



# FRANCE

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

**29<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, JANUARY/FEBRUARY  
2018**

### FOLLOW-UP TO THE PREVIOUS REVIEW

During its second Universal Periodic Review (UPR) in 2013, reviewing states made recommendations to France on the ratification of international instruments,<sup>1</sup> discrimination,<sup>2</sup> refugees,<sup>3</sup> its national human rights framework,<sup>4</sup> and the treatment of Roma people.<sup>5</sup> France accepted 136 out of 166 recommendations, rejected 27, and provided no clear position on three recommendations.<sup>6</sup>

France committed to ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,<sup>7</sup> to strengthening diversity and tackling discrimination in employment,<sup>8</sup> ensuring that refugee children are not detained and have access to medical care,<sup>9</sup> providing sufficient funding to the newly created Ombudsperson's office ("Defender of Rights"<sup>10</sup>),<sup>11</sup> creating a national monitoring centre for violence against women,<sup>12</sup> and strengthening its policies to address discrimination against Roma and to ensure that informal settlements are dismantled in compliance with European and international human rights law.<sup>13</sup>

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review on France, March 21, 2013 (A/HRC/23/3), recommendation 120.1 (Burkina Faso), 120.2 (Cambodia), 120.6 (Peru), 120.17 (Slovakia).

<sup>2</sup> A/HRC/23/3, recommendation 120.27 (Sudan).

<sup>3</sup> A/HRC/23/3, recommendations 120.160 (Chile), 120.163 (Mexico), 120.164 (Norway).

<sup>4</sup> A/HRC/23/3, recommendations 120.32 (Oman), 120.34 (Jordan), 120.35 (Trinidad and Tobago), 120.36 (Nepal).

<sup>5</sup> A/HRC/23/3, recommendations 120.67 (Namibia), 120.86 (Iran), 120.145 (Austria), 120.146 (Japan), 120.147 (Republic of Korea), 120.148 (Russian Federation), 120.149 (United States of America), 120.150 (Brazil), 120.151 (Poland), 120.152 (Burundi).

<sup>6</sup> A/HRC/23/3, recommendations 120.52 (Namibia), 120.53 (Tunisia), 120.54 (Bangladesh) asking France to increase its international official development assistance. France commented that the ODA did not fall within the scope of the universal periodic review.

<sup>7</sup> A/HRC/23/3/Add.1, response to recommendation 120.2 (Cambodia).

<sup>8</sup> A/HRC/23/3/Add.1, responses to recommendations 120.40 (Ukraine), 120.62 (Japan), 120.70 (Sri Lanka).

<sup>9</sup> A/HRC/23/3/Add.1, responses to recommendations 120.60 (Chile), 120.164 (Norway).

<sup>10</sup> Ombudsman-type position which gather the prerogatives of several human rights institutions.  
<https://www.defenseurdesdroits.fr/fr/institution/organisation/defenseur>

<sup>11</sup> A/HRC/23/3/Add.1, response to recommendation 120.33 (Ireland).

<sup>12</sup> A/HRC/23/3/Add.1, response to recommendation 120.37 (Moldavia).

<sup>13</sup> A/HRC/23/3/Add.1, responses to recommendations 120.67 (Namibia), 120.146 (Japan).

Regrettably, France rejected recommendations to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>14</sup>

Some progress has been made with respect to recommendations made in France's second UPR. With regard to discrimination against Roma people, several French cities have developed integration policies. In 2014, the government developed a plan to tackle the situation in informal settlements; however, it remains poorly implemented.

France ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence in July 2014,<sup>15</sup> the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in November 2014,<sup>16</sup> and the Third Optional Protocol to the Convention on the Rights of the Child in January 2016.<sup>17</sup>

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

Over the past four years the authorities have introduced a number of reforms aimed at strengthening the national human rights framework. Several national action plans have been developed, including national action plan against racism and anti-Semitism,<sup>18 19</sup> and the national action plan for gender equality in the public sector.<sup>20</sup> France has also revised the action plan to implement Security Council resolution 1325 on "Women, peace and security".<sup>21</sup> A national centre was created in January 2013<sup>22</sup> to analyse violence against women and to strengthen prevention, protection and support for the victims. On 21 December 2016, the government extended the mandate of the Inter-Ministerial Committee to Combat Racism and Anti-semitism (DILCRAH)<sup>23</sup> to include discrimination on grounds of sexual orientation or gender identity.

### Right to privacy and mass surveillance

Two laws were passed in July and November 2015 granting extensive powers of surveillance to intelligence services.<sup>24</sup> The laws allow for indiscriminate mass surveillance on the basis of a wide range of general concerns and without proper judicial control. Amnesty International is concerned that these laws pose a threat to the rights to privacy and to freedom of expression and that they vest broad surveillance powers in the executive branch under the guise of fighting terrorism.

### Universal jurisdiction

Amnesty International is concerned that following the 2010 law adapting the Criminal Code to the establishment of the

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<sup>14</sup> A/HRC/23/3/Add.1, response to recommendation 120.8 (Philippines).

<sup>15</sup> A/HRC/23/3/Add.1, response to recommendation 120.142 (Namibia).

<sup>16</sup> A/HRC/23/3/Add.1, response to recommendation 120.2 (Cambodia)

<sup>17</sup> A/HRC/23/3/Add.1, response to recommendation 120.17 (Slovakia)

<sup>18</sup> Décret n° 2012-221 du 16 février 2012 instituant un délégué interministériel à la lutte contre le racisme et l'antisémitisme

<sup>19</sup> A/HRC/23/3/Add.1, response to recommendation 120.5 (Bahrain).

<sup>20</sup> A/HRC/23/3/Add.1, response to recommendation 120.38 (Romania).

<sup>21</sup> A/HRC/23/3/Add.1, response to recommendation 120.42 (Namibia).

<sup>22</sup> Décret n° 2013-7 du 3 janvier 2013 portant création d'une mission interministérielle pour la protection des femmes contre les violences et la lutte contre la traite des êtres humains.

<sup>23</sup> Release by the French Government: <http://www.gouvernement.fr/conseil-des-ministres/2016-12-21/comite-interministeriel-de-lutte-contre-le-racisme-et-l-anti>.

<sup>24</sup> LOI n° 2015-912 du 24 juillet 2015 relative au renseignement and LOI n° 2015-1556 du 30 novembre 2015 relative aux mesures de surveillance des communications électroniques internationales.

International Criminal Court,<sup>25</sup> four impediments remain in the law<sup>26</sup> which drastically restrain the applicability of universal jurisdiction in relation to war crimes, crimes against humanity and genocide.

### **Arms transfers**

France's ratification of the Arms Trade Treaty on 2 April 2014 was a positive step given its role as a major exporter of arms. Further, given its leading role in the Arms Trade Treaty negotiations, France should be leading with regard to its effective implementation as well. Gaps in the legal framework remain and could lead to unlawful arms transfers, diversion or illicit arms trafficking, with serious risks to human rights in the importing countries.

Over the period 2006-2015, Saudi Arabia and Egypt were among the top importers of arms and equipment from France. These arms transfers took place despite the overriding risk that the weapons could be used to commit serious violations of international human rights and humanitarian law, especially in the Yemen conflict and for internal repression in Egypt.

A bill proposing criminal prosecution of individuals and companies violating arms embargoes has yet to be passed despite its requirement under UN Security Council resolution 1209.<sup>27</sup>

## **PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **Human rights and counter-terrorism**

In November 2014, Parliament adopted a new law aimed at countering terrorism. The law criminalizes a wide range of behaviours which are only vaguely connected with the intention of perpetrating a terrorist offence. Amnesty International is also concerned that the law lacks legal clarity in many of its provisions.

In the wake of several coordinated violent attacks carried out in November 2015, the French government declared a state of emergency which has been renewed five times since then, most recently until 1 November 2017.<sup>28</sup> During the state of emergency, exceptional powers are granted to the Ministry of the Interior, including to conduct house searches and to impose measures restricting the rights to freedom of movement, peaceful assembly, and privacy on vague grounds and without judicial oversight.

An anti-terrorism law, passed on 3 June 2016,<sup>29</sup> grants the Minister of the Interior powers to impose administrative control measures on individuals allegedly coming back from conflict areas and deemed a threat to public security. The law extends the power of judicial authorities to authorize house searches at any time day or night for the purposes of investigating terrorism-related offences.

Authorities have also resorted to emergency powers to ban dozens of public assemblies and to prevent hundreds of peaceful protesters attending public assemblies. Between 28 and 30 November 2015, prefects banned demonstrations throughout France, which included all public events planned in the context of the Paris Climate Change Conference. In December 2015, the Minister of Interior imposed residence orders on dozens of climate activists.<sup>30</sup>

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<sup>25</sup> LOI n° 2010-930 du 9 août 2010 portant adaptation du droit pénal à l'institution de la Cour pénale internationale.

<sup>26</sup> Article 689-11 of the Code of Criminal procedure provides that universal jurisdiction only applies if these four conditions are met: the investigation is initiated by the public prosecutor, the suspect ordinarily resides in France, the ICC has expressly declined jurisdiction, and the offenses are punishable under the law of the State where they were committed.

<sup>27</sup> 1998 United Nations Security Council Resolution No 1209.

<sup>28</sup> LOI 55-385 relative à l'état d'urgence.

<sup>29</sup> LOI 2016-731 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale.

<sup>30</sup> France: A right not a threat: Disproportionate restrictions on demonstrations under the state of emergency in France. 31 May 2017, Index number: EUR 21/6104/2017

## Freedom of expression

The 2014 law on counter-terrorism criminalizes the apology of terrorism without providing a clear definition of such behaviour. Hundreds of individuals have been prosecuted since then for behaviours that do not constitute direct incitement to commit a terrorism-related offence and therefore are covered by the right to freedom of expression.

On 20 October 2015, the Court of Cassation confirmed the conviction of 14 individuals for incitement to racial discrimination, on the basis of the 1881 law on freedom of the press. They were sentenced to pay a fine and €12,000 in damages. In 2009 and 2010, they had participated in a non-violent action in a supermarket calling for the boycott of Israeli products. Amnesty International considers that the sentence violates their rights to freedom of expression.

The 2016 anti-terrorism law<sup>31</sup> criminalizes the regular consultation of websites deemed to be inciting or glorifying terrorism, unless they were consulted in good faith, for research purposes or other professional reasons, or with the aim of informing the general public. The vague definition of the offence increases the risk of prosecution of individuals for behaviours that would fall within the scope of legitimate exercise of freedom of expression and information. In a ruling issued on 10 February 2017, the Constitutional Court struck down the section of the law criminalizing the act of consulting such websites, arguing that free communication of thoughts and opinions is a fundamental right.<sup>32</sup>

## Asylum-seekers, refugees and migrants

Asylum-seekers in France face long delays before they can file an application for asylum and enjoy the rights as a registered applicant for refugee status, including access to temporary accommodation. The three-day registration period between the initial application and the registration is seldom respected due to lack of resources to register applications. Unregistered asylum-seekers risk deportation and suffer harsh living conditions due to the lack of reception capacity.

More than 6,500 migrants and asylum-seekers living in the informal settlement known as "The Jungle" in Calais were forcibly evicted in October 2016. They were relocated to reception centres throughout France and given information regarding asylum procedures. However, the authorities failed to genuinely consult with them or to provide them with adequate information prior to their eviction. Amnesty International and other organizations raised concerns regarding the approximately 1,600 unaccompanied minors in the camp. Their situation was to be assessed jointly by the French and UK authorities to consider their best interests, including their possible transfer to the UK to be reunited with their families. However, the authorities did not have the capacity to register all the unaccompanied minors, and some were allegedly turned away as they were considered to be adult; however, many of them did not undergo a thorough assessment. On 2 November 2016, the UN Committee on the Rights of the Child raised concerns over unaccompanied minors in Calais who were left without adequate shelter, food and medical services during the eviction operation. By November 2016, about 330 unaccompanied minors had been transferred to the UK.

On 29 July 2015 a law on asylum reform was passed, granting asylum-seekers the right to a suspensive appeal in front of the National Asylum Court (*Cour nationale du droit d'asile*).<sup>33</sup> While this law is a step in the right direction, serious concerns remain over the overall situation of refugees in France and the asylum process. France also has yet to fulfil its commitment to the European Council to welcome 24,000 refugees.

France continues to use the procedure under the Dublin Regulation<sup>34</sup> to transfer asylum-seekers to Hungary despite the risk they face there of human rights violations and the calls from the UNHCR to end such transfers.

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<sup>31</sup>Loi n° 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale.

<sup>32</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2016-611-qpc/decision-n-2016-611-qpc-du-10-fevrier-2017.148614.html>. Constitutional court ruling on the criminalization of websites consultation.

<sup>33</sup> Law on asylum reform, 29 July 2015. (<https://www.legifrance.gouv.fr/eli/loi/2015/7/29/INTX1412525L/jo>)

<sup>34</sup> Dublin Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

Amnesty International is also concerned about the number of cases of deportations without a thorough and individual assessment of the risks of torture or other ill-treatment they might face upon return. This includes people from the Blue Nile, Darfur and South Kordofan areas who would face serious human rights violations. Afghan nationals have also been deported despite the ongoing dangers they would face upon being returned to Afghanistan. There are also reports of contact between the French and the Eritrean authorities prior to deportation of Eritrean nationals.

### **Discrimination against Roma people**

Roma people in France face widespread discrimination in accessing their economic and social rights. While a governmental Circular was adopted in 2012<sup>35</sup> calling on prefects to put in place a mechanism to consult and assess the needs of Roma people living in informal settlements prior to any proposed eviction, its implementation has been uneven and forced evictions have continued to take place without adequate rehousing options in violation of international human rights law and standards. Forced evictions also have negative impacts on a range of economic and social rights, including access to healthcare, education and employment.

### **Discrimination against transgender people**

In October 2016, Parliament adopted a law to enable transgender people to gain legal recognition of their gender in accordance with their gender identity without fulfilling any medical requirement. Amnesty International remains seriously concerned, however, that the law still imposes requirements on transgender people, such as changing their name or physical appearance in line with their gender identity. This violates a number of their rights, including to non-discrimination.

### **Corporate Social Responsibility**

On 27 March 2017, the National Assembly adopted a bill imposing a duty on a number of French companies to implement a "vigilance plan" to prevent serious human rights abuses and environmental damage in relation to their activities in France and abroad as well as those of subsidiaries and in their other established business relations. The bill would subject the companies to fines for non-compliance.<sup>36</sup> In addition, any shortcomings in the due diligence plan which would lead to human rights abuses could be used by victims to claim damages against the company before a French court.

### **Targeted assassinations**

Defence Minister Le Drian stated during a parliamentary hearing in January 2017 that France had committed targeted killings in the context of several of its military interventions<sup>37</sup> in order to fight "military terrorism".<sup>38</sup> Amnesty International is concerned that there is a risk that such killings may have constituted war crimes or extrajudicial executions.

### **Excessive use of force by the police**

In 2016, law enforcement officials allegedly resorted to excessive use of force against hundreds, if not thousands, of protesters in the context of public protests against reform of labour laws. In some instances, it was alleged that law enforcement officials used kinetic impact projectiles and sting-ball grenades in contravention of domestic and international standards. Amnesty International is concerned about the lack of an impartial mechanism to investigate these allegations.

On 10 June 2016, the UN Committee against Torture raised concerns regarding allegations of excessive use of force by police in the context of administrative searches conducted using emergency powers, and called for investigations into

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<sup>35</sup> CIRCULAIRE INTERMINISTERIELLE NOR INTK1233053C du 26/08/2012 relative à l'anticipation et à l'accompagnement des opérations d'évacuation des campements illicites.

<sup>36</sup> LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (1)

<sup>37</sup> Operation Chammal against Daesh in Iraq (f. 2014) and operation Barkhane against insurgents in the Sahel region (f. 2014)

<sup>38</sup> <http://www.lcp.fr/actualites/le-drian-quand-un-chef-militaire-combat-la-france-cest-notre-ennemi-donc-le-tape>

those allegations.<sup>39</sup>

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### Amnesty International calls on the government of France to:

#### *Right to privacy and mass surveillance*

- Amend laws 2015-912 and 2015-1556 to ensure that mass surveillance is not allowed.

#### *Universal jurisdiction*

- Amend Law No 2010-930 to lift the four legislative impediments to universal jurisdiction and ensure access to justice for victims.

#### *Arms transfers*

- Meet its obligations under the Arms Trade Treaty and not authorize the transfer of conventional arms where it has knowledge, at the time of authorization, that the arms or items would be used in the commission of genocide, crimes against humanity, or war crimes, or if there is an overriding risk that an arms export could facilitate a serious violation of international human rights law or international humanitarian law;
- Close any legal loopholes in domestic legislation that could lead to unlawful arms transfers, diversion or illicit arms trafficking.

#### *Human rights and counter-terrorism*

- Lift the current state of emergency and the associated derogations its treaty obligations unless the authorities can effectively demonstrate that they are facing a public emergency threatening the life of the nation and that the emergency measures are strictly necessary to confront that situation;
- Limit the use of emergency powers to what is strictly required by the exigencies of the situation;
- Amend law 55-385 on the state of emergency so that authorities are not bestowed additional powers to ban or restrict the right to peaceful assembly;
- Instruct prefects to revoke emergency measures imposed on individuals restricting freedom of movement and the right to freedom of peaceful assembly unless strictly required by the exigencies of the emergency situation.

#### *Freedom of expression*

- Ensure respect for the rights to freedom of expression and peaceful assembly.

#### *Asylum seekers, refugees and migrants*

- Ensure all asylum seekers have access in a timely manner to a fair and efficient asylum procedure by respecting the three-day registration period for asylum applications;
- Honour the 2015 pledge to the European Council to accept 24,000 refugees in France;
- Refrain from transferring asylum-seekers back to Hungary on the basis of deficiencies in reception conditions and asylum procedures and a genuine risk of *refoulement* due to legislation designating Serbia, the Former Yugoslav Republic of Macedonia and Turkey as safe third countries, as well as attempted Dublin returns from Hungary to Greece;

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<sup>39</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Committee against Torture Concluding observations on the seventh periodic report of France. 10 June 2016

- Ensure individuals are not returned to countries where they would be at real risk of serious human rights violations, by conducting thorough individual assessments to examine the risks foreign nationals would face upon being sent back to their countries of origin and ahead of any deportation decision.

#### *Discrimination against Roma people*

- Strengthen the 26 August 2012 Circular to ensure no one is rendered homeless further to an eviction, to propose appropriate rehousing options to people prior to the eviction and to hold genuine consultations with Roma people to find long-term solutions.

#### *Discriminations against transgender people*

- Ensure that transgender people can obtain legal recognition of their gender through a quick, accessible and transparent procedure in accordance with the individual's own sense of their gender identity, while preserving their right to privacy;
- Postpone non-emergency invasive and irreversible surgeries and other medical treatments on infants and children with variations in sex characteristics until they are able to meaningfully participate in decision making and give their informed consent, in line with the principle of evolving capacities of children and adolescents.

#### *Corporate Social Responsibility*

- Amend the due diligence law 2017-399 to reverse the burden of proof from the victims to the companies and ensure accountability for victims of corporate human rights violations;
- Build on law 2017-399 and extend its application beyond the large multinationals that are currently targeted.

#### *Targeted assassinations*

- Refrain from the unlawful use of lethal force, including against individuals suspected of terrorism.

#### *Excessive use of force by the police*

- Conduct a thorough and impartial investigation into all the cases of unnecessary or excessive use of force by law enforcement officials against protesters and in the context of administrative searches conducted using the emergency powers;
- Ensure judicial authorities collect and publish data regarding investigations, prosecutions and convictions of criminal offences perpetrated by law enforcement officials;
- Amend the Law on National Security (Article 435-1) to comply with international law and standards on law enforcement and ensure that it stipulates that law enforcement officials may use force only when strictly necessary to carry out a legitimate law enforcement objective and only to an extent that is proportionate to that objective, and only for protecting against a threat of death or serious injury.<sup>40</sup>

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<sup>40</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 4 and 5 stipulate that police should avoid the use of force as far as possible, and exercise restraint in its use, and Principles 9 and 10 permit the use of firearms only in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives, and after having identified themselves and given a clear warning of their intent to use firearms.