



**Submission to the Universal Periodic Review of France**

Human Rights Watch

October 2022

1. Human Rights Watch submits the following information regarding France's implementation of recommendations it accepted through its third Universal Periodic Review (UPR) in 2018, as well as information about additional international human rights obligations and issues not addressed in the 2018 review. This submission is not a complete review of the implementation of all 239 recommendations either fully or partially supported by France, nor is it a comprehensive review of France's protection of human rights in the domestic sphere.

### **Rule of law**

2. Since November 2015, France has spent more time under a state of emergency regime – first on security grounds, following the deadly 2015 Paris attacks, and then in response to the Covid-19 pandemic – than under ordinary law. Under a state of emergency, the executive branch has exceptional powers and can impose temporary restrictions on several fundamental rights and freedoms.

3. Measures such as curfews; administrative closures of associations and places of worship; restrictions on movement and holding protests; and surveillance, restrict the rights to freedom of assembly and association and interfere with the right to privacy. While restrictions on these rights are permitted, including on public health grounds, they should be non-discriminatory, as well as necessary and proportionate to the legitimate public interest threat. Further restrictions introduced on the basis of an emergency should also be limited in duration, and subject to review. The French Defender of Rights warned against the proliferation of laws in response to Covid-19 that the pandemic did not always justify, and the multiplication of norms regulating individual freedoms without judicial control.<sup>i</sup> The European Commission noted in its July 2021 Rule of Law report that the use of accelerated procedures, including for laws with a significant impact on individual freedoms, has become the norm and denounced the shrinking space for civil society.<sup>ii</sup>

4. In some instances, exceptional measures introduced in France during a state of emergency have later been incorporated into ordinary law, which extends their application beyond the emergency for which they were considered necessary. For example, French authorities used powers initially introduced under a state of emergency to dissolve a leading anti-discrimination organization, alleging among other things that its descriptions of certain counterterrorism measures as Islamophobic incited hatred.<sup>iii</sup>

5. In May 2018, the UN special rapporteur on human rights and counterterrorism expressed concerns about the 2017 counterterrorism law, which incorporates state of emergency powers into ordinary law and includes insufficient safeguards in the use of non-criminal measures against terrorism suspects.<sup>iv</sup>

6. A law “consolidating the principles of the Republic” entered into force in 2022 to “fight against separatism and attacks on citizenship.”<sup>v</sup> The law is widely viewed as targeting Muslims. The National Consultative Commission on Human Rights (CNCDDH) and the European Commission expressed concerns that it could violate fundamental rights, including freedom of association, information, and education.<sup>vii</sup>

7. Rights groups raised concerns that the separatism law feeds Islamophobia, and specifically the targeting of Muslim women wearing headscarves, face veils, or other body-covering garments. In January, the Senate voted to ban the wearing of “ostentatious religious symbols,” including the hijab, in sports competitions. A civil society collective, Les Hijabeuses, successfully led<sup>viii</sup> an effort to combat the bill. The group has appealed rules of the French Football Federation prohibiting women from competing in the hijab; the Council of State is examining the appeal.

8. The Council of State in June upheld a ban<sup>ix</sup> on full-body swimsuits, or burkinis, in public swimming pools after a Grenoble court suspended the ban locally, saying it undermined neutrality in public services.

9. Human rights organizations and other international bodies have documented and criticized excessive use of force by police during protests, harming protesters and threatening the right to protest. France adopted a protest law in April 2019 that posed risks on the right to freedom of peaceful assembly.<sup>x</sup> UN experts in February 2019 expressed concern about the law and already disproportionate restrictions on the right to protest in France.<sup>xi</sup>

10. French police crowd control and anti-riot tactics, used during demonstrations, injured scores of people during the “Yellow vests” protests that erupted in late of 2018. Those injured included peaceful demonstrators, high-school students, and journalists.<sup>xii</sup> There has been widespread criticism of police methods, including by the United Nations and the French ombudsperson.<sup>xiii xiv</sup>

### **Recommendations to French government**

11. France should:
- a. Ensure that measures to keep the public safe from threats to national security and Covid-19 respect fundamental freedoms and the rule of law;
  - b. Respect the legitimate role and work of organizations that seek to end discrimination and uphold human rights, in particular when they are critical of French policy and practice, and respect the exercise of freedom of speech, association, and assembly of civil society in this regard;
  - c. Ensure that emergency measures are subject to robust and regular scrutiny and judicial oversight and that they do not become permanent measures by being integrated into regular laws for use after a state of emergency has ceased;
  - d. Ensure that counterterrorism measures are non-discriminatory and proportionate and require judicial authorization for measures such as raids and searches;
  - e. Review crowd control policies to ensure effective safeguards against excessive use of force during protests and unjustified interference with the right to protest. Investigate alleged abuses and hold officers to account for excessive use of force.

### **Ethnic profiling during police checks**

12. France accepted recommendations in the last UPR review in 2018 to stop ethnic profiling in identity checks but failed to take legislative steps to end such practices.

13. Ethnic profiling during police checks, affecting Black and Arab youth in particular, continues to be a pervasive problem in France,<sup>xv</sup> even though the Constitutional Council (Conseil Constitutionnel), France’s highest constitutional authority, has confirmed that identity checks must be “based exclusively on criteria that exclude discrimination of any kind.”<sup>xvi</sup> Successive governments have failed to address this widespread, systemic discrimination targeting Black and Arab youth and have allowed this abusive and illegal practice to persist, which deeply harms not only the affected people, but also relations between the police and the population.

14. In April 2019, after a five-year investigation, the French ombudsman reported<sup>xvii</sup> discriminatory and illegal orders at a specific police station in Paris, saying it targeted “black people and north Africans” in the surrounding area for identity checks and “homeless and Roma people” for systematic expulsion.<sup>xviii</sup> French authorities gave no formal response. Faced with the inaction of the French authorities, a group of non-governmental organizations, including Human Rights Watch, initiated an unprecedented legal case<sup>xix</sup> in January 2021 against the government that seeks to end these abusive practices.<sup>xx</sup>

### **Recommendations to the French government**

15. France should:
- a. End discriminatory policing and targeting of Black and Arab youth;
  - b. Reform the legal framework for identity checks, adopt specific rules for police controls of children, develop a system for recording police stops, collect data on identity checks, and create an independent complaints body;

- c. Support legislation to require police officers to establish a written record of every identity check to explain its legal basis and allow for monitoring of these police operations. This measure, successfully used in other European countries, has proven to be a simple and effective way to ensure transparency and accountability and to build trust without imposing a burden on police officers;
- d. Take concrete steps to document, analyse, and address ethnic profiling by the police;
- e. Ensure that abuse during police stops is systematically investigated and appropriately prosecuted, and hold officers to account through internal mechanisms for failure to abide by instructions.

### **Treatment of migrants, asylum seekers, and unaccompanied migrant children**

16. Since France's last UPR, Human Rights Watch continued to document abuses against migrants and asylum seekers by the French police forces, and lack of access for migrants and asylum seekers to basic services. Human Rights Watch has also expressed concerns on the treatment of unaccompanied migrant and asylum-seeking children, with some unable to access services or receive protection as guaranteed by the law.

17. Adults and children living in informal encampments in Paris and in and around Calais in northern France are regularly subjected to repeated mass evictions, police harassment, and restrictions on humanitarian assistance. Children are summarily rejected at the border, and their access on French territory to protection and essential services is denied by the French authorities.

18. In 2021, Human Rights Watch documented repeated mass eviction operations taking place in northern France, near-daily police harassment, and restrictions on provision of and access to humanitarian assistance.<sup>xxi</sup> The authorities carry out these abusive practices with the primary purpose of forcing people to move elsewhere, without resolving their migration status or lack of housing, or of deterring new arrivals. The human rights defender expressed alarm at the inhumane and degrading living conditions of asylum seekers and migrants in Calais.<sup>xxii</sup>

19. In 2021, Human Rights Watch documented unlawful expulsions of migrants, including unaccompanied children, at the French-Italian border.<sup>xxiii</sup>

20. In 2019, Human Rights Watch reported that French border police in the Alps summarily returned unaccompanied migrant children to Italy during the year, and some child protection authorities used flawed age assessment procedures on unaccompanied migrant children, depriving some of the protection and care to which they are entitled.<sup>xxiv</sup>

21. In 2019, aid workers and volunteers providing vital assistance to migrants were harassed by the police in Calais region and around the French-Italian border. Some faced trial and conviction for their humanitarian work.<sup>xxv</sup>

22. In August 2018, France adopted a flawed asylum and immigration law.<sup>xxvi</sup> The French Defender of Rights,<sup>xxvii</sup> the Council of Europe Commissioner for Human Rights,<sup>xxviii</sup> the UN High Commissioner for Refugees and NGOs criticized the law for undermining access to asylum, including by weakening appeal rights and safeguards for those subject to accelerated asylum procedures. The law did not ban detention of migrant children.

23. The European Court of Human Rights ruled in February 2019 that France had subjected an unaccompanied child living in a makeshift camp in Calais to "degrading treatment" for failing to take steps to ensure he was identified as a child and given protection and care.<sup>xxix</sup>

### **Recommendations to the French government**

24. France should:

- a. Commit to humane treatment of migrants and asylum seekers and full respect for their rights, and to protect the right to asylum;
- b. End degrading treatment and police harassment of migrants and asylum seekers, with a particular focus on northern France and Paris; end restrictions on humanitarian assistance and essential services; end police harassment of humanitarian and human rights workers and volunteers;
- c. Take action to make mental health support services available to people seeking protection;
- d. Support emergency temporary relocation programs in times of increased arrivals;
- e. Offer additional options for migration status based on family or community ties, language, or historical connections to countries of origin;
- f. Ensure that unaccompanied migrant children on French territory have access to the protection and services to which they are entitled.

### **French citizens detained in Northeast Syria**

25. Since at least March 2019, French nationals, most of them children, have been arbitrarily detained in camps and prisons for suspected members of the Islamic State (ISIS) and their families in northeast Syria. They are held in life-threatening, deeply degrading, and often inhumane conditions, with no ability to challenge the legality and necessity of their detention. Detained children are deprived of their basic rights including the rights to life, protection, health, freedom from arbitrary detention, and education.

26. To date, France has repatriated 70 children and 16 mothers from camps in northeast Syria (the last ones in July 2022).<sup>xxx</sup> But an estimated 160 children, 75 women, and 60 men remain arbitrarily detained in the region for alleged ISIS links.

27. The humanitarian and security conditions in the two locked camps holding the remaining French women and children, along with tens of thousands of Syrians and other foreigners, continue to deteriorate. Hundreds of detainees in the larger camp, al-Hol, have already died in the past three years, at least half of them children, according to the UN. Causes include lack of medical care, unsanitary conditions, accidents such as tent fires, targeted killings by ISIS, and gunfire exchanges between detainees and guards. Food and fresh water are inadequate, children receive no or little schooling, and children and women have been sexually assaulted. Conditions are even worse in the overcrowded prisons holding thousands of male ISIS suspects from dozens of countries including an estimated 60 Frenchmen and several hundred boys. ISIS attacked the largest of these prisons in January, leading to a 10-day battle and an estimated 500 deaths of prisoners and local armed forces.

28. The UN High Commissioner for Human Rights, UN human rights experts, the Council of Europe Commissioner for Human Rights, the International Committee of the Red Cross, Human Rights Watch, as well as France's National Human Rights Commission (CNCDH), and Defender of Rights have called for the repatriation of children and their mothers. The Kurdish-led authorities in northeast Syria who are detaining the French and other foreigners have repeatedly urged home countries to repatriate their nationals.

29. In a February 2022 decision, the UN Committee on the Rights of the Child found that France had violated the right to life of French children held in these camps, their right not to be subjected to cruel, inhuman, or degrading treatment, and their best interests.<sup>xxxii</sup>

30. In September 2022, the European Court of Human Rights ruled that France had violated its obligations under the European Convention on Human Rights in the way it refused to repatriate five French women and children arbitrarily detained for more than three years as Islamic State (ISIS) suspects and family members in northeast Syria.<sup>xxxiii</sup> The court found that France had failed to conduct an independent review and issue a reason for its refusal.

31. UN Security Council Resolution 2396 of 2017, which is binding on all member states, emphasizes the importance of assisting children as well as women associated with groups such as ISIS who may themselves be victims of terrorism.

### Recommendations to the French government

32. France should:
- a. Urgently repatriate all the French nationals from northeast Syria, prioritizing children and their mothers in line with the international rights of the child to family unity and to be detained only as an exceptional measure of last resort;
  - b. Provide sufficient rehabilitation and reintegration services, including psychological support, to repatriated nationals;
  - c. Investigate and prosecute adult suspects as warranted, in line with international due process standards;
  - d. Pending repatriations, provide adequate aid to ensure camp and prison conditions in northeast Syria meet international standards, continue pressing the United Nations Security Council to reauthorize vital aid operations across Syria's borders.

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<sup>i</sup> French Defender of Rights (Défenseur des droits), 'Annual Activity Report 2020' (March 2021). Available at: [https://defenseurdesdroits.fr/sites/default/files/atoms/files/defenseurdesdroits-annualactivityreport2020-en\\_01.pdf](https://defenseurdesdroits.fr/sites/default/files/atoms/files/defenseurdesdroits-annualactivityreport2020-en_01.pdf)

<sup>ii</sup> European Commission, 'Country Chapter on the Rule of Law Situation in France' (July 2021). Available at: [https://ec.europa.eu/info/sites/default/files/2021\\_rplr\\_country\\_chapter\\_france\\_en.pdf](https://ec.europa.eu/info/sites/default/files/2021_rplr_country_chapter_france_en.pdf)

<sup>iii</sup> Human Rights Watch, 'French Court Confirms Dissolution of Anti-Discrimination Group' (September 27, 2021). Available at: <https://www.hrw.org/news/2021/09/27/french-court-confirms-dissolution-anti-discrimination-group>

<sup>iv</sup> Preliminary findings of visit to France by the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (May 23, 2018). Accessible at: <https://www.ohchr.org/en/press-releases/2018/05/preliminary-findings-visit-un-special-rapporteur-promotion-and-protection>

<sup>v</sup> Law No. 2021-1109 of 24th August 2021 aimed at fighting "separatism" in France and confirming respect for the principles of the Republic. Accessible at: <https://www.vie-publique.fr/loi/277621-loi-separatisme-respect-des-principes-de-la-republique-24-aout-2021>

<sup>vi</sup> See National Consultative Commission on Human Rights (CNCDH) second opinion on the draft law accessible at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043329207>

<sup>vii</sup> European Commission, 'Country Chapter on the Rule of Law Situation in France' (July 2021). Available at: [https://ec.europa.eu/info/sites/default/files/2021\\_rplr\\_country\\_chapter\\_france\\_en.pdf](https://ec.europa.eu/info/sites/default/files/2021_rplr_country_chapter_france_en.pdf)

<sup>viii</sup> See Alliance Citoyenne, 'Les hijabeuses : pour le droit pour toutes de jouer au football'. Accessible at: <https://alliancecitoyenne.org/hijabeuses/>.

<sup>ix</sup> See Robert Plummer, 'French burkini ban upheld as Grenoble loses legal challenge,' (June 21, 2022) BBC, accessible at: <https://www.bbc.co.uk/news/world-europe-61883529>.

<sup>x</sup> Law No. 2019-290 of 10th April 2019 "aiming at strengthening and ensuring the maintaining of public order during demonstrations". Accessible at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000038358582/>

<sup>xi</sup> See 'France: UN experts denounce severe rights restrictions on "gilets jaunes" protesters' (February 14, 2019). Accessible at: <https://www.ohchr.org/en/press-releases/2019/02/france-un-experts-denounce-severe-rights-restrictions-gilets-jaunes?LangID=E&NewsID=24166>

<sup>xii</sup> Human Rights Watch, 'France: Police Crowd Control Methods Maim People' (December 14, 2018). Accessible at: <https://www.hrw.org/news/2018/12/14/france-police-crowd-control-methods-maim-people>

<sup>xiii</sup> See 'France: UN experts denounce severe rights restrictions on "gilets jaunes" protesters' (February 14, 2019). Accessible at: <https://www.ohchr.org/en/press-releases/2019/02/france-un-experts-denounce-severe-rights-restrictions-gilets-jaunes?LangID=E&NewsID=24166>

<sup>xiv</sup> French Defender of Rights (Défenseur des droits), 'Annual Activity Report 2018' (March 2019). Available at: <https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/raa-2018-num-19.02.19.pdf>

<sup>xv</sup> Human Rights Watch, "'They Talk to Us Like We're Dogs' Abusive Police Stops in France," (June 18, 2020). Accessible at: <https://www.hrw.org/report/2020/06/18/they-talk-us-were-dogs/abusive-police-stops-france>

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<sup>xvi</sup> See Decision No. 2016-606/607 QPC of the Constitutional Council of January 24, 2017. Accessible at:

[https://www.conseil-constitutionnel.fr/decision/2017/2016606\\_607QPC.htm#:~:text=LE%20CONSEIL%20CONSTITUTIONNEL%20A%20ÉTÉ,une%20question%20prioritaire%20de%20constitutionnalité.](https://www.conseil-constitutionnel.fr/decision/2017/2016606_607QPC.htm#:~:text=LE%20CONSEIL%20CONSTITUTIONNEL%20A%20ÉTÉ,une%20question%20prioritaire%20de%20constitutionnalité.)

<sup>xvii</sup> See Défenseur des droits, 'Ordres discriminatoires : après de longues investigations, le défenseur des droits rend sa décision,' (April 16, 2019), accessible at:

<https://www.defenseurdesdroits.fr/fr/actualites/2019/04/ordres-discriminatoires-apres-de-longues-investigations-le-defenseur-des-droits.>

<sup>xviii</sup> See report by the French Defender of Rights of April 16, 2019 accessible at:

<https://www.defenseurdesdroits.fr/fr/actualites/2019/04/ordres-discriminatoires-apres-de-longues-investigations-le-defenseur-des-droits>

<sup>xix</sup> Human Rights Watch, 'France: Class Action Lawsuit against Ethnic Profiling,' (July 22, 2021). Accessible at:

<https://www.hrw.org/news/2021/07/22/france-class-action-lawsuit-against-ethnic-profiling.>

<sup>xx</sup> Human Rights Watch, 'France: Class Action Lawsuit against Ethnic Profiling' (July 22, 2021). Accessible at:

<https://www.hrw.org/news/2021/07/22/france-class-action-lawsuit-against-ethnic-profiling>

<sup>xxi</sup> Human Rights Watch, "'Enforced Misery: The Degrading Treatment of Migrant Children and Adults in Northern France,'" (October 7, 2021). Accessible at: <https://www.hrw.org/news/2021/10/07/france-degrading-treatment-migrants-around-calais>

<sup>xxii</sup> Defender of Rights, 'Visit of the Defender of Rights on Tuesday 22 and Wednesday 23 September to Calais' (September 24, 2020). Accessible at <https://defenseurdesdroits.fr/fr/communiquede-presse/2020/09/visite-de-la-defenseur-des-droits-mardi-22-et-mercredi-23-septembre-a>

<sup>xxiii</sup> Human Rights Watch, 'France: Police Expelling Migrant Children' (May 5, 2021). Accessible at:

<https://www.hrw.org/news/2021/05/05/france-police-expelling-migrant-children>

<sup>xxiv</sup> Human Rights Watch, 'Subject to Whim: The Treatment of Unaccompanied Migrant Children in the French Hautes-Alpes' (September 5, 2019). Accessible at: <https://www.hrw.org/report/2019/09/05/subject-whim/treatment-unaccompanied-migrant-children-french-hautes-alpes>

<sup>xxv</sup> Human Rights Watch, 'France: Aid Worker's Defamation Conviction Upheld' (June 25, 2019). Accessible at:

<https://www.hrw.org/news/2019/06/25/france-aid-workers-defamation-conviction-upheld>

<sup>xxvi</sup> Human Rights Watch, 'France Approves Flawed Asylum and Immigration Law' (August 4, 2018). Accessible at: <https://www.hrw.org/news/2018/08/04/france-approves-flawed-asylum-and-immigration-law>

<sup>xxvii</sup> See opinion by the French Defender of Rights of March 15, 2018 accessible at

[https://juridique.defenseurdesdroits.fr/index.php?lvl=notice\\_display&id=24356](https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=24356)

<sup>xxviii</sup> Council of Europe Commissioner for Human Rights, 'The Commissioner is concerned by certain provisions of the draft law on immigration and asylum in France' (March 12, 2018). Accessible at:

<https://www.coe.int/en/web/commissioner/-/le-commissaire-s-inquiete-de-certaines-dispositions-du-projet-de-loi-immigration-asile-en-france>

<sup>xxix</sup> European Court of Human Rights judgement Khan vs. France (February 28, 2019) accessible at:

<https://hudoc.echr.coe.int/eng?i=001-191277>

<sup>xxx</sup> Human Rights Watch, 'France Repatriates 51 Women and Children from Camps in Syria' (July 13, 2022).

Accessible at: <https://www.hrw.org/news/2022/07/13/france-repatriates-51-women-and-children-camps-syria>

<sup>xxxi</sup> See 'France violated rights of French children detained in Syria by failing to repatriate them, UN committee finds' (24 February 2022). Accessible at: <https://www.ohchr.org/en/press-releases/2022/02/france-violated-rights-french-children-detained-syria-failing-repatriate>

<sup>xxxii</sup> European Court of Human Rights Grand Chamber judgement H.F. and Others v. France (September 14, 2022). Accessible at: <https://hudoc.echr.coe.int/eng?i=001-219333>