prosecutor's monopoly in the context of legal proceedings for cases of offences committed by a French soldier abroad, allowing victims to open civil law suits and launch public inquiries.

85. In 2013, the government legislated in order to deprive French or foreign victims of the ability to file a complaint with claims for criminal indemnification. Article 30 of the law on military programming of 18 December 2013 amending Article 698-2 of the Code of Criminal Procedure reserves the right to initiate proceedings for the public prosecutor. According to the law amending Article 698-2 of the Code of Criminal Procedure: "[...] a public inquiry may only be initiated by the prosecutor of the Republic when the case pertains to acts committed by a soldier in completing their tasks, engaged in an operation drawing on military capacities implemented outside of the French territory of French waters, whatever their objective, duration or scope [...]". The aim of the text is clearly stated in the introduction to the law: "The monopoly afforded to the public prosecutor [...] shall constitute effective protection for soldiers against excessive prosecutions" and "will also serve as a safeguard of an absence of judiciary action used by parties as a method by which to contest French military policy."

86. The military community represented by the CSFM (Conseil Supérieur de la Fonction Militaire, or Supreme Council of the Military Services) had nevertheless expressed its opposition to this text: "It delivered an unfavourable opinion on the project concerning the protection of soldiers against excessive prosecutions in their military responsibilities."⁴²

87. This provision favours the impunity of French soldiers who may be responsible for crimes of torture as part of their external operations. A number of cases of crimes (torture, homicide, sexual violence) committed by French soldiers have been passed by in silence these last few years. Fears and concerns on the subject were heightened in 2015 by the lack of diligence employed in the inquiry and legal proceedings surrounding the allegations of sexual crimes committed by French soldiers, inflicted on Central African minors.

ACAT-France and FIACAT invite the Committee to recommend that the State party amend Article 698-2 of the Criminal Procedure Code to end the public prosecutor's monopoly in prosecuting French soldiers for foreign operations.

4. 4 PRISON CONDITIONS AND CRIMINAL POLICY (ARTICLE 11)

4.1 OVERPOPULATION OF PRISONS

The Committee's concluding observations, § 24 (CAT/C/FRA/CO/4-6)

The Committee is deeply concerned by the levels of overcrowding in prisons which, even though they are significantly falling in some institutions, continue to be alarming in French Overseas territories.

List of issues concerning France's seventh periodic report, § 14 (CAT/C/FRA/Q/7)

Please provide details of additional measures to reduce the very high rates of overcrowding in prisons not only in mainland France but also in overseas territories, especially in Mayotte. Please provide updated information, notably detailed statistics, on the use of alternatives to custodial sentences and the measures taken to increase its use, under the Prison Act of 2009.

41. Investigations initiated for unintentional violence following the death of ten French soldiers in the Uzbin valley in Afghanistan in August 2008.

42. (Plenary session of the 89a session of the CSFM)

88. The French prison population has been growing constantly over the last ten years and French prisons still suffer from overcrowding. On 1 September 2010, there were 60,789 prisoners detained in France. As of 1 February 2016, this had increased to 67,362. Over this same period, the operational prison capacity grew from 56,428 to 58,787 places. 1,200 prisoners were sleeping on a mattress placed on the floor on 1 February 2016.⁴³

89. In January 2013, an information report of the French National Assembly *on solutions for tackling prison overcrowding* reported an alarming situation with *'serious consequences that have been unanimously condemned'*.⁴⁴ After having studied the causes and consequences of overcrowding, this report lists 76 recommendations to resolve the issue. It notably recommends avoiding custodial sentences wherever possible and to make imprisonment a useful punishment to promote rehabilitation. It also proposes that certain crimes should no longer be punishable by a prison sentence (using narcotic drugs, driving without a license or insurance, etc.) or even as a last resort, that a *numerus clausus* [quota] should be imposed on all prisons if all the other recommendations prove to be insufficient to resolve overcrowding. Some of these recommendations were also proposed by the Jury of the Consensus Conference in February 2013⁴⁵, as well as by the French National Consultative Commission for Human Rights (CNCDH)⁴⁶. Nevertheless, very few of these recommendations were eventually implemented in the Act of 15 August 2014, *concerning individual sentencing and reinforcing the effectiveness of criminal sanctions*, known as the Penal Reform Act.

4.2. PHYSICAL DETENTION CONDITIONS

90. ACAT-France deplores the dilapidated state of some old prisons. It is also just as concerned about more recent prisons, whose design and architecture could qualify them as dehumanised prison factories.

4.2.1. DILAPIDATION OF SOME PRISONS

• DUCOS PRISON (MARTINIQUE)

91. ACAT-France is deeply concerned by the situation in the Ducos prison, which has been unanimously denounced as being unfit for detaining prisoners. The situation of the Ducos prison has been condemned for many years. Many parliamentarians have called on the Ministry of Justice to take action for more than 10 years. In 2009, a report by the Inspector-General of Places of Deprivation of Liberty alerted the government about the highly critical situation of this establishment.⁴⁷ In 2013, several judgments of the Administrative court of appeal in Bordeaux ruled that the detention conditions are contrary to Article 3 of the ECHR. A mission report on the difficulties in assessing the way inmates are handled in the Ducos prison, then a report by the working group on the problems of prisons in Overseas territories⁴⁸, submitted to the Justice Minister in June and July 2014, both gave alarming descriptions of this institution. To such an extent that on 1 May 2014, the British Justice system refused to extradite a man under a European arrest warrant, deeming that the detention conditions in French overseas prisons "did not respect human rights." The prisoners themselves have denounced their situation, claiming "deplorable living conditions, more than the unbearable and "terrible detention conditions." A survey carried out by the IPO in 2014, confirmed the observations made in these various documents. Overcrowding is chronic and massive. On 1 February 2016, the occupancy rate of the short-term prison unit of Ducos prison was therefore 230.3% and that of the main prison was 142.5%.⁴⁹ The various extension plans implemented over the last few years have not managed to resolve the problem, since the prison population has increased in concert. Up to 5 people can be held in cells of 9 sq. m. with many of the mattresses even being placed on the ground. This extreme crowding makes it very difficult or even impossible to move around the cells. Privacy, especially for hygiene facilities is non-existent here: toilets are at best partially partitioned; at worse, not at all. In a ruling of 20 November 2013, the Administrative Court of Appeal of Bordeaux pointed the finger at "those sanitary facilities, devoid of a specific aeration system, located right next to living and eating areas." The physical detention conditions are sometimes deplorable here:

43. Monthly statistics of the population detained and imprisoned, 1 February 2016, Ministry of Justice

44. *Rapport d'information sur les moyens de lutte contre la surpopulation carcérale*, Assemblée nationale, N°652, Dominique Raimbourg and Sébastien Huyghe, 23 January 2013.

45. Report of the Jury of the Consensus, *Pour une nouvelle politique publique de prévention de la récidive*, submitted to the Prime Minister on 20 February 2013.

46. *Rapport sur les problématiques pénitentiaires en Outre-mer*, May 2014, submitted to the Justice Minister on 8 July 2014.

47. CGLPL, *Rapport de visite du centre pénitentiaire de Ducos (Martinique)*, 3 to 7 November 2009 and 12 November 2009.

48. *Rapport sur les problématiques pénitentiaires en Outre-mer, May 2014, submitted to the Justice Minister on 8 July 2014.*

49. Monthly statistics of the French population detained and held behind bars, 1 February 2016, Ministry of Justice, Table 41, p.47

dirty cells, no maintenance in the exercise areas which become impassable in bad weather (which is frequent due to the tropical climate), poor waste collection and removal, lack of maintenance products provided to inmates, not enough aeration or light, etc. Furthermore, the prison is infested with rats and other pests. Access to healthcare is also inadequate (lack of equipment and staff). It can take several weeks to get an appointment.

• **Baumettes prison (Marseille)**

92. The situation of the Baumettes prison has been criticised for many years. Moreover, in June 2011, the French State was ordered to pay damages to two prisoners due to the deplorable detention conditions they were forced to endure. In turn, the Inspector-General of Places of Deprivation of Liberty sounded the alarm after visiting this prison in October 2012. Here, the Inspector-General found a “*serious violation of fundamental rights, notably with respect to the obligation (...) to protect the detainees (...) from any inhumane or degrading treatment*” and published an urgent set of recommendations.⁵⁰ Overcrowding⁵¹, degraded state of facilities, poor waste management, lack of activities, etc. were highlights and the Inspector-General remarked: “*that in 2012 no substantial improvement had been made.*”

93. Subsequently, after being found guilty by the French courts, the prison administration carried out works. In September 2013, one year after its damning report, a team from the Inspector-General again visited the Baumettes prison in order to inspect progress of the requested work. Clear progress on physical conditions and the operations of Baumettes penitentiary centre was observed. Nevertheless, “while the measures taken and planned are relevant, the conditions in which they are being implemented and the durability of their effects are, to date, fragile,” stated the CGLPL. It notably highlights the fact that given that the work was carried out in a hurry, the renovation works are “*mediocre or poor in quality.*” It further stresses that considerable uncertainties remain around the financing to complete the work.

ACAT-France and FIACAT invite the Committee to recommend that the State party rehabilitate and redevelop French prisons to bring an end to the inhuman and degrading treatments observed.

4.2.2. NEW PRISONS

94. While it is clear that old dilapidated prisons must be renovated or rebuilt, ACAT-France nevertheless warns about the architectural choices that might be made during construction of new prisons. The most recent prison construction programmes have been unanimously criticized for their oversizing, architecture, dehumanisation, and often their distance from urban centres. Significant security measures have been installed in these prisons, replacing human relations. More than often one-way mirrors, cameras and soundproof doors have considerably reduced the contact between prisoners and guards. The Government has decided to lower the latest construction phases, which ACAT-France welcomes. However, those prisons built and commissioned raise questions.

95. For example, the Condé-sur-Sarthe prison, opened in May 2013, considered to be one of the most secure prisons in France, is highly controversial. Like most of the most recent prisons commissioned, the security imperative has replaced human interaction. Contact between inmates and guards are limited, the outdoor exercise yards cramped, the cell doors locked and movement is very closely monitored and restricted. The architecture is oppressive. The prison is far from urban centres, making links with the outside difficult: it is often difficult for families of prisoners to get to the prison and go to the visiting room. Furthermore, this prison is notable for being a maximum security centre, designed for prisoners who have been given long-term sentences, and are considered dangerous. Its architecture exacerbates the tensions. Several attacks on prison staff were recorded in 2013. Several prison administration working groups had nevertheless suggested that security measures implemented in France and the inability to protest were key factors at the root of the violence committed. The guards also complain about their working conditions and the climate of violence in the prison. Many of them have asked to be transferred.

50. CGLPL, *Recommandation du 12 novembre 2012, prises en application de la procédure d'urgence et relatives au centre pénitentiaire des Baumettes, à Marseille*. Published in the OJ on 6 December 2012.

51. As of 1 February 2016, there were 1,657 people held in the short-term prison unit which has an operating capacity of 1,196, in other words a density of 138.5%. Source: Ministry of Justice.

51. Interview on Europe 1, 4 June 2013.

ACAT-France and FIACAT invite the Committee to recommend that the State party carry out an assessment on future and past prison building programmes, in association with all the stakeholders concerned.

4.3. BODY SEARCHES

96. The use of body searches in prisons is strictly regulated by Article 57 of the Prison Act of 24 November 2009. This article requires that any type of search (full body search or pad down search) is adapted to the personality of the prisoner and justified by the presumption of an offence or a security risk. It prohibits the practice of systematic searches. Full searches may only take place in a subsidiary manner when all other types of search have proved unsuccessful. Nevertheless, despite the framework set by law, the prison authorities stubbornly maintained this practice. Many prison directors have instigated systematic strip searches after each visit from family or friends. Many prisons were sanctioned by the administrative judge between 2011 and 2013. On 6 June 2013, the Council of State very clearly prohibited systematic full body searches and considered that the prison authority had committed a serious infringement of human dignity in the Fleury-Mérogis prison. The prison authorities showed an apparent willingness to breach the court rulings and the law, using the security imperative to justify these breaches. Nevertheless, as the CGLPL pointed out “certainly security is paramount, but so is the dignity of the prisoners. The two are inseparable.”⁵²

97. After the many convictions in the French courts, in a note of 15 November 2013, the Minister of Justice restated the legal framework that governs detainees. That note nevertheless provides the *‘possibility to use a systematic system of full body searches against inmates identified as presenting risks.’* This category of prisoner who presents risks is not defined in any text and the identification process for these prisoners is neither known nor checked. Testimonials received by ACAT-France seem to indicate that, at least in some prisons, these demeaning measures are very widely applied, removing the excessive nature of this act, to become a de facto principle. Testimonials talk of ‘almost systematic searches’ at the short-term prisons of Caen and Fleury-Merogis. In Fleury-Merogis, almost half of the inmates are allegedly subject to these demeaning measures.

98. ACAT-France is concerned about the lack of traceability of full body searches on prisoners, making it impossible to guarantee compliance with the provisions of the 2009 Prison Act. During an interview with ACAT-France, the CGLPL confirmed the heterogeneity and opacity of these practices, stating that there were major differences from one prison to the next. Moreover, it is estimated that at least 30 to 40% of prisoners will be subject to strip searches and CGLPL also regretted the lack of traceability for such measures.

99. In a letter of 24 June 2014, ACAT-France requested details from the Minister of Justice on the concrete application of these demeaning measures since the publication of the note. According to the answer of the Ministry of Justice of 19 November 2014, a survey was carried out over the period from 1-30 June 2014, which revealed that *“at the national level, on average 62.6% of prisoners who met visitors in the visiting room over this period were not subjected to a full search.”* By analysing these figures, it appears that a third of inmates (37.4%) have therefore been subject to a full search over this period.

ACAT-France and FIACAT invite the committee to recommend that the State party put a definitive end to full body searches and replace them with other methods that will guarantee prison security while guaranteeing the human dignity of the detainees.

ACAT-France and the FIACAT invite the Committee to recommend that the State party take all necessary measures to ensure that the Prison Act of 24 November 2009 is strictly respected and any strip search measures are monitored.

5. IMPARTIAL SURVEY (ARTICLE 12)

5.1. THE INDEPENDENCE OF SURVEYORS QUESTIONED

The Committee's concluding observations, § 21 (CAT/C/FRA/CO/4-6)

"The State party must take the necessary measures to ensure that each allegation of ill-treatment attributable to law enforcement agents should be promptly subject to a transparent and independent enquiry and the authors be sanctioned in an appropriate way."

List of issues concerning the seventh periodic report of France, § 17 (CAT/C/FRA/Q/7)

Please provide information about the measures taken to carry out prompt, independent and impartial enquiries following persistent allegations of ill-treatment, the excessive use of armed force, harassment and disproportionate use of weapons in the following situations: a) arrests; b) forced evacuation c) operations to maintain order; d) demonstrations; e) air evacuation operations from administrative detention centres or holding centres.

100. Effective enquiries capable of identifying and punishing people responsible for ill-treatment are essential to give practical meaning to the ban on torture, and degrading or inhumane treatment or punishment. Nevertheless, given the facts, these obligations are regularly ineffective when it comes to police violence. In such cases, it becomes extremely difficult to get an effective enquiry. The independence of the investigators is questioned, the investigations carried out are regularly perceived as dubious, shallow and generally opaque, leaving little place for public scrutiny both in terms of their process and the conclusions.

101. Two types of investigations can be conducted for allegations of illegal use of force by law enforcement agents: judicial enquiries and the administrative enquiries. The aim of the judicial enquiry (and legal proceedings) is to reduce the impact on society. The aim of the administrative enquiry (and downstream, the disciplinary procedure) is to highlight the damage to the institution and the profession.

102. In both cases, however, the investigations are in practice delegated to the police forces and the gendarmes themselves or specific inspection services (IGPN or IGGN). According to the Magistrates interviewed by ACAT, the vast majority of criminal investigations are directly conducted by police or gendarme services. The specialised investigation services, notably IGPN and IGGN, are only brought into judicial investigations for the most serious cases. Based on the opinion of the judges interviewed, the investigations are better in quality when they are conducted by IGPN or IGGN. In spite of everything; even in this case, the investigations are conducted by police officers and gendarmes.

103. Indeed, these internal investigations arouse a certain amount of distrust in the general public. The IGPN and IGGN investigators are suspected of giving more credence to the statements of the police and gendarmes than the third parties who made the accusations. In July 2010, a severe report from the Court of Auditors [Cours des comptes] highlighted serious shortcomings within the IGPN and the IGS. The report questioned the impartiality of these institutions: *"Unlike some of their European counterparts, both organisations report directly to the police forces subject to their investigative power."* The Court of Auditors condemned the lack of external involvement in the investigation process and concluded that *"without reforms to create an organisation that is both more integrated and more transparent, the question of the pertinence of such an internal investigation system of the police might be raised, when compared to the independent bodies created in other European countries."*⁵³ Nevertheless, the requirements to be impartial, effective and swift, imposed by international law are barely respected in France.

WISSAM EL-YAMNI CASE: AN INQUIRY WITH MULTIPLE IRREGULARITIES

On the night of 31 December 2011 /1 st January 2012, Wissam El-Yamni, 30, was arrested in Clermont-Ferrand in unclear circumstances and died a few days later. Wissam El-Yamni was celebrating the New Year with friends in the supermarket car park, when the police officers received a shower of stones as they passed by. There followed a car chase, after which Wissam El-Yamni was arrested. Several witnesses stated that the victim was beaten before being placed in a car and taken to the police station. The journey lasted only a few minutes, and then follows a cloud of uncertainty around what happened when he arrived at the police station. Wissam El-Yamni was found lifeless, without a belt and his trousers down, lying face

down in the police station corridor. He was then taken to hospital where it was found he had had a heart attack. After being put into an artificial coma, he died nine days later. This death was surrounded by many uncertainties and contradictions, which the investigation has not as yet been able to clear up. The case is still open.

Uncertainty over the cause of death

Several medical reports were produced, each contradicting the other.⁵⁴ The first medical reports written in the Accident and Emergency service reported several fractures and lesions, notably around the neck, described as possible strangulation marks. An autopsy report then suggested that a 'pliage' (folding)⁵⁵ technique might have been used. In this case, a bone malformation of the victim would have apparently accentuated the effect, and apparently ruled out death by strangulation. New medical reports subsequently suggested that death was due to cardiac poisoning caused by taking drugs, a hypothesis that had been ruled out by previous medical reports, and contradicted by a toxicology report made at the request of the family.

Contradictions in the police versions

Farid El-Yamni, the victim's brother, was amazed that some inconsistencies in police statements were not picked up by the investigating judges: "*The examining chamber related a version of a police officer, who states that Wissam appeared to be dying on his arrival at the police station. It did not reveal that this version had changed, the same policeman stated in other statements that the victim was perfectly conscious because he was talking, which was confirmed by another police officer in the corridor*⁵⁶."

Disappearance of evidence?

Hodge-podge of photos

Several photographs of the victim were taken between his arrest and his death. According to his brother, the photos were taken by police the day after the arrest: the police record of 1 st January mentions the existence of photographs. However, no photo of the 1st of January has ever been provided by the police. Other photos were then taken on 2 January (by the doctors at the hospital), then 3 (by the family), then about 9 (by the police) and finally on 10 January after his death (by the police). On these last photos, the wounds have considerably improved, since he continued to receive treatment whilst in a coma. According to the family, the penultimate series of photos was placed in the court record and presented as being the photos taken on 1 st January. The family of Wissam El-Yamni had to make considerable efforts to prove that the photos could not have been taken on that date. Faced with this photographic confusion, and following a request from the family, the Examining Chamber, ordered the police computers and cameras to be examined. Supervised by the IGPN, this analysis proved to be very incomplete, obliging the examining magistrate to order a second rogatory commission. According to the family, this new investigation revealed in 2014, that the computers and camera equipment had been reformatted in January 2013, which made it impossible to date the photos placed in the court record. Meanwhile, the photos taken on 1 st January have still not been found.

Partial audio recordings

The family also requested that the radio bands and cctv images be checked for the route taken by the police before arriving at the station, then inside the station. Handed over at the start of 2014, these recordings are, according to the victim's brother, fragmented and incomplete. Some parts of the journey are missing.

Disappearance of Wissam El-Yamni's belt

On the evening of his arrest, the victim wore a belt, visible on the videos where he appeared before being taken to the station. However, this belt subsequently disappeared and has never been returned to the family with his personal effects. "It has probably taken from Wissam before his arrival at the station, because he had been left with his jeans down in a corridor.

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

54. Médiapart, *Mort après avoir été interpellé : bataille d'expertises médicales*, 31 December 2013

55. The 'folding' technique involves keeping a person in a sitting position, with the head pressed on their knees in order to contain them.

56. *Support committee for Justice for Wissam, Wissam El-Yamni: questions following the explanations on the cancellation of the investigation of one of the two police officers in the police dog handling unit by the examining chamber*, 29 January 2015;

What happened to his belt? Why had his jeans been lowered?", asked his brother Farid⁵⁷. This case raised many questions to which the police authorities are not providing any answers. The investigation report of the IGPN concluded at the end of January 2012, that death was due to using the 'folding' technique, adding that "nothing leads us to believe that the arrest conditions were irregular." A preliminary judicial investigation was opened against two police officers for "deliberate violence leading to unintentional death by a person invested with official powers. In this case, the Defender of Rights referred the matter to itself in 2012. To the best of ACAT-France's knowledge, on the date this report was written, this preliminary judicial investigation has made no progress.

A need to create an independent investigation body

104. Investigations are a core part of the procedures, on which the judicial rulings are based. This is why ACAT-France is arguing that an independent investigation body should be created to examine the complaints that point to the illegal use of force by law enforcement agents, in order to be able to fulfil the requirements of impartiality, effectiveness and speed, imposed by international law.

ACAT-France and the FIACAT invite the Committee to recommend that the State party establish a fully independent body, responsible for investigating the facts committed by police officers and gendarmes..

5.2 SANCTIONS

The Committee's concluding observations, § 31 (CAT/C/FRA/CO/4-6)

The Committee reiterates its previous recommendation according to which the compliance with the provisions of Article 12 of the Convention carries with it the requirement for an exemption to the system of discretionary prosecution.

105. ACAT France and FIACAT share the Committee's concerns as to the discretionary prosecution principle which gives public prosecutors the power to decide whether or not they follow-up on the complaints they receive. According to the French authorities, "this principle does not interfere with the right of victims to take legal action", in so far as they can appeal against rulings to withdraw proceedings or themselves initiate proceedings by filing for civil injury, and where the prosecutors' status as magistrates guarantees their objectivity⁵⁸. ACAT-France would however like to point out that in practice, decisions made by the State Prosecutor's Office to discontinue proceedings are rarely followed by an objection, direct citation or complaint with the complainant filing for civil injury based on the interviews conducted by the ACAT-France with victims. In fact, filing for civil injury requires victims and their families find financial resources to cover legal fees, which represents an insurmountable obstacle for many people, as ACAT-France discovered in its interviews. Furthermore, the victims and their families are often unfamiliar with the judicial system and do not always have support from more knowledgeable people in their immediate sphere of family and friends.

106. According to ACAT, it is even more important to make it mandatory to bring a case before an examining magistrate in this type of case, since the data that it has been able to gather, shows that cases which concern the actions of law enforcement officers are more often thrown out of court than other cases of violence where no law enforcement officers are involved. It would be useful to publish the specific statistics concerning the rates of discontinued proceedings which concern law enforcement officers.

57. Médiapart, *Un an après la mort de Wissam El-Yamni, une enquête à reculons*, 26 January 2013

58. United Nations, Information received from France, following the concluding observations of the Committee against torture on the fourth to sixth periodic reports of France, CAT/C/FRA/CO/4-6/Add. 1, 22 June 2011 .

The Committee's concluding observations, § 31 (CAT/C/FRA/CO/4-6)

The Committee notes with concern the absence of precise and recent information making it possible to compare the number of complaints received about the actions of the security forces which are contrary to the Convention, with the subsequent criminal and disciplinary responses.

5.2.1 DISCIPLINARY SANCTIONS

107. In 2008, the State party declared to the Committee that "as soon as the allegations of verbal or physical abuse are brought to the knowledge of the authorities, a thorough investigation is conducted, and any breach established is subject to an administrative sanction, without prejudice to a criminal sanction (...). These sanctions are strictly enforced, as soon as a breach of obligations has been established"⁵⁹. Nevertheless, ACAT-France deplores the lack of transparency of French authorities with regard to the disciplinary action following allegations of ill-treatment by the security forces.

108. We learn from the IGPN annual report that in 2014, the Administration declared a total of 2,098 disciplinary sanctions against the National Police. This includes 989 warnings, 826 reprimands, 146 2nd group sanctions (e.g.: suspension for less than 15 days), 79 3rd group sanctions (e.g.: suspension for 16 days to 2 years, demotion), 63 4th group sanctions (e.g.: dismissal)⁶⁰. However, this data alone does not make it possible to really assess the disciplinary follow-up of the cases of alleged illegal use of force since it is not clear how many cases involve the use of force and to which acts the declared sanctions refer.

109. As for the facts concerning the gendarmes, ACAT-France found a total opacity: we have no knowledge either of the number of alleged acts or the number of sanctions given out with regard to these allegations.

110. ACAT-France has questions about the proportionality of the disciplinary sanctions given out. Although the 'police of the police' is generally considered to be a harsh institution, the information that we have obtained instead, suggest a relative indulgence of hierarchical authorities when it comes to allegations of violence committed by police or gendarmes. In this regard, ACAT-France took great interest in the observations of the sociologist Cédric Moreau de Bellaing, who carried out an extensive investigation on the work of the General Services Inspectorate (IGS) [Inspection générale des services]. At the end of his study, the researcher concluded that the authorities were relatively clement towards acts of violence. Not only did this lead to a sanction less often than any other type of offence, but the sanctions handed out were harsher than for other acts.

111. ACAT-France observations are consistent with these analyses. In the cases that it has examined in the course of its investigation, it is rare that disciplinary sanctions are made public. When this is the case, the sanctions given out for acts of deliberate violence are sometimes very lenient given the seriousness of the injury caused or the offences recorded (in particular, see the cases of **Ali Katrina, Abdelhakim Ajimi** and **Geoffrey Tidjani** mentioned below).

5.2.2 COURT-ORDERED SANCTIONS

• WRARE CONVICTIONS

112. ACAT-France deplores a total opacity on the conviction rate of police officers and gendarmes. No figures have been published by the Ministry of Justice. According to the magistrates which ACAT-France has met, it should nevertheless be possible to know the number of convictions against persons invested with official powers, provided that this data is recorded. These figures have occasionally been published by the French government, notably at the request of the Committee⁶¹. Such statistics ought to be published annually. Alone, they cannot be sufficient, because they do not allow us to draw any conclusion, if they do not also specify the number of complaints filed, investigations opened, discharges delivered or the proportion of accused

59. Fourth to Sixth periodic reports of France to the UN Committee against Torture, CAT/C/FRA/4-6, June 30, 2008, p. 10

60. IGPN, *Rapport d'activité 2014*, p. 14

61. Fourth to Sixth periodic reports of France to the UN Committee against Torture, CAT/C/FRA/4-6, June 30, 2008, p. 23

or defendants who were acquitted or discharged, as well as the total number of sentences delivered. However, none of this information has been published to date. In 2010, The Committee stated that it was concerned by *"the absence of precise information and recent information making it possible to compare the number of complaints received about the actions of the security forces, with the subsequent criminal and disciplinary response"*⁶². No positive developments have occurred since that date.

113. These concerns are all the more important since it is clear from ACAT-France's investigation that cases involving an illegal use of force rarely appear to culminate in convictions. Of the 89 cases examined by ACAT-France in the course of its investigation, those in which the courts had delivered a decision at the time of writing this report, mostly resulted in discharges. This was the case, for example with the case of **Mohamed Boukrourou**, who died during his arrest in November 2009. Called out to arrest him in a pharmacy, for police officers tried to handcuff him and pushed him to the ground. They then allegedly trampled on him in the police van and punched and kicked him. He had bruises on the face and wounds on his cheek, eyebrows and lips. In March 2012, the examining magistrate brought proceedings against the four police officers, before a discharge was delivered on 24 December 2012⁶³. In the case of **Lamine Dieng**, who died in 2007, a discharge order was delivered by the examining magistrate in June 2014. The same issue concerning Ali Zeid, who died in 2009 after his arrest and Mahamadou Maréga, who died in November 2010, after being struck seventeen times by a Taser⁶⁴. These three cases are explained in more detail later in the report.

• LENIENT CONVICTIONS

114. When police violence can be proven and the responsibility of the officers is proven, the sanction delivered should be proportionate to the seriousness of the deeds. Nevertheless the evidence is conclusive: victims, lawyers, magistrates and non-profit organisations interviewed deem that the convictions are rarely proportionate to the gravity of the deeds when it comes to police violence. From this point of view, there is a clear difference of treatment between police prosecuted for violence and other litigants. In the cases examined by the ACAT-France, when convictions are delivered, they rarely go beyond a suspended prison sentence, even when the crime in question led to the death or disability of the victim. Rare are the cases where the sentences are also registered in the Bulletin No.2 of the judicial record or are accompanied by a ban from exercising their duties. Nevertheless, the fact that the person charged is a police officer, should on the contrary lead to heavier criminal liability. .

115. 115. Out of 89 cases examined by ACAT-France and covering a period of ten years, only 7 resulted in convictions. Other than a totally exceptional case of a mandatory custodial sentence, these were only suspended prison sentences.

- **Sékou** (aged 14) lost an eye as a result of being shot by a flash-ball in 2005: a police officer was given a 6-month suspended prison sentence. The conviction was not included in the officer's criminal record, which enabled him to continue to exercise his duties.
- **Abdelhakim Ajimi** (22) died from suffocation during his arrest in 2008: Two police officers were convicted of manslaughter and were given suspended prison terms of between 18 and 24 months. A municipal police officer was sentenced to 6 month suspended prison sentence for non-assistance to a person in danger.
- **Geoffrey Tidjani** (16) was seriously injured in the face after being shot with a flash-ball in 2010: a police officer was convicted of wilful aggravated violence and forgery and use of forged documents. He was sentenced to a 12-month suspended prison sentence, a 24-month ban to carry a weapon and a 12-month ban to exercise his duties
- **Serge Partouche** (48) died by suffocation during his arrest in 2011: three police officers were convicted of manslaughter and sentenced to 6-month suspended prison sentences.
- **Nassuir Oili** (aged 9) was hit in the eye by a flash-ball in 2011: a gendarme was convicted at the court of assize and given a two-year suspended sentence for wilful violence leading to mutilation or permanent disability. The conviction was not included in his criminal record.
- **Five students** were injured as a result of blows received during an arrest in Marseilles in 2012: a police officer was convicted of wilful violence and given a 12-month suspended sentence. The conviction was not included in his criminal record.

62. United Nations, Concluding observations No 31 of the Committee contre la torture on the fourth to sixth periodic reports of France, CAT/C/FRA/CO/4-6, 20 May 2010, p.9

63. Amnesty International, *France: dismissal in the Boukrourou case, who died at the hands of the police*, 9 January 2013

64. See Appendix 2

- **Mickaël Verrelle** (30) was crippled after having been violently bludgeoned in April 2010: a police officer was sentenced to five years in prison, including three years without remission, and was banned from exercising the profession of police officer, for aggravated violence.

116. In the face of these findings, the French authorities argue that "the convictions given to policemen guilty of violence cannot be regarded as being generally disproportionate to the crimes they were accused of (...). The suspended sentence which might be given by the criminal courts can be explained by the fact that, subject simultaneously to a disciplinary sanction that can go as far as striking them off the list of officers, the convicted parties are almost always first offenders who benefit from the usual suspended sentences in this category."⁶⁵ Nevertheless, the disciplinary sanctions seem also to sometimes be very lenient, in view of the crimes. In any event, no quantitative data exists which can confirm the statements which are also supported by the French Government.

ACAT-France and FIACAT invite the Committee to recommend that the State party:

Publish figures concerning allegations of mistreatment and court-ordered and disciplinary sanctions issued as a result of these allegations;

> Ensure that disciplinary and court-ordered sanctions handed down to members of the security forces for acts of mistreatment are in proportion to the severity of the offences

5.2.3 INVESTIGATIONS OF TORTURE COMMITTED ABROAD

117. The French criminal code provides for the jurisdiction of French Courts in dealing with crimes - including torture - committed abroad, by foreigners against French nationals. This is the principle of passive jurisdictions of national courts. It is on this basis and in accordance with Article 5.1 of the Convention that ACAT-France has filed three complaints for torture. Two concerning French citizens (Adil Lamtalsi and Mostafa Naïm) who were tortured in Morocco by Moroccans, in 2008 and 2010 respectively. The third complaint concerned a French citizen (Mohamed Zaied) tortured in Tunisia by of the Tunisians in 2008. As soon as the French justice acknowledges its jurisdiction to deal with a case, it must carry out an examination of the facts while respecting the requirements of promptness and impartiality laid down by Article 13 of the Convention.

- **IPROMPTNESS OF INVESTIGATIONS**

118. The proceedings opened following the three complaints filed by ACAT-France exceed the reasonable time limit as defined by the Committee. In fact, the complaints were filed almost three years ago.

- The complaints concerning Adil Lamtalsi and Mostafa Naïm were filed on 21 May 2013.
- The complaint concerning Mohammed Zaied was filed on 24 June 2013.

The judicial investigations are still ongoing but few investigative acts have been conducted on any of the cases.

- **IIMPARTIALITY OF INVESTIGATIONS**

119. The investigations into complaints of torture committed abroad are sometimes hampered by the political authorities when they have diplomatic implications. In these cases, impartiality and the diligence of the magistrates is undermined by political intervention in breach of the principle of separation of powers.

Adil Lamtalsi, a Franco-Moroccan national, was arrested in Tangiers on 30 September 2008 by the Moroccan police. He was detained at a secret detention centre in Temara, under the responsibility of the Moroccan Directorate of General Security (DST) [Direction de la surveillance du territoire]. He was tortured for three days and then transferred to the Gendarmerie in Larache. On 11 November 2008, he was sentenced to ten years in prison for drug trafficking based on confessions obtained under torture. He was transferred in France in May 2013 to serve out his sentence.

65. Fourth to Sixth periodic reports of France to the UN Committee against Torture, CAT/C/FRA/4-6, 30 juin 2008, p. 21

On his arrival in the French territory, Adil Lamtalsi filed a complaint for torture and filed a civil action for damages against Abdellatif Hammouchi, the Head of the Moroccan Directorate of General Security. On 20 February 2014, while Mr Hammouchi was in France, the examining magistrate tried to issue a summons to him to attend a hearing. The police officers charged with delivering the summons were told that Mr Hammouchi had already left. The summons sparked a diplomatic incident which had been previously discussed in the part concerning the Additional Protocol to the Franco-Moroccan Convention of cooperation in criminal matters.

120. At the same time, informed by the presence in France of Mr Hammouchi, another victim of torture, Mr Zakaria Moumni, filed a complaint for torture against him, accusing him of having directly participated in the physical abuse. For this complaint, filed on the basis of universal jurisdiction, to be admissible, the French justice should have got confirmation of Mr Hammouchi's presence on French territory at the time the complaint was filed. The French authorities (in particular, the Ministry of the Interior, the border police and the Ministry of Foreign Affairs) contacted by the State Prosecution service, refused to confirm the presence of Mr Hammouchi without denying it, either. Over the following days, the French and Moroccan authorities issued press releases condemning the summons issued to Mr Hammouchi by a French examining magistrate. Nevertheless, no official press releases contested Mr Hammouchi's visit to French territory. Quite the reverse, the press release of the Inter-Parliamentary France-Morocco friendship Group, stated that "Mr Abdellatif Hammouchi, Director General of the Moroccan Directorate of General Security, accompanied Mr Mohamed Hassad, Morocco's Minister of the Interior." Similarly, during an interview given to Europe 1, the Minister of Foreign Affairs Laurent Fabius explained that Mr Hammouchi did not enjoy diplomatic immunity because he had come to France in a private capacity. Since the competent authorities had refused to confirm to the State Prosecutor Mr Hammouchi's presence in France, the complaint filed by Zakaria Moumni could not lead to the opening of a judicial investigation.

121. The ambivalence of the political authorities became evident a few months later when the French authorities announced their intention to decorate Mr Hammouchi with the Legion of Honour despite the fact that he had been implicated in several complaints of torture. Furthermore, Mr Hammouchi was again welcomed in France as part of an official visit, without being prosecuted or summoned in the context of on-going cases

ACAT-France and FIACAT invite the Committee to recommend that the State party guarantee that investigations for torture are carried out within a reasonable time frame and without any intervention by political powers.

6. RIGHT TO COMPLAIN (ARTICLE 13)

List of issues concerning the seventh periodic report of France, § 17 (CAT/C/FRA/Q/7)

Please specify what protection mechanisms exist to facilitate filing complaints for acts of ill-treatment by the police and security forces and to protect complainants against retaliation.

6.1. DIFFICULTIES OF FILING COMPLAINTS AGAINST SECURITY FORCES.

122. ACAT-France has observed during its investigation that it is not always that simple when it comes to implicating the security forces. Our information shows that in many cases victims themselves abandon the attempt to file a complaint. Many do not want to do it, because they know that they will be faced with a long and costly procedure, but also because they are also perfectly convinced (with reason) that their case will have little chance of success. Some people even mention the fear of reprisals from the security forces: criminal proceedings against them, repeated identity checks, etc. These difficulties are even greater for foreigners placed in detention centres or in a holding centre while waiting to be taken to the border. Complaints are therefore sometimes viewed as "a useless process, which will slow down their release from the detention centre, or even make their situation worse and work against them in obtaining their residence permit. To the reprisals usually feared by victims of police violence, we must also add the fear that a complaint will speed up the deportation process.

123. ACAT-France has also found that sometimes the security forces refuse to register complaints committed by a member of the unit to which they themselves belong. The CNDS and the Defender of Rights have endlessly denounced these practices⁶⁶. Testimonies of complaints being refused have also been brought to the attention of ACAT-France during its investigation. Several lawyers interviewed felt that the refusal to accept complaints in cases where the Police or the Gendarmerie are alleged to have used excessive force are common and they now advise their clients to file the complaint directly with the State Prosecutor in order to spare them useless effort.

124. Even if they are not confronted with a refusal to lodge a complaint, the victims are sometimes also strongly discouraged to press their case. Oral discussions with officials explaining that the process will be long and costly or that they might in turn be subject to legal proceedings have led some people to let the matter drop or withdraw a complaint that they have already filed. ACAT-France has received several testimonies on this issue, notably from people held in detention centres. .

« I was taken from the detention centre to [the police station at] Chessy The police officer to whom I was introduced discouraged me from making a complaint, by telling me that it would not help anything and I could get three months in prison if I filed a complaint I was afraid and therefore did not file the complaint..⁶⁷ »

6.2. PROTECTING THE COMPLAINANT

• CONTEMPT AND RESISTING ARREST: WHEN THE VICTIM BECOMES THE ACCUSED

125. “The state will defend the police officer or gendarme (...) against attacks, threats, violence, unlawful acts, insults, defamation and contempt of which he may be a victim in the course of performing his duty ” Police and gendarmes are therefore protected against infringements made against them in the course of their duties,⁶⁸ along with the necessary legal protection to ensure they are protected in their job. However, a great many lawyers, magistrates, non-profit organisations and institutions are increasingly finding the use of contempt and resisting arrest proceedings, especially in cases where the police force has been implicated. This observation was largely confirmed during the investigation of ACAT-France. The risk of being prosecuted therefore constitutes an obstacle in seeking justice for two reasons: firstly, because it dissuades a large number of people to file a complaint, and secondly because it undermines the complainant’s credibility and discredits his/her complaint. In this type of case, complaints for contempt and resisting arrest automatically contribute to a defence strategy against accusations of police brutality and aggravate the climate of impunity.

126. In this respect, ACAT-France condemns a two-speed justice system. Even when they concern the same case, the offences of contempt and resisting arrest are not tried at the same time as the offences for police brutality: the first are judged much faster than the second, usually via an immediate summary trial. As a result, magistrates often do not have all the elements of the case at the time they are ruling on the complaint for contempt and resisting arrest. The immediate summary trials are known for being fast track in nature. As part of these proceedings, the claimants are immediately judged on leaving custody, but may ask for up to 2 to 6 weeks to prepare their defence. Consequently, the defendants have less time and fewer resources to prepare their defence. However, a conviction for contempt and resisting arrest undeniably contributes to undermine the credibility of a complaint of police brutality.

127. However, when we compare the convictions for brutality imposed on law enforcement officers and those handed down to citizens for contempt and resisting arrest from officers, the differences are glaring. In the latter case, not only are their many convictions, the union and the judiciary mention the figure of 15,000 convictions per year), but they are also more severe than those handed down to law enforcement officers. By comparing these two types of cases, we cannot help but find a state of affairs that is a blatant as it is disturbing.

66. For examples, please refer to CNDS, Opinion 2008-44, 2008-88, 2008-120, 2009-48, 2009-155 and 2010-10; Defender of Rights, Annual Report of Activities 2011, p. 129

67. Testimony gathered by Cimade on 10 September 2014 as part of a case referred to the Defender of Rights and submitted to ACAT following an interview on 15 January 2015.

68. *Inland security code*, Art. R. 434-7

CONVICTIONS FOR CONTEMPT AND RESISTING ARREST.

Gaëtan Demay was accused of having participated in a banned demonstration and to have thrown a sign at a police officer on 8 November 2014. At the time, Gaëtan Demay was taking part in a demonstration in Toulouse against police brutality in memory of the young ecologist Rémi Fraisse, killed by a hand-grenade on the construction site of the Sivens dam a few days earlier. According to the police, he allegedly tried to force a police cordon and throw an advertising sign in the direction of a peace keeper, who was neither hit or injured. Found guilty of participating in a banned demonstration, violence and contempt towards a police officer, the young man was given a six-month custodial sentence including two months without remission. Although Gaëtan Demay admitted his involvement in the banned demonstration, he refuted all the other charges. He stated that he had been bludgeoned, pushed to the ground and taken away by plain clothes police officers, while he stood on the side of the procession to send a text message.

Similar convictions have been registered in Nantes after demonstrations against the airport at Notre Dame de Landes. Enguerrand, 23, was therefore sentenced to a one-year custodial sentence for having made and thrown a smoke grenade.



ACAT-France and the FIACAT invite the Committee to recommend that the State party modify the judicial procedures so that the complaints for contempt and resisting arrest are heard at the same time as complaints for abusive use of force which have been filed at the same time.

6.3. DIFFICULTIES IN LODGING COMPLAINTS ABOUT ILL-TREATMENT IN DETENTION

**List of issues concerning the seventh periodic report of France,
§ 17 (CAT/C/FRA/Q/7)**

Please provide information about the measures taken to facilitate filing a complaint for ill-treatment of inmates within prisons and the procedure which is followed. Please also provide detailed statistics on this matter.

128. ACAT-France is concerned about the difficulties encountered by inmates to appeal against the prison administration. In its 2013 annual report, CGLPL mentioned that it had been informed of several acts of obstruction or reprisal related to judicial procedures initiated by prisoners. It mentions what it calls the 'figure of the litigious strategist' in prison: "These are the people who try to resist the prison system by legal means (asking the prison governor for a meeting to contest a decision made contrary to the regulations, referring the case to the Inspector-General, or even for the boldest among them, take a case for body searches, overcrowding, etc., before the administrative court). An attitude that is very harshly viewed by the prison administration." The Inspector-General points the finger at the prison administration's occasional refusal to forward a complaint to the State Prosecutor's office, pressure put on an inmate to withdraw his complaint, but above all the punishments meted out against these persons (increased body searches, hampering sleeping at night, talking about a criminal case with fellow inmates, power cuts in the cell, etc.). These acts are extremely worrying.



ACAT-France and the FIACAT invite the Committee to recommend that the State party take concrete and immediate measures to ensure that any prisoner is free to exercise his or her rights without being hindered in any way. It especially recommends that any prisoner who contacts the CGLPL should not suffer reprisals (see above).

7. CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT BY ANY PERSON ACTING IN AN OFFICIAL CAPACITY. (ARTICLE 16)

The Committee's concluding observations, § 21 (CAT/C/FRA/CO/4-6)

The Committee remains particularly concerned given the persistent allegations that it has received about cases of ill-treatment of inmates and other people in their hands by public law enforcement officials.

129. Over eighteen months, from June 2014 to December 2015, ACAT France investigated the use of force by the representatives of the law in France. In the context of this investigation, it carried out a detailed analysis of the documentation available on the subject. It also looked into 89 alleged cases of police brutality in France over the past ten years (2005-2015), and finally managed to meet and talk with a very wide range of stakeholders concerned (victims and their families, non-profit sector, journalists, lawyers, police officers, magistrates, doctors, Ministry of the Interior, elected officials, sociologists, IGPN, IGGN, Defender of Rights and Inspector-General of Places of Deprivation of Liberty etc.). In this way, 65 people were interviewed between October 2014 and October 2015. At the end of its research work, ACAT-France can only share the concerns of the Committee and would like to share some of its observations. Its analyses and recommendations are also described in more detail in the ACAT report 'Order and Force Investigation into the use of force by the representatives of the law in France'⁷⁰.

7.1. TRANSPARENCY IN THE USE OF FORCE

The Committee's concluding observations, § 21 (CAT/C/FRA/CO/4-6)

The Committee remains particularly concerned given the persistent allegations that it has received about cases of ill-treatment of inmates and other people in their hands by public law enforcement officials.

130. The first finding that was evident to ACAT-France during its investigation was the blatant lack of transparency in terms of the use of force by public officials. On this subject, there is a total lack of transparency across the board. We have not been given any figures about the number of persons injured or killed during police or gendarme operations. No exhaustive data has been published about the use of arms or the number of complaints filed against law enforcement officers for acts of violence, nor the number or type of sanctions meted out after such acts. The French authorities are nevertheless eager to publish many statistics on subject of police objectives, the number of interventions, or officers hurt or killed in the course of duty.

131. The only figures available are sparse and incomplete. Some scattered figures can be found in institutional or parliamentary reports, or sometimes by chance in written questions to the Government or communications of the French state to international bodies. This data is nevertheless largely incomplete and does not give a full picture of the issue.

132. Without such official publications, doubt and confusion reign. They cast doubt on the willingness of the authorities to shed light on cases of use of force or to firmly sanction abuses. However, it seems unlikely that the information concerning the use of force by police officers and gendarmes has not been recorded, or at least, cannot be recorded.

133. ACAT-France considers that France has the tools available to provide greater transparency. The use of weapons by the national police is for example recorded in the file for monitoring the use of arms (TSUA). Each time that a weapon (of any kind) is used by a police officer, this file will detail the conditions and the context of this use (officer's level of training, details of the weapon & munition, consequences of the use, such as any potential injuries, medical treatment, etc.). Despite repeated requests from ACAT-France, this data is still not officially published.

70. ACAT-France, *Order and Force Investigation into the use of force by the representatives of the law in France*, March 2016

ACAT-France and FIACAT invite the Committee to recommend that the State party publish each year:

- > **The number of times each type of weapon is used by the law enforcement officers;**
- > **The number of persons injured or killed during police or gendarme actions;**
- > **The number of complaints filed before the courts for violence committed by security forces.**
- > **The number of convictions and the sentences delivered in these cases;**
- > **The number and type of disciplinary sanctions taken by the police or gendarme authorities for acts of violence.**

7.2. INTERMEDIATE WEAPONS

List of issues concerning the seventh periodic report of France, § 18 (CAT/C/FRA/Q/7)

Please provide information about the measures taken to carry out prompt, independent and impartial enquiries following persistent allegations of ill-treatment, the excessive use of armed force, harassment and disproportionate use of weapons in the following situations: a) arrests; b) forced evacuation c) operations to maintain order; d) demonstrations; e) air evacuation operations from administrative detention centres or holding centres. Please specify the results of the investigations conducted by the authorities, notably the General Inspectorate of the National Police [Inspection générale de la police nationale] and the State Prosecutor of Boulogne-sur-Mer, with regard to the allegations of excessive use of force and verbal abuse against migrants and asylum seekers in the town of Calais, which took place in May 2015.

134. Supposedly non-lethal or ‘less lethal’ when compared to fire arms, the use so-called ‘intermediate’ weapons, have risen rapidly over the last decades in order to give the law enforcement forces a wide range of options to scale the level of force used depending on the situation. The United Nations recommends the use of neutralising non-lethal weapons ‘in order to increasingly limit the access to equipment capable of causing death or injury.’⁷¹ In particular, two types of weapons have grown very strongly in France over the last decade: rubber bullet guns (Flash-balls) and the electroshock weapons (Tasers) Originally intended for use in extreme situations, these weapons are now used on a daily basis. While the development of intermediate weapons is recommended for a proportionate use of force depending on specific situations, it is nevertheless governed by the proviso that their use “really reduces the risk of significant infringement against all the persons against which it is used” and they should not be “misused or used in the place of other less dangerous methods.”⁷² Nevertheless, far from limiting the use of weapons likely to cause death or injury, ACAT-France has on the contrary found that they aggravate this risk and are more likely to cause injury than other weapons.

7.2.1. FLASHBALL : MORE THAN 40 VICTIMS IN 10 YEARS

135. The French forces of order currently use two types of rubber bullet guns: the Flash-Ball Superpro® and the LBD 40x46®. According to the information published by the Defender of Rights, these weapons were used on average seven times a day in 2012⁷³. They are specially used in order to maintain order.

136. Many doctors have questioned the effects of this weapons on the human body, notably **impacts to the head**. One figure is startling: the increase in irreversible eye damage. In several cases, the rubber balls remained lodged in victims’ eye cavities. Many people have lost an eye or their sight. Doctors seem to be unanimous on the fact that because of the risks involved, the rubber balls should never be aimed at the head.⁷⁴ Many people also warn against the risks of firing rubber balls at the stomach or chest, notably when it comes to firing from a close range. According to the studies examined and the doctors that ACAT-France met, shots fired at a person’s thorax can cause serious injury to the internal organs and severe pulmonary contusions and may lead to death⁷⁵. Based on these observations, some doctors recommend that any injury to the chest

71. United Nations, Basic principles on the use of force and the use of firearms by persons acting in an official capacity (September 1990) Article 2 and 3.

72. Defender of Rights, decision MDS-2015-147 16 July 2015

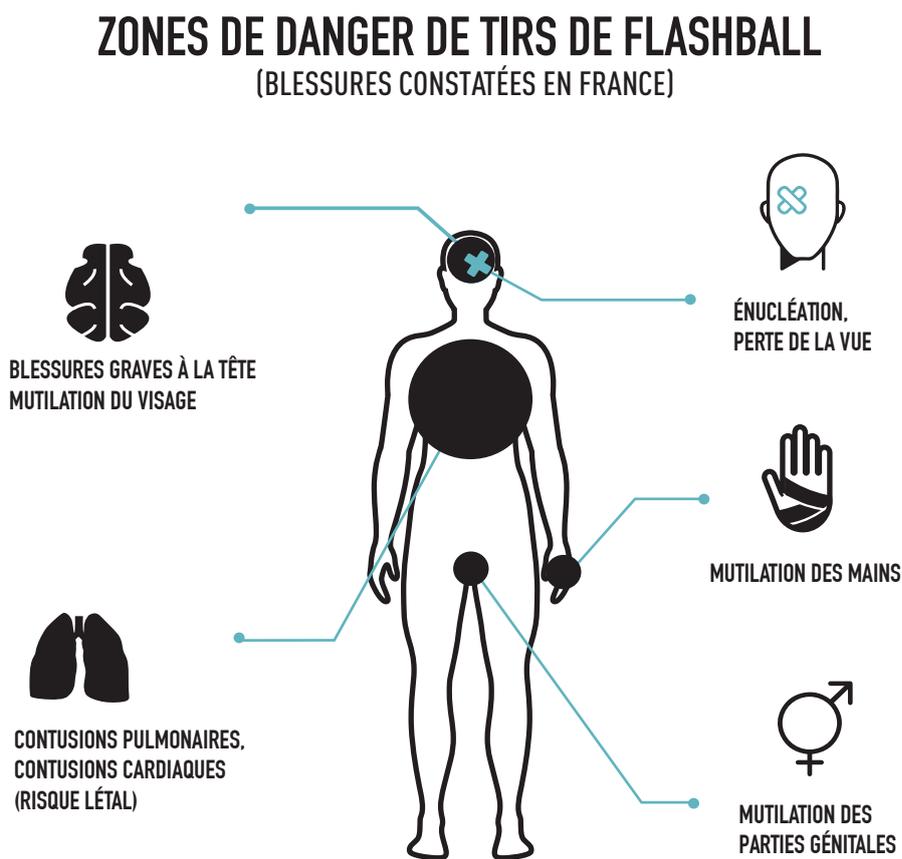
73. Defender of Rights, *Rapport sur trois moyens de force intermédiaire*, May 2013, p. 32

74. Virginie Pinaud, Philippe Leconte, Frédéric Berthier, Gilles Potel, Benoît Dupas, *Orbital and ocular trauma caused by the Flash-ball: a case report*, published in the British journal Injury Extra, in July 2009

75. 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 caused by « less-lethal » munitions*, *World Journal of Emergency Surgery*, 26 juin 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

caused by the impact of an intermediate weapon using projectiles should be considered as potentially lethal.⁷⁶ Nevertheless, despite these medical analyses and despite the recommendations of the Defender of Rights⁷⁷, the French authorities have relaxed the conditions for using these weapons: a joint investigation of the National Police and the National Gendarmerie adopted on 2 September 2014, no longer imposes a minimum strike range and has extended the bodily areas which can be targeted⁷⁸. The new regulations for use ban aiming at the head and recommend “aiming mostly at the torso and the upper and lower limbs.” Despite the recommendations of the Defender of Rights⁷⁹, there it is permitted to aim at the heart areas and the genital triangle, which have nevertheless been qualified as high risk areas by doctors and experts.

137. The French authorities have the greatest difficulty in acknowledging the damage caused by these weapons. The number of people wounded is regularly under-estimated. Yet, it continues to rise. Over the last ten years, ACAT-France has identified at least. **39 people who have been seriously injured**, mostly in the face. **21 have been hit in the eye**, or have lost the use of an eye. Furthermore, a man hit by a close-range shot in the thorax **died** in December 2010. According to ACAT’s findings, the victims of these weapons are often very young: one third were minors when they were injured. One in two victims were under 25. These included two nine-year old children. Most of these incidents occurred during demonstrations and law enforcement operations.⁸⁰



76. École nationale de police du Québec, *Les armes intermédiaires d'impact à projectiles et leur utilisation en contexte de foule*, p. 57

77. Defender of Rights, *Rapport sur trois moyens de force intermédiaire*, May 2013

78. DGNP and DGGN, Investigation concerning the use of electroshock weapons, 40 and 44 mm calibre rubber bullets and the stinger grenade, provided by the State to the National Police and the National Gendarmerie units, 2 September 2014.

79. Defender of Rights, *Rapport sur trois moyens de force intermédiaire*, May 2013, p. 36

80. See Appendix 1

138. At the end of its investigation, ACAT-France found that the rubber bullet guns (Flash-balls) are not suited to the situations for which they have been designed and are currently being used. When used at close-range during arrests, rubber bullet guns can be lethal: the risk of death and irreversible injuries are high when the weapon is used at a range of less than seven metres (Flash-Ball Superpro®), or less than ten metres (LBD 40 x 46®). In France, one man died in these circumstances in 2010

139. Used in the context of public gatherings, rubber bullet guns such as the Flash-Ball Superpro® or LBD 40 x 46® cause too much harm. In a crowd setting, it is not possible to adjust the sight and assess the firing range. A few metres or a wrong angle are enough to cause irreversible damage. The consequences of their use are disproportionate. Many victims could have been spared by using other techniques.

140. Given that these weapons have proven to be much more dangerous proportionate to the goals for which they were designed, ACAT-France recommends that rubber bullet guns should not be used by French security forces.

ACAT-France and the FIACAT invite the Committee to recommend that the State party ban the use of rubber bullet guns and immediately withdraw the allocated weaponsl.

VICTIMS OF RUBBER BULLET GUNS IN FRANCE

Mostepha Ziani, died after being hit by a Flash-ball

In December 2010, the police intervened in a hostel for immigrant workers in Marseille, after Mostepha Ziani had attacked his room-mate with a knife. According to the police, Mr Ziani was threatening to throw a glass at the officers, one of them responded by firing a flash-ball at his thorax, at a range of less than five metres. Mostepha Ziani died the next day in hospital. A pathology report subsequently directly linked the death with the Flash-ball. In this case, the Defender of Rights recommended disciplinary proceedings for disproportionate use of force: "The threat presented by (Mr Ziani) could not justify the use of a potentially lethal defensive method, such as the Flash-ball at quite a close-range, and on top of that into the individual's chest"⁸¹. The police officer who fired the shot was investigated and sent for trial at the criminal court. At the time of writing of this report, this case is still ongoing.

Amine, aged 14, mutilated after being hit in the genitals.

On 14 July 2015, after leaving the mosque at the end of the prayers, Amine was messing around with friends, throwing firecrackers, when clashes erupted between youths and the police. While the teenager said he had nothing to do with this group, his father testified that his son "saw a policeman take aim at him, before being hit by a Flash-ball in the lower abdomen. One of his testicles burst." According to the site Islam & Info, which publicised the case, the young body was allegedly "left in agony on the ground by the police," and was reportedly taken home by his friends. The shooting left the boy in a serious condition. The medical report lists many injuries to the right testicle. The family made a formal complaint, and the Defender of Rights took up the case. To date, the case is still open.

Nassuir Oili, a nine-year old child hit in the eye.

On 7 October 2011 in Mayotte, the child was hit by a Flash-ball during a gendarmerie operation at a march to demonstrate against the "high cost of living." As he was playing on the beach and the gendarmes were running after the demonstrators to arrest them, Nassuir Oili found himself involved in the gendarmes' operation. At the very moment that one of his colleagues had released the child, after realising that he posed no threat, a gendarme positioned 12 metres away used his Flash-ball before leaving the very seriously injured child on the ground. Nassuir Oili had been hit in the eye. According to the Defender of Rights, a fire-fighter, alerted by a passer-by, came to the

81. Defender of Rights decision n° MDS 2010-175

aid of the child. In this case, the Defender of Rights recommended disciplinary proceedings for disproportionate use of the Flash-ball: "The use of the weapon was not necessary given the threat represented by the child, who was very young and small in size (24 kilogrammes and 1.35 metres tall), and "came up to the elbow of the officers", according to their own statements, even though he had allegedly threatened one of them with a stone ⁸²" It recommended disciplinary proceedings against this same gendarme and another for not having come to the child's aid. In March 2015, the gendarme responsible for the shooting was sentenced to two year suspended sentence for wilful violence leading to mutilation or permanent disability. The conviction was not included in the officer's criminal record, which enabled him to continue to exercise his duties.

Sylvain Mendy, 23, severe heart and pulmonary contusions.

During an identity check in June 2009, Sylvain Mendy was hit at almost point-blank range in the heart. After being shot, the young man fell to his knees. While he was having difficulty in breathing, he was immediately handcuffed and taken to the police station, where the police officers noticed a bloody wound of 2 centimetres in diameter close to the heart. Sylvain Mendy was then hospitalized for 15 days. A medical certificate stated that there were 'severe heart and lung contusions' and concluded that he was totally incapable of working for thirty days. The case was dismissed by the State Prosecutor who considered that there was 'not enough evidence' in this case⁸³.

7.2.2. TASER

The Committee's concluding observations, §30 (CAT/C/FRA/CO/4-6)

The Committee is concerned that the use of these weapons may cause an acute pain, constituting a form of torture and that, in certain case, can even cause death

141. The Taser gun is used to control a person by using the electric shock capability (of 50,000 volts and 2.1 milliamps), which produces a sensation of pain, blocking the nervous system and creating Electro Muscular Disruption, which can cause the person to fall down. This weapon can be used in different ways. Other than using it as a warning device, by pointing the laser beam at the target without firing (warning arc), the Taser X 26® can be used either remotely (firing mode), or body to body (stun mode). In **firing mode**, it can shoot two electrodes several metres to the targeted person. The electrode attaches to the person thanks to two dart-like hooks that remain connected to the guns by a wire. The electrical arc produces the loss of control of the musculoskeletal system, which generally makes the person fall over. In **Drive-Stun mode**, it is applied directly to the part of the person's body to be paralysed, leading to neutralisation by a sensation of pain and affects the sensory nervous system. In the stun mode the pain is no less intense, but is more localised..

• **A weapon open to abuse**

142 By their very nature, electroshock weapons are open to abuse. Because they are considered as harmless, they seem to encourage the use of force to the detriment of negotiation. The use of this type of weapon should remain exceptional. However, contrary to the recommendations CAT, CPT and even of the Defender of Rights, ACAT-France has found that the Taser is frequently used by the French security forces to make it easier to handcuff suspects. The Ministry of the Interior does not deny this practice, which is justified by the fact that the use of the Taser to handcuff a person may prove to be "less dangerous for the physical integrity of the person than a physical intervention by police or gendarmes."⁸⁴ In 2012, Tasers were therefore used on average three times per day⁸⁵.

82. Defender of Rights decision n° MDS 2011-246

83. CNDS, décision n° 2009-129 and Médiapart, *Flashball : plus de vingt blessés graves depuis 2004*, 4 December 2013

84. Defender of Rights, *Rapport sur trois moyens de force intermédiaire*, May 2013, p. 17

85. Defender of Rights, *Rapport sur trois moyens de force intermédiaire*, May 2013, p. 13

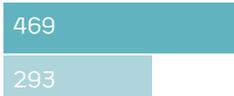
USE OF TASER'S IN FRANCE BY THE NATIONAL POLICE AND NATIONAL GENDARMERIE FROM 2010 TO 2012.

■ Mode contact
■ Mode tir

2010



2011



2012



*Source : défenseur des droits

143. In particular, it is the use of the Taser in Drive-Stun mode which gives cause for concern. The security forces have many techniques to control a suspect when they are in direct contact with them, making it unnecessary to use this weapon in Stun mode, in the vast majority of cases. There is a greater risk that the use of this mode perverted, because it is the easiest option, especially when handcuffing a suspect. In addition, it can produce significant pain. Nonetheless, the use of the Drive-Stun mode has increased in France, and now appears to be the mode most frequently used by the security forces. In 2012, the gendarmerie used Tasers X26® 619 times in Drive-Stun mode (259 in firing mode) As for the police, out of 442 uses, 229 were in Drive-Stun mode (122 in firing mode, 91 in warning mode)⁸⁶.

• Conditions for use relaxed.

ACAT-France has further found that the conditions for using the Taser X26® have been relaxed. For example, the new rules for use published in September 2014, have extended the body areas which can be targeted.⁸⁷ The security forces are now not prohibited from aiming at the head or neck, and now there is no ban on targeting the heart.

• Video recording capability stopped

144. ACAT-France is furthermore particularly concerned by the decision of the Ministry of the Interior only to buy Tasers that come without audio or video recorders. Checking how weapons are used is a fundamental guarantee for preventing and sanctioning abusive uses. With the Taser X 26®, the most popular model used by the French security forces, it is possible to carry out these checks via a video or audio recording. On this Taser model, as soon as the weapon is switched on, a video and audio automatically starts recording.

145. However, despite the importance of these recordings, the Ministry of the Interior announced in October 2014, that Taser purchases will henceforth be limited to weapons not fitted with these cameras. According to the Ministry, this policy change is justified by the poor quality of recordings produced by these devices, and that in time, every law enforcement officer will be equipped with a pedestrian camera device attached to their uniform. The Defender of Rights has regretted this decision, pointing out the "by examining these videos [in the cases referred to it] it either led the officer being cleared, or helped to establish that an excessive use of the weapon had been made. (...) The requirement to record the images and sounds when Tasers X26® are used is due to the effects of this weapon, and because the European Union has classified it as being included in the equipment likely to cause a cruel, inhuman or degrading treatment."⁸⁸ We should also add the the pedestrian camera device is far from being widespread in France and that currently no framework exists to state how it will be used. In addition, the pedestrian camera must be deliberately switched on by the person carrying it, contrary to the automatic audio and video recording provided by the Taser X26®.

• A potentially dangerous weapon

146. The Committee has been concerned about the effects of the ESW on several occasions, considering that it can cause extreme pain and as such fall within the scope to be qualified as torture.⁸⁹ Furthermore, these weapons are also listed on the European list of equipment which in the event of misuse or abuse, can lead to cases of cruel, inhuman or degrading treatment.⁹⁰

86. Defender of Rights, *Rapport sur trois moyens de force intermédiaire*, May 2013, p. 13

87. DGNP and DGGN, Investigation concerning the use of Tasers, 40 and 44 mm Flash-balls and the stinger grenade, provided by the State to the National Police and the National Gendarmerie units, 2 September 2014.

88. Opinion of the Defender of the Rights No 15-16, 16 April 2015

89. United Nations, *recommendations to Portugal*, CAT/C/PRT.CO/4 of 22 November 2007, § 14

90. Regulation (EC) No. 1236/2005 of 27 June 2005 concerning the trade in certain products used for capital punishment, torture or other cruel, inhuman or degrading treatment, Appendix III.

147. As the Committee has already had the opportunity to stress, the ESW are the source of dozens of cases of injuries each year.⁹¹ Clinical trials raise the risk of serious injury due to the impact of the hooks when used in firing mode (vascular injuries, external genital injuries, ocular penetrations, intra-cranial penetrations), or the risk of burns when used in stun mode, risks which are increased when used at the same time as tear gas. Added to this is the risk of consecutive injuries if victims subsequently fall due to the loss of neuromuscular control. Doctors also highlight the risk of miscarriage in pregnant women, respiratory diseases (asthma, chronic bronchitis) or even epilepsy.⁹²

148. The apparent non-lethal nature of the ESW is contested on a regular basis. Moreover, in the past, the Committee has expressed concern *“that the use of these weapons (...) may in some cases, cause death, as revealed by reliable studies and recent developments in practice.”*⁹³ According to a report by Amnesty International published in 2012, more than 500 people have died in the United States since 2001, after having received electric shocks from electroshock weapons. Among these deaths, sixty were officially attributed to ESWs.⁹⁴ In July 2015, British judges in turn incriminated the Taser in the death of a man, acknowledging that in his case, the electric shock proved to be fatal.⁹⁵

149. In France, ACAT-France has identified four deaths that occurred as a result of using a Taser.⁹⁶ In all these cases, the Justice found no link between the death and firing the ESW. Nevertheless, the circumstances of these deaths raise questions.

150. ACAT-France notably questions the risks presented by these weapons when they are used on people in a state of excited delirium. This state, which may notably be caused by mental illness or by ingesting drugs, seems to increase the potential dangers and the risk of death when using a ESW. Deaths which occurred during arrests have been attributed to these medical states, especially when ESWs have been used.⁹⁷ The Defender of Rights mentioned in turn a heightened risk of death in such circumstances.⁹⁸ Despite the significant use of these weapons in some countries, there is no medical research on their effects on this type of person.

DEATHS FOLLOWING THE USE OF A TASER

Mahamadou Marega, who died after being hit 17 times by a Taser

On 30 November 2010, the police went to the home of Mahamadou Marega, after he had threatened the person who was putting him up with a knife. During this intervention, categorised by the security forces as very difficult, they reported that they were faced with a mentally deranged man ('hysterical'). The police officers made use of their Taser in firing mode and stun mode 17 times. During the investigation, they explained that they had to use the weapon so many times because the shots had no effect on Mahamadou Marega. According to the Defender of Rights, *“the effect of the ESW are largely cancelled or greatly reduced by the critical state in which [Mr Marenga] was in, qualified as excited delirium.”*⁹⁹ After finally managing to handcuff him, the police officers used technical immobilisation measures on him and kept him face-down on the ground with his legs raised, before realising that he was dead. The Defender of Rights to whom this case was referred, recommended disciplinary proceedings against police officers for abusive use of the ESW in stun mode and for having used disproportionate constraint measures. Considering in its opinion that the Taser shots *“Did not play a direct and certain role in the death of this man, and that the intervening police officers could not be blamed in any way”*, the examining magistrate dismissed the case.¹⁰⁰

91. United Nations, *Examination of the fourth to sixth reports of France by the Committee against Torture, Analytical report of the 928th session*, CAT/C/SR.928, p. 5

92. Dr Bertrand Bécour, Isabelle Sec, Roland Istria, Gérald Kierzek, Caroline Rey, Jean-Louis Pourriat, *L'usage du Taser® est-il toujours conforme aux recommandations ? Le point de vue de médecins légistes cliniciens*, 2^e Congrès de balistique lésionnelle, Marseille, 7 décembre 2009; British Medical Journal, *“Tasers”*, November 2015

93. United Nations, *recommendations to Portugal*, CAT/C/PRT.CO/4 of 22 November 2007, § 14

94. Amnesty International, *USA, Life, liberty and the pursuit of human rights; A submission to the UN Human Rights committee*, September 2013, p. 23

95. British Medical Journal, *Tasers*, November 2015

96. See Appendix 3

97. Council of Europe, *20th Annual General Report on the CPT's activities (2009-2010)*, § 79

98. Defender of Rights, *Rapport sur trois moyens de force intermédiaire*, May 2013, p. 18

99. Defender of Rights, decision MDS2010-167 10 April 2012

100. « Colombes : non-lieu dans l'affaire du décès par Taser », *Le Parisien*, 15 October 2012

Loïc Louise, , 21, died after a Taser was fired for 17 seconds

On 3 November 2013, Loïc Louise went to a birthday party. He was arguing with his cousins, when the gendarmes intervened to stop the beginning of a fight. One of the gendarmes then used his Taser to control the student, who collapsed on the ground. According to eye-witnesses reported by the journal Médiapart, the young man allegedly stayed immobile on the ground for at least fifteen minutes before one of his friends, a professional soldier, was authorised by the gendarmes to approach him. When he took his pulse, he realised that Loïc Louise was no longer breathing. His death was recorded two hours later at the hospital of Orléans. In this case, the prolonged use of the Taser is especially worrying: Médiapart revealed that according to the conclusions of the IGGN, the shooting lasted for 17 seconds. The electroshock gun in fact works in cycles of five seconds: as long as the user keeps his finger pressed down, the cycles continue, as was the case for Loïc Louise. A judicial investigation for manslaughter was opened in August 2014 and is still in progress.

ACAT-France and FIACAT invite the Committee to recommend that the State party:

- > **Restrict the use of ESW to cases where it is absolutely necessary, when other less coercive means have failed and when it is the only possible alternative to the use of a method that has a greater risk of injury or death;**
- > **Issue a blanket ban the use of ESW in drive stun mode;**
- > **Commission reliable, independent studies to be carried out on the true effects of using Tasers X26®, in particular against persons in states of excited delirium;;**
- > **Suspend any use of Tasers X26® against people who are clearly delirious, until the results of this study have been published;**
- > **Exclusively use ESW equipped with video and sound recorders. .**

7.3. METHODS FOR RESTRAINT AND POSITIONAL ASPHYXIA

ACAT-France wishes to warn the Committee about the use of two immobilisation techniques that could cause suffocation and that have already caused several deaths in France.

7.3.1. FOLDING (PLIAGE)

151. The folding technique (pliage) is used to restrain a person by pushing his/her head down to his/her knees whilst sitting down. This technique may cause positional asphyxia and resulted in several deaths. It was banned in France in connection with deportation measures after the death of two persons during their expulsion from French territory in December 2002 and January 2003. After these tragic events, the national Police issued a directive with regards to the expulsion by air of illegal aliens to prohibit the practice of folding. However, this directive only applies to deportation procedures. During a meeting with ACAT-France in June 2015, an adviser to the office of the Minister for Home Affairs stated that, overall, "the folding technique is absolutely prohibited, as it has irreversible consequences". As a reference he quoted a directive of the IGPN of 2008, which banned this technique in any police intervention. Yet, despite several requests, ACAT-France has not had access to this directive.

152. In any event, ACAT-France is following several cases in which the folding technique is suspected or questioned. In at least two cases of death, the police acknowledged having practised this action. Wissam El-Yamni died in January 2012 after being arrested. After consulting the autopsy report and the report of the IGPN, the newspaper Le Monde stated that the practice of folding is questioned in this case. In 2009, a

101. Médiapart, *Taser : Loïc Louise est mort après un tir de 17 secondes*, 17 September 2014

69-year-old man, Ali Ziri, died after a police intervention. In this case, once again, a police officer admitted having used the folding technique in the vehicle that was taking Ali Ziri to the police station.

ALI ZIRI DIES DURING A POLICE INTERVENTION

Ali Ziri (69) died on 11 June 2009 following a banal roadside check that quickly turned into a tragic event. According to the police officers, the two men who were checked (Ali Ziri and a friend) were very drunk and had an insulting and recalcitrant attitude. This made them use force to apprehend them. According to the police officers and the lawyer, in the police van on their way to the police station, the police officers used the folding technique on Ali Ziri for 3-4 minutes. On arriving at the police station, Ali Ziri was pulled out of the vehicle and thrown to the ground, then thrown inside the police station. He was left lying on the ground in his vomit and handcuffed for 30 minutes to 1 hour 15 minutes until he was hospitalised. His death was pronounced the next day in hospital. A medical expertise also revealed the presence of 27 large bruises (12 to 17 cm in diameter) on his body. Since the medical tests contradict each other, the causes and the exact time of death are still uncertain. The investigation did not demonstrate that the folding technique was the cause of death. The court dismissed the case, and this was upheld on appeal and also by the Supreme Court in February 2016.

7.3.2. PRONE POSITIONING OR VENTRAL DECUBITUS

153. The ventral decubitus technique is used to block a person face down on the floor, with his/her head turned to the side. Sometimes the law enforcement officials use other methods of restraint in addition to this position, such as handcuffing the wrists behind the back and immobilising the ankles (sometimes with the knees raised), and can go as far as putting weight on the back of the person that is being held down. Because of the position being imposed on the person, this technique greatly impedes breathing movements and can cause positional asphyxia. The risks are even greater if other methods of restraint are added, which further increase the difficulty of breathing.

154. A rapporteur of the Committee was "concerned that the immobilisation technique in the position called the ventral decubitus continues to be used".¹⁰³ In 2007, France was condemned by the European Court of Human Rights following the death of a man because of this practice: "the Court notes that Mohamed Saoud was held down for thirty-five minutes in a position likely to cause death by "postural" or "positional" asphyxiation. Yet, the Court observes that this form of immobilisation was identified as highly dangerous to life since the agitation exhibited by the victim was the result of suffocation by the pressure exerted on his body."¹⁰⁴

155. Because of the risks of this technique, several countries have stopped using it. In France, this technique has been regulated, but it is not prohibited. "When it is necessary to immobilise a person, compression - especially when it is exerted on the chest or abdomen - must be as temporary as possible and released as soon as the person is restrained by regulatory means".¹⁰⁵ It is therefore still practiced in France and it is questioned in several cases of death listed by ACAT-France.

156. The Directorate General of the National Police has nevertheless indicated to the Committee that it had "considered the possibility of developing technical equipment that would immobilise persons in a state of paroxysmal excitement, without having to resort to the use of the ventral decubitus technique".¹⁰⁶ At the time of writing this report, the results of this consideration were not made public. During meetings with the IGPN or the Ministry for Home Affairs, ACAT-France has failed to obtain more information about the study that was carried out on the subject.

102. Le Monde, *Une méthode de contention interdite a pu provoquer la mort de Wissam El Yamni*, [A prohibited method of restraint could have caused the death of Wissam El Yamni], 30 January 2012.

103. United Nations, *Consideration of the fourth to sixth reports of France by the Committee against Torture, Summary record of the 928th meeting*, CAT/C/SR.928, p. 6.

104. ECHR, *Saoud v. France*, Application n° 9375/02, 9 October 2007, § 102.

105. Note of the DGPN of 8 October 2008, mentioned by the CNDS in its report 2008, p. 20.

106. United Nations, *Consideration of the fourth to sixth reports of France by the Committee against Torture, Summary record of the 931st meeting*, CAT/C/SR.931, p. 10.

DEATHS CAUSED BY IMMOBILISATION TECHNIQUES

Serge Partouche, aged 48, was autistic. On 20 September 2011, while he was walking in his parents' neighbourhood in Marseille, three police officers apprehended him after receiving a call from a neighbour who thought he had a threatening behaviour. After trying to oppose his arrest, Serge Partouche was restrained and blocked face down on the ground. A policeman exerted weight on his back, while another applied a stranglehold. When they stood up the man lay motionless. When Serge's father arrived, five to ten minutes after the start of the intervention, it was too late. He pushed the officer off his son's back. He states: "Serge was bleeding from his eyes and mouth".¹⁰⁷ In November 2014, the three police officers were convicted of involuntary manslaughter and given a six month suspended sentence.

Lamine Dieng (25) died during his arrest. On 17 June 2007, at about 4am, the police intervened in Paris following an altercation. When they arrived near the scene the officers discovered a man lying on the pavement between two cars with a bottle of alcohol and they suspected him. According to the police officers, Lamine Dieng showed an "extraordinary force" to resist arrest. When he was finally immobilised on the ground by five police officers, he was handcuffed behind his back, his right arm above the shoulder, face down and feet strapped down. In the police car he was again held down by four police officers by the shoulders, chest and legs, until an officer realised that Lamine Dieng had stopped moving. His death was confirmed on arrival at the police station. In its opinion, the CNDS maintains that Lamine Dieng's death was caused by "inadequate restraint".¹⁰⁸ However, seven years after the event, the examining magistrate dismissed the case in June 2014. The family decided to appeal. The case is still ongoing.

Amadou Koumé (33) died on 6 March 2015 at the police station of the 10th district of Paris after being arrested in a bar. According to a witness, a plainclothes officer grabbed Amadou Koumé "by the neck by placing his arm under his chin and pressing him against his chest (...). He collapsed into the arms of the police officers and started to suffocate. The officer of the BAC [Anti-Crime Brigade] lowered him down and continued to strangle him." On the ground, the police officer "was on top of him, knee on his back and still holding his head in the crook of his arm". According to witnesses' statements published by the newspaper Libération, Amadou Koumé "gave the impression that he was afraid to die", "he uttered cries of agony and suffocation".¹⁰⁹ Amadou Koumé was unconscious when he arrived at the police station that was located at 900 meters from the place of arrest. First-aiders were called in emergency. They tried to revive him, unsuccessfully. His death was declared two hours later. The autopsy report describes a "pulmonary oedema that occurred during asphyxiation and facial and cervical trauma".¹¹⁰ The family lodged a complaint.

ACAT France and FIACAT invite the Committee to recommend that the State Party explicitly prohibit the use of the techniques known as "folding" and "ventral decubitus".

7.4. OTHER MEANS OF FORCE THAT CAN CONSTITUTE ILL TREATMENT

7.4.1. INTENTIONAL ASSAULT

157. ACAT-France has received many testimonies from people claiming to have been beaten during arrests, police custody, police transport or deportations. Some of these testimonies mention beatings received after being restrained or handcuffed.

107. Libération, *Autiste mort étouffé, les policiers jugés* [Autistic man dies of suffocation, police officers judged], 23 September 2014

108. CNDS, decision 2007-83, quoted by Amnesty International, *Not forgotten: Fifth anniversary of Lamine Dieng's death during arrest*, 19 June 2012

109. Libération, *Il s'est affaissé dans les bras des policiers et a commencé à suffoquer* [He collapsed into the arms of the police officers and started to suffocate], 10 September 2015

110. *Médiapart, Mort au commissariat, Amadou Koumé "émettait des cris d'agonie et d'étouffement"* [Death of Amadou Koumé at the police station, he "uttered cries of agony and suffocation"], 10 September 2015

TESTIMONIES

Several media tell the story of **Alexandre C.**, who claims to have suffered violence during riots in Trappes in the Yvelines in July 2013 even though he was not participating in the riots. "They hit me in the face, head, legs, back... I was so scared that I cried, 'Ok, I surrender!' They insulted me and hit me repeatedly with truncheons. A big and burly policeman hit me hard on my leg, and that's when I felt that my leg was broken." Alexandre ended up with a cast on his ankle and 17 staples on his head. Doctors gave him 45 days of total incapacity for work. The victim lodged a complaint. Three police officers were indicted for intentional violence in this case, which is still ongoing.¹¹¹

A lawyer also alerted ACAT-France on the situation of **Justin***, who suffered violence during his arrest and in police custody on 21 June 2013 in Toulouse. According to his testimony in the media, Justin explained that a police officer pulled him by the handcuffs to make him stand up and drag him to the police vehicle. "I felt extreme pain in my left wrist at that moment." His wrist was broken in two places. Before entering the police vehicle, he says that he was thrown head first against the bodywork. During the journey, he says that he was slapped and insulted. Still handcuffed on his arrival, Justin says he was pushed once head first against a wall before being thrown to the ground and getting hit in the ribs. He was then left alone, still handcuffed, for an hour. Doctors later observed multiple bruises in the face, a ruptured left eardrum, a significant contusion of the ankle, a 15-cm mark on the leg and injuries on the back on an area with a diameter of 10cm. "Reddish marks left by the handcuffs can clearly be seen more than two months after the event. Above the left wrist, a 10-cm scar runs along his forearm," declares an online news website.¹¹² During an interview, his lawyer informed ACAT-France that Justin lodged a complaint as a civil party claiming damages after his previous ordinary complaint had been discontinued. Meanwhile, Justin is being prosecuted for intentional rebellion and assault. Both cases are still ongoing.

In January 2012, **a group of students** were the victims of violence during a police intervention in Marseille. The police intervened in an incident of noise disturbances coming from an apartment where students were celebrating their friend's graduation. After a call for reinforcements, twenty-seven men were dispatched to the scene. The victims and witnesses reported the use of tear gas in the apartment and beatings. The scene was partly filmed by a neighbour: the images shown later reveal young people going down the stairwell with their hands on their head whilst being insulted and beaten as they pass. The students explained that they were beaten up in front of the building before being handcuffed and placed in custody for 36 hours. Six of them were injured: broken nose and ankles, bruises, abrasion burns, etc. Only one officer was identified thanks to the video. He was given a twelve-month suspended sentence. Since they did not appear on the video, the other officers were not convicted.

*Name has been changed.

7.4.2. VIOLENCE AGAINST MIGRANTS IN CALAIS

158. ACAT-France has documented several cases of serious injuries occurring during operations to evacuate dwellings that were illegally occupied. Many allegations of police violence were also denounced during the dismantling of camps or makeshift structures. Acts of violence have been reported during the evacuation of Roma camps in Marseille and the Paris region.¹¹³ In Calais, police harassment of migrants has been repeatedly denounced by the Defender of Rights and the associations.¹¹⁴ In Paris, the disproportionate use of tear gas and truncheons was also denounced in June 2015, during the evacuation of camps in the 18th district. The use of strong-arm means of such magnitude raises questions particularly with regard to the principles of strict necessity and proportionality. The European Commissioner for Human Rights and the Human Rights Committee of the United Nations have expressed their concerns about this.¹¹⁵

111. L'Humanité, *Violences policières à Trappes, le témoignage-choc d'Alexandre* [Police violence in Trappes, the shocking story of Alexandre], 22 October 2013; France 3 Région, 22 juillet 2013; Le Parisien, *Trappes : trois policiers accusés de violences volontaires* [Trappes : three police officers accused of intentional violence], 27 March 2015

112. Carredinfo.fr, *Tabassé 3 heures et poignet brisé* [Beaten up for 3 hours and fractured wrist], 2 September 2013

113. Council of Europe, Report of the Commissioner for Human Rights, after his visit in France from 22 to 26 September 2014

114. Defender of Rights, *Exiles and fundamental rights: the situation in the territory of Calais*, October 2015, p. 71; Defender of Rights, Decision MDS n° 2011-113 of 13 November 2015; Human Rights Watch, *Migrants, Asylum Seekers Abused and Destitute*, 20 January 2015

115. Council of Europe, *Report of the Commissioner for Human Rights, after his visit in France from 22 to 26 September 2014*; United Nations, *Concluding observations of the Human Rights Committee on the fifth periodic report of France*, 17 August 2015

7.5. PREVENTIVE DETENTION

Concluding observations of the Committee, § 29 (CAT/C/FRA/CO/4-6)

The Committee urges the State Party to consider repealing this measure, which is in flagrant violation with the fundamental principle of legality in criminal law, but also in potential contradiction with Article 16.

List of points regarding the 7th periodic report of France § 21 (CAT/C/FRA/Q/7)

In its previous concluding observations, the Committee had shown deep concern about the existence of the preventive detention measure introduced by Law No. 2008-174 of 25 February 2008 and asked for the repeal of this measure to be considered. Furthermore, the Law of 2010 on the risk of criminal recidivism extended preventive surveillance. In this sense, considering the reply to paragraphs 275 to 277 of the report of the State Party, please indicate the progress of the Commission's work on the redrafting of penalties set up in 2014 and if preventive detention has been removed.

159. Despite the recommendations of the Committee in this regard, the Human Rights Committee of the United Nations¹¹⁶ and a large part of French civil society, the Law of 15 August 2014 on the individualisation of penalties and on strengthening the effectiveness of criminal sanctions has not repealed the preventive detention measure that constitutes a flagrant violation of the fundamental principle of the legality of sanctions.

ACAT-France and FIACAT invite the Committee to recommend again that the State Party repeals the measure of preventive detention.

8. OTHER ISSUES

THE LEGAL STATUS OF INTERIM MEASURES AND DECISIONS OF THE COMMITTEE

Concluding observations of the Committee, § 35 (CAT/C/FRA/CO/4-6)

*The Committee is concerned that the State Party believes that it is not obliged to comply with the requests for interim measures of the Committee (with reference to Communications n° 195/2002, *Brada v. France* (17 May 2005) and n° 300/2006, *Tebourski v. France* (1 May 2007)).*

List of points regarding the 7th periodic report of France § 25 (CAT/C/FRA/Q/7)

In light of the previous concluding observations, please indicate what is the legal status, in the national legal system, of the interim measures and decisions of the Committee regarding communications from individuals and explain what procedural safeguards are in place to enforce the interim measures and decisions of the Committee under Article 22 of the Convention.

116. Human Rights Committee, Consideration of the 4th report of France, Concluding observations, 22 July 2008

117. Committee against Torture, *Dar v. Norway*, n°249/2000, paragraph 16.3

160. As a State Party to the Convention against Torture that made a statement of recognition on the basis of Article 22 of the Convention, France has undertaken to comply in good faith with the procedure of individual communication. This obligation applies both to the interim measures as well as the decisions on the merits of the CAT¹¹⁷.

161. Yet, in its report to the Committee (paragraphs 397 to 401), France argues that the interim measures, as well as the decisions of the CAT on individual complaints, are only recommendations. In fact this opinion makes the commitment taken on the basis of Article 22 lose its initial intention. Actually, by making the compliance with the decisions of the Committee depend on the goodwill of the State, it renders the mechanism of individual complaint inoperative.

ACAT France and FIACAT invite the Committee to recommend that the State party implement the necessary measures to ensure compliance with the interim measures and decisions of the Committee regarding communications from individuals.





ANNEXES

ANNEX 1. APPLICATIONS FOR INTERNATIONAL PROTECTION, REVIEWS AND DECISIONS TAKEN BY NATIONALITY

YEAR 2014 (SOURCE OFPRA, ACTIVITY REPORT)

CONTINENT	TOTAL DEMANDES					TOTAL DÉCISIONS OFPRA (hors mineurs A)						ANNULATIONS CNDA			Total admis OFPRA + CNDA
	1 ^{er} dées	Révis	Total ddes hors min A	Ddes min A	Total général	Total admis	Dont CR	Dont PS	% admis	Rejets	Total	Total ann.	Dont CR	Dont PS	
Afrique	18 754	1 172	19 926	5 049	24 975	2 967	2 431	536	16,3%	15 277	18 244	2 103	1 556	547	5070
Amériques	2 234	152	2 426	177	2 603	66	37	29	3,1%	2 058	2 124	70	28	42	136
Asie	12 531	2 045	14 576	2 925	17 501	3 071	3 116	855	29,6%	9 464	13 435	1 563	1 263	300	5 534
Europe	11 623	2 129	13 752	5 708	19 460	1 718	1 198	520	9,6%	16 144	17 862	2 013	1 139	674	3 731
Apatrides	272		272		272	41	41		25%	123	164				41
TOTAL	45 454	5 498	50 952	13 859	64 811	8 763	6 823	1 940	16,9%	43 066	51 829	5 749	4 186	1 563	14 512

EUROPE	TOTAL DEMANDES					TOTAL DÉCISIONS OFPRA (hors mineurs A)						ANNULATIONS CNDA			Total admis OFPRA + CNDA
	1 ^{er} dées	Révis	Total ddes hors min A	Ddes min A	Total général	Total admis	Dont CR	Dont PS	% admis	Rejets	Total	Total ann.	Dont CR	Dont PS	
Albanie	1 944	151	2 095	901	2 996	344	67	277	9,0%	3 479	3 823	319	48	271	663
Arménie	1 105	382	1 487	454	1 921	88	59	29	5,8%	1 429	1 517	165	89	76	253
ARYM (Macédoine)	161	14	175	63	238	7	6	1	4,8%	140	147	8	4	4	15
Azerbaïdjan	535	70	605	235	840	120	116	4	15,4%	661	781	45	45		165
Biélorussie	43	2	45	12	57	9	9		16,1%	47	56	33	33		42
Bosnie-Herzégovine	501	24	525	320	845	48	27	21	9,3%	468	516	29	23	6	77
Géorgie	952	240	1 192	419	1 611	107	80	27	5,0%	1 704	1 811	107	68	39	214
Kosovo	1 994	357	1 951	824	2 775	238	140	98	6,6%	3 350	3 588	379	217	162	617
Moldavie	20	3	23	6	29	2		2	9,1%	20	22	3	2	1	5
Monténégro	139	6	145	115	260	6	3	3	4,0%	144	150	3	2	1	9
Russie	2 138	587	2 725	1 481	4 206	497	459	38	16,6%	2 502	2 999	702	605	97	1 199
Serbie	287	41	328	278	606	47	39	8	14,3%	282	329	54	47	7	101
Turquie	1 184	223	1 407	217	1 624	183	171	12	9,5%	1 739	1 922	158	150	8	341
Ukraine	1 008	28	1 036	388	1 424	20	20		10,5%	171	191	8	6	2	28
autres Europe	12	1	13	15	28	2	2		20,0%	8	10				2
TOTAL	11 623	2 129	13 752	5 708	19 460	1 718	1 198	520	9,6%	16 144	17 862	2 013	1 139	674	3 731

ASIE	TOTAL DEMANDES					TOTAL DÉCISIONS OFPRA (hors mineurs A)						ANNULATIONS CNDA			Total admis OFPRA + CNDA
	1 ^{er} dées	Révis	Total ddes hors min A	Ddes min A	Total général	Total admis	Dont CR	Dont PS	% admis	Rejets	Total	Total ann.	Dont CR	Dont PS	
Afghanistan	472	62	534	144	678	485	255	230	81,5%	110	595	223	49	174	708
Bangladesh	2 425	1 157	3 582	227	3 809	202	194	8	5,5%	3 459	3 661	306	368	28	598
Bhoutan	22	8	30	4	34					22	22	8	8		8
Brmanie	21	27	48	5	53	8	7	1	4,0%	191	199	43	42	1	51
Cambodge	41	4	45	4	49	2	2		6,1%	31	33				2
Chine	2 497	119	2 616	176	2 792	604	601	3	23,6%	1 955	2 559	12	6	6	616
Inde	51		51	11	62	5	2	3	11,4%	39	44	7	5	2	12
Irak	606	8	614	299	913	384	383	1	93,4%	27	411	13	4	9	397
Iran	132	17	149	38	187	99	88	11	66,4%	50	149	37	34	3	136
Jordanie	8		8	7	15	1	1		33,3%	2	3	1	1		2
Kazakhstan	82	15	97	53	150	24	22	2	19,7%	98	122	17	11	6	41
Kirghizstan	41	6	47	17	64	17	15	2	37,0%	29	46	24	22	2	41
Laos	5		5	3	8					2	2				
Liban	40	1	41	21	62	2	2		5,3%	36	38	4	4		6
Mongolie	89	19	108	33	141	13	6	7	9,8%	119	132	9	1	8	22
Népal	59	14	73	13	86	1	1		2,0%	48	49	12	10	2	13
Ouzbékistan	6	9	15	5	20	11	11		42,3%	15	26	4	3	1	15
Pakistan	2 047	60	2 107	89	2 196	117	97	20	6,0%	1 577	1 694	65	43	22	182
Palestine (autorité)	148	1	149	67	216	107	102	5	89,4%	14	121	4	4		111
Sri Lanka	1 548	494	2 042	616	2 658	446	407	39	25,0%	1 492	1 938	612	587	25	1 058
Syrie	2 072	12	2 084	1 070	3 154	1 404	884	520	95,7%	63	1 467	63	55	8	1 467
Tadjikistan	8		8	4	12	2	2		100,0%		2	2		2	4
Thaïlande	30		30		30	1	1		16,7%	5	6				1
Vietnam	29	3	32	2	34	5	5		12,5%	35	40	2	2		7
Yémen	20	2	22	7	29	10	7	3	55,6%	8	18	2	1	1	12
autres Asie	52	7	59	10	69	21	21		36,2%	37	58	3	3		24
TOTAL	12 531	2 045	14 576	2 925	17 501	3 071	3 116	855	29,6%	9 464	13 435	1 563	1 263	300	5 534

AMÉRIQUES	TOTAL DEMANDES					TOTAL DÉCISIONS OFFRA (HORS MINEURS A)						ANNULATIONS CNDA			Total admis Offra + CNDA
	1 ^{er} dds	Réex	Total dds hors min A	Dds min A	Total général	Total admis	Dont CR	Dont PS	% admis	Rajets	Total	Total ann	Dont CR	Dont PS	
Bresil	13		13	3	16	3	2	1	23,1%	10	13				3
Colombie	60	5	65	24	89	9	7	2	12,5%	63	72	5	2	3	14
Cuba	33	1	34	3	37	5	5		14,7%	29	34	1	1		6
Dominicaine (Rép.)	255	8	263	3	266	3		3	1,4%	234	217				3
Dominique	15		15		15					13	13				
Guyana	36	1	37		37	3	3		6,1%	46	40				3
Haiti	1 730	126	1 856	130	1 986	26	13	13	1,6%	1 572	1 508	54	22	32	80
Jamaïque	11		11		11	1	1		12,5%	7	8	1	1		2
Pérou	47	9	56	7	63	9	2	7	15,9%	49	58	5		5	14
Sainte-Lucie	11		11		11					8	8				
Vénézuéla	28	1	29	2	31	3	2	1	15,0%	17	20	1	1		4
autres Amériques	35	1	36	5	41	4	2	2	11,8%	30	34	3	1	2	7
TOTAL	2 274	152	2 426	177	2 603	66	37	29	3,1%	2 058	2 134	70	28	42	136
AFRIQUE	TOTAL DEMANDES					TOTAL DÉCISIONS OFFRA (HORS MINEURS A)						ANNULATIONS CNDA			Total admis Offra + CNDA
	1 ^{er} dds	Réex	Total dds hors min A	Dds min A	Total général	Total admis	Dont CR	Dont PS	% admis	Rajets	Total	Total ann	Dont CR	Dont PS	
Afrique du Sud	8		8	2	10					8	8	2	1	1	2
Algérie	1 304	33	1 337	297	1 634	71	48	23	6,7%	986	1 057	35	18	17	106
Angola	415	38	453	294	747	36	28	8	9,2%	357	393	55	37	18	91
Bénin	31		31		31	2	2		8,7%	21	23				2
Burkina Faso	60		60	8	68	4	2	2	11,4%	31	35	7	4	3	11
Burundi	13	3	16	14	30	14	12	2	53,8%	12	26	4	4		18
Cameroon	268	10	278	33	311	33	26	7	14,9%	189	222	33	30	3	66
Cap-Vert	7		7	1	8					8	8				
Centrafrique	658	16	674	112	786	380	130	250	95,5%	18	398	53	8	45	433
Comores	506	48	554	137	691	37	32	5	6,5%	532	569	1	1		38
Congo	482	28	510	112	622	37	32	5	5,8%	602	639	38	31	7	75
Côte d'Ivoire	740	75	815	212	1 027	163	151	12	19,4%	678	841	98	76	22	261
Djibouti	39	4	43	25	68	11	11		42,3%	15	26	4	4		15
Égypte	333	36	369	70	439	123	120	3	30,6%	279	402	118	116	2	241
Erythrée	607	6	613	116	729	70	69	1	14,8%	404	474	113	113		183
Éthiopie	174	4	178	39	217	15	15		28,3%	38	53	15	13	2	30
Gabon	29		29	9	38	2	1	1	11,8%	15	17				2
Gambie	78	3	81	21	102	21	20	1	28,8%	52	73	5	5		26
Ghana	31	1	32	1	33	1		1	5,6%	17	18	2	2		3
Guinée	1 612	159	1 771	571	2 342	481	436	45	23,8%	1 544	2 025	270	228	42	751
Guinée équatoriale	7		7	2	9					3	3				
Guinée-Bissau	95	9	104	15	119	8	7	1	7,0%	107	115	6	4	2	14
Kenya	28	1	29	10	39	6	3	3	42,0%	8	14	9	4	5	15
Libéria	11		11	10	21	1	1		11,0%	8	9				1
Libye	206	6	212	70	282	11	10	1	12,4%	78	89	15	10	5	26
Madagascar	79	2	81	19	100	6	4	2	7,7%	72	78	1		1	7
Mali	1 151	32	1 183	331	1 514	283	264	19	17,4%	1 345	1 628	79	69	10	362
Maroc	179	3	182	19	201	26	23	3	20,8%	99	125	6	5	1	32
Mauritanie	604	198	802	120	922	80	78	2	9,8%	753	813	121	110	11	201
Niger	21		21	6	27	2		2	20,0%	8	10				2
Nigéria	1 067	62	1 129	316	1 445	68	30	38	8,0%	784	852	89	55	34	157
Ouganda	29		29	4	33	9	9		64,3%	5	14	3	3		12
Rép. Dém. Congo	3 782	277	4 059	1 434	5 493	415	379	36	10,1%	3 706	4 121	336	299	37	751
Rwanda	149	22	171	72	243	82	82		46,0%	93	175	59	56	3	141
Sahara occ (origine)	507	4	511	14	525	85	84	1	35,3%	196	241	10	10		95
Sénégal	265	4	269	94	363	75	74	1	30,0%	175	250	23	21	2	98
Sierra Leone	60	6	66	17	83	13	11	2	25,2%	43	56	10	7	3	23
Somalie	661	25	686	133	819	58	22	36	11,2%	460	518	187	35	152	245
Soudan	1 793	34	1 827	157	1 984	170	159	11	13,3%	1 110	1 280	232	120	112	402
Tchad	298	19	317	68	385	26	24	2	11,0%	208	234	46	39	7	72
Togo	135	3	138	31	169	12	11	1	9,0%	122	134	14	14		26
Tunisie	236	1	217	30	247	22	15	7	13,8%	137	159	4	4		26
Zimbabwe	6		6	3	9	1	1		33,3%	2	3				1
autres Afrique	10		10		10	7	5	2	43,8%	9	16				7
TOTAL	18 754	1 172	19 926	5 040	24 975	2 967	2 431	536	16,3%	15 277	18 244	2 103	1 556	547	5 070

ANNEX 2.

FLASH-BALLS AND RUBBER BULLET GUNS: AT LEAST 39 SERIOUS INJURIES AND ONE DEATH SINCE 2004

- 14 July 2015, **Tarik Malik** (26) was hit in the head by a projectile fired by the police, presumably rubber bullet gun ammunition. The medical report indicates a 10-cm wound, 24 stitches and 21 days of total incapacity for work.
- 14 July 2015, **Bakary** (16) was shot in the left cheek by a flash-ball bullet, in Les Mureaux.
- 14 July 2015, **Amine M.** (14) was seriously injured in Argenteuil by a shot from a rubber bullet gun 40x46® in the genitals. The medical report indicates numerous wounds on the right testicle.
- 5 April 2015, in Marseille, **Lou*** was seriously injured in the genitals with a flash-ball projectile.
- 30 October 2014, **Boush-B***, aged 20, lost an eye as a result of the use of a flash-ball during a police intervention in Blois.
- 19 October 2014, **Alexandre Meunier** (25) was seriously injured in the right eye with a flash-ball shot during a scuffle outside a football match in Lyon.
- 10 September 2014, **Verdun*** was seriously injured in the hand, presumably with a rubber bullet gun.
- 10 May 2014, **Davy Graziotin** (34) was seriously injured in the face after being shot with a rubber bullet gun 40x46® during a protest against the airport in Nantes.
- 21 April 2014, **Yann Zoldan** (26) was seriously injured in the face after being shot with a rubber bullet gun 40x46® during the evacuation of a squat.
- 22 February 2014, three young men were seriously injured during a protest against the airport in Nantes with rubber bullet weapon shots, presumably rubber bullet guns. **Quentin Torselli** (29) lost an eye, **Damien Tessier** (29) lost the use of an eye and **Emmanuel Derrien** (24) was injured in the face.
- 1 February 2014, **Steve** (16) lost the use of an eye after being shot with a rubber bullet gun 40x46® during clashes with the police in Reunion.
- 27 December 2013, **Quentin Charron** (31) lost the use of an eye after being shot with a rubber bullet gun 40x46® during a protest of firefighters in Grenoble..
- 19 July 2013, **Salim** (14) lost an eye after being shot by a Flash-Ball Superpro® outside clashes during a protest.
- 25 June 2013, **Mohamed Kébé** (21) was injured in the face after being shot by a Flash-Ball Superpro® in Villemomble..
- 6 February 2013, **John David** (25) lost the use of an eye, presumably after being shot by a rubber bullet gun during a protest of ArcelorMittal employees in Strasbourg.
- 21 September 2012, **Florent Castineira** (21) lost an eye after being shot by a Flash-Ball Superpro®, during a police intervention to control clashes after a football match.
- 22 February 2012, **Jimmy Gazar** was seriously injured in the face after being shot by a flash-ball in Reunion.

- 7 October 2011, **Nassuir Oili** (9) lost an eye after being shot by a Flash-Ball Superpro® during a police intervention outside protests "against the high cost of living" in Mayotte.
- 5 June 2011, **Daranka Gimo** (9) was in a coma for three months with serious sequelae after being shot by a rubber bullet gun 40x46®.
- 7 February 2011, **Ayoub Boutahara** (17) lost the use of an eye after being shot with a Flash-Ball Superpro® outside clashes with the police.
- 31 December 2010, **Marie Candoni** (22) was seriously injured at the mouth after being shot with a Flash-Ball Superpro® during a police intervention at a rave party.
- 18 December 2010, **Mohamed Abatahi** (37) was injured in the face after being shot with a Flash-Ball Superpro® during a police intervention at a protest.
- 12 December 2010, **Mostepha Ziani** (43) died after being shot with a Flash-Ball Superpro® in the chest, when he was apprehended in his home.
- 5 December 2010, **Guillaume Laurent** (23) was injured in the eye by a Flash-Ball Superpro®, outside a football match in Nice.
- 14 October 2010, **Geoffrey Tidjani** (16) was seriously injured in the face by a shot from a rubber bullet gun 40x46® during a protest in Montreuil (93).
- 19 May 2010, **Nordine** (27) was seriously injured in the face by a Flash-Ball Superpro® during clashes between youths and the police in Villetaneuse (93).
- 9 April 2010, **Eliasse** (17) was injured in the face by a flash-ball shot during a police intervention to disperse several groups of youths during an altercation in Tremblay..
- 8 July 2009, **Joachim Gatti** (34) lost an eye after being shot by a Flash-Ball Superpro® during the evacuation of a squat in Montreuil (93).
- 21 June 2009, **Clément Alexandre** (30) was seriously injured in the face by a Flash-Ball Superpro® during a police intervention at the World Music Day events in Paris..
- 4 June 2009, **Sylvain Mendy** (23) was hit in the heart by a Flash-Ball Superpro® during an identity check.
- 9 May 2009, **Alexandre** (21) and **Clément** (31) lost the use of an eye after being shot by a rubber bullet gun 40x46® during a police intervention at a birthday party.
- 1 May 2009, **Samir Ait Amara** (18) was seriously injured in the head during his arrest after being shot by a Flash-Ball Superpro®.
- 17 April 2009, **Halil Kiraz** (29) lost an eye after being shot by a Flash-Ball Superpro® during an arrest.
- 19 March 2009, **Joan Celsis** (25) lost the use of an eye after being shot by a Flash-Ball Superpro® during a protest in Toulouse.
- 27 November 2007, **Pierre Douillard** (16) lost the use of an eye after being shot by a rubber bullet gun 40x46® during a protest in Nantes..
- 28 October 2006, **Jiade El Hadi** (16) lost the use of an eye after being shot by a Flash-Ball Superpro® in Clichy-sous-Bois.
- 5 July 2005, **Sékou** (14) lost an eye as a result of the use of a Flash-Ball Superpro®.

* Le prénom a été modifié.

ANNEX 3.

DEATHS EXAMINED BY ACAT-FRANCE AS PART OF ITS INVESTIGATION

- 3 December 2015 : **Babacar Guèye** (27) was killed with a firearm during an arrest.
- 25 April 2015, **Pierre Cayet** (54) died in unclear circumstances after falling at the police station in Saint-Denis.
- 6 March 2015, **Amadou Koumé** (33) died during his arrest in Paris after the use of an immobilisation technique.
- 20 December 2014, **Bertrand Nzohabonayo** (20) was killed with a firearm at the police station of Joué-lès-Tours.
- 16 December 2014, **Abdoulaye Camara** (31) was killed with a firearm during his arrest in Le Havre.
- 26 October 2014, **Rémi Fraisse** (21) died following an offensive firing of a grenade during an intervention to maintain law and order on the dam construction site in Sivens.
- 17 October 2014, **Timothée Lake** (20) was killed with a firearm during his arrest in Toulouse.
- 5 September 2014, a 34-year-old **man** died in Paris during his arrest in which an electroshock weapon was used.
- 26 August 2014, **Hocine Bouras** (23) was killed with a firearm in the vehicle of the gendarmerie that was taking him from the prison in Strasbourg to the courthouse in Colmar.
- 21 August 2014, **Abdelhak Goradia** (51) died in the police vehicle that was taking him from the detention centre in Vincennes to Roissy airport.
- 29 July 2014, **Dorel Iosif Florea** (42) was killed with a firearm during his arrest.
- 3 November 2013, **Loïc Louise** (21) died during his arrest after the prolonged use of a Taser.
- 4 April 2013, a 45-year-old **man** died in Crozon during his arrest in which a Taser was used.
- 28 March 2013, **Lahoucine Aït Omghar** (25) was killed with a firearm during his arrest.
- 27 June 2012, **Nabil Mabtoul** (26) was killed with a firearm during a roadside check.
- 21 April 2012, **Amine Bentounsi** (28) was killed with a firearm during his arrest.
- 31 December 2011, **Wissam El-Yamni** (30) died in unclear circumstances following his arrest.
- 20 September 2011, **Serge Partouche** (48) died during his arrest following the use of an immobilisation technique.
- 12 Décembre 2010, **Mostepha Ziani** (43) died during his arrest after being shot by a flash-ball in the chest.
- 30 November 2010, **Mahamadou Marega** (38) died during his arrest in which a Taser (17 discharges) and immobilisation techniques were used.

- 12 November 2009, **Mohammed Boukrourou** (41) died after his arrest following the use of immobilisation techniques.
- 11 June 2009, **Ali Ziri** (69) died in unclear circumstances following his arrest after a roadside check.
- 23 May 2008, **Joseph Guerdner** (27) was killed with a firearm while attempting to flee from a gendarmerie station.
- 9 May 2008, **Abdelhakim Ajimi** (22) died during his arrest following the use of an immobilisation technique.
- 17 June 2007, **Lamine Dieng** (25) died in unclear circumstances following his arrest.
- 3 May 2007, **Louis Mendy** (34) was killed with a firearm during an arrest.

ANNEX 4.

DEATHS LISTED BY ACAT-FRANCE FOLLOWING THE USE OF THE ELECTROSHOCK WEAPON TASER X26® MODEL

- 5 September 2014 in Paris : death of a 34-year-old **man** after two shots of an electroshock weapon in direct contact. The link between the use of the weapon and the death was not established. The police officers said that the person was having an "acute behavioural crisis".
- 3 November 2013 in La Ferté-Saint-Aubin (Loiret): death of **Loïc Louise** (21) after the prolonged use (17 seconds) of a Taser. A preliminary investigation against persons unknown was opened on 8 August 2014 for involuntary manslaughter. The investigation is ongoing.
- 4 April 2013 in Crozon (Finistère): death of a 45-year-old **man** after a Taser discharge. Very little information is known about this case that seems to have been dismissed in February 2014.
- 30 November 2010, in Colombes (Hauts-de-Seine): death of **Mahamadou Marega** 38), who had received 17 discharges of a Taser in direct contact and without direct contact. The officials described him as being in an "agitated state of delirium". A dismissal was made by the investigating judge, which was confirmed on 22 February 2013 by the Court of Appeal of Versailles.

In these four cases, no link could be established between the Taser discharges received and the recorded deaths.

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