



France

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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in
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1. (A) Introduction

- 1.1** CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 180 countries throughout the world.
- 1.2** In this document, CIVICUS examines the Government of France's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyze France's fulfillment of the rights to freedom of association, assembly, and expression since its previous UPR examination in 2013. To this end, we assess France's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations.
- 1.3** During the 2nd UPR cycle, the Government of France received two recommendations relating to the freedom of expression and opinion. Of these recommendations, one was accepted and one was noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of France has not implemented one of these and has only partially adhered to the second. While the government of France has faced a serious terrorist threat during the period under review, measures ostensibly taken to protect the French public from attack have had far-reaching consequences for the exercise of the fundamental freedoms of association, peaceful assembly and expression by law-abiding citizens.
- 1.4** CIVICUS is deeply concerned by the negative consequences for civil society of France's decision to repeatedly extend its state of emergency, which has granted expanded powers of arrest, detention and surveillance to security forces without adequate judicial oversight and without due regard for ensuring that measures taken to restrict fundamental freedoms are proportionate to the threat posed by those targeted.
- In Section B, CIVICUS examines France's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
 - In Section C, CIVICUS examine France's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of expression, independence of the media and access to information.
 - In Section D, CIVICUS examine France's implementation of UPR recommendations and compliance with international human rights standards related to freedom of assembly.

- In Section E, CIVICUS makes a number of recommendations to address the concerns listed.

2. (B) Freedom of association

2.1 While the French constitution contains no article expressly protecting the right to freedom of association, Article 2 of the Declaration of Human and Civic Rights of 1789 states that the “aim of every political association is the preservation of the natural and imprescriptible rights of Man”.¹ A 1971 decision of the Conseil Constitutionnel confirmed that freedom of association is one of “the fundamental principles recognised under the laws of the Republic” and that, as such, “associations may be freely established and may be rendered public subject to the sole requirement of the lodging of prior notice”.² The preamble of the 1946 constitution also refers to the right to join trade unions.³ Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which France is a state party, also guarantees freedom of association.

2.2 The legal framework governing freedom of association in France is guided by *Loi du 1er juillet 1901* (on associations) and *Loi 87-571 du 23 juillet 1987* (on foundations). These laws generally provide an enabling environment for civil society to operate. An association can be formed by just two people and without any mandatory registration requirements, while steps to obtain legal personality are uncomplicated and inexpensive. The 1901 law prohibits organisations with purposes which are “illegal, contrary to the law, to morality or whose purpose is to go against the territorial integrity or the republican form of the Government...”⁴

2.3 Despite this generally enabling legal framework, conditions for civil society organisations have worsened since the imposition of a state of emergency in France following a series of terrorist attacks over the past two years. A state of emergency was imposed in November 2015 and, at the time of writing, has been extended until at least 1 November 2017, following a decision by France’s new president, Emmanuel Macron, in May 2017.⁵ Under the state of emergency, the authorities are granted

¹ English language text of the Constitution of France 1958 (revised 2008) and the Declaration on Human and Civic Rights 1789 available from the Constitute project:

https://www.constituteproject.org/constitution/France_2008?lang=en.

² Decision no. 71-44 DC of 16 July 1971, Law completing the provisions of Articles 5 and 7 of the Law of 1 July 1901 on association agreements, Available at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/sample-of-decisions-in-relevant-areas-dc/decision/decision-no-71-44-dc-of-16-july-1971.135366.html>

³ See this 2006 analysis of association laws in Western Europe from ICNL: <http://www.icnl.org/research/library/files/France/framework.pdf>

⁴ Gerard, Thomas, “A report on NGO Laws in France”, 25th March, 1998, provided by ICNL: <http://www.icnl.org/research/library/files/France/reporter.pdf>

⁵ ‘En France, Rallonge pour l’état d’urgence’, *Liberation*, 24th May, 2017: http://www.liberation.fr/france/2017/05/24/en-france-rallonge-pour-l-etat-d-urgence_1572058

expanded powers including controlling the movement of suspects close to their residence (so-called “assigned residence” orders), conducting searches without the normal judicial oversight and shutting down meeting places.⁶

- 2.4** During the United Nations COP 21 climate conference in Paris in November 2015, these emergency measures were used to impose “assigned residence” orders on 26 climate change activists who were associated with “far left” groups. The orders required them to stay at home and prevented them from attending the important climate change meeting. Research by international civil society groups asserted that these activists had no prior history of violent or destructive activism, and the government itself later confirmed that the activists themselves did not pose a direct threat to national security.⁷ These orders were a clear violation of the freedom of association as civil society activists were caught up in France’s security dragnet imposed in the immediate aftermath of terrorist attacks in Paris earlier that month.
- 2.5** Also in November 2015, a mosque in a Paris suburb, which is also the offices of community group the Association of Muslims of Aubervilliers (AMA), was raided by police. AMA member Sofienne Karroumi posted photos on social media of the destruction caused to their offices by police during the search, including damaged computers, overturned furniture and holes punched in the ceiling.⁸ The House of AMA President Chiheb Harar was also raided by up to 60 police and he was taken into custody despite the absence of any evidence linking him or AMA to terrorism.⁹
- 2.6** In June 2017, French civil society organisations decried reported plans by France’s government to enshrine these extensive powers, which allowed the above-mentioned abuses to take place, into ordinary (non-emergency) laws. Leading human rights organisation Ligue des droits de l’homme said that, if passed, these new powers “would trample individual and collective freedoms” and lead France towards authoritarianism.¹⁰

⁶ A parliamentary commission report from February 2017 on the implementation of the state of emergency showed how the exercise of these powers has reduced over time. See ‘Communication d’étape sur le contrôle de l’état d’urgence - Réunion de la commission des Lois du mercredi 22 février 2017’: http://www2.assemblee-nationale.fr/static/14/lois/communication_2017_02_22.pdf

⁷ ‘Upturned lives – the disproportionate impact of France’s state of emergency’ – Amnesty International, February 2016, pages 18-19. <https://www.amnesty.org/en/documents/eur21/3364/2016/en/>

⁸ ‘Locals upset after police raid Paris suburb mosque’, The Observers, 18th November 2015: <http://observers.france24.com/en/20151118-police-raid-paris-suburb-mosque-aubervilliers>

⁹ ‘France: abuses under state of emergency’, Human Rights Watch, 3rd February, 2016: <https://www.hrw.org/news/2016/02/03/france-abuses-under-state-emergency>

¹⁰ ‘PRÉSIDENT DE LA RÉPUBLIQUE ET GOUVERNEMENT : COCKTAIL À RISQUES POUR LES LIBERTÉS?’, Ligue des droits de l’homme, 7th June, 2017: <http://www.ldh-france.org/president-republique-gouvernement-cocktail-risques-les-libertes/> (Quotation translated from French).

3. (C) Freedom of expression, independence of the media and access to information

3.1 Under the 2nd UPR cycle, the government received two recommendations relating to freedom of expression and access to information. The government of France was urged to reconsider both the bans on students wearing religious symbols in public schools and on full-face concealment in public spaces to ensure expression of freedom of religion or belief. France was also called upon to prevent any initiative contrary to General Comment 34 of the Committee of Human Rights, related specifically to Article 19 of the ICCPR on freedoms of expression and opinion.¹¹ Of the recommendations received, one was accepted and one noted. However, as discussed below, the government did not take effective measures to implement these recommendations. Of the two recommendations pertaining to these issues, the government has not implemented the first, by continuing its ban on full-face veils in public, and has only partially succeeded in implementing the second.

3.2 Article 19 of the ICCPR guarantees the right to freedom of expression and opinion. Article 11 of France's Declaration of Human and Civic Rights provides that the "free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely"¹², with a limited number of exceptions to this rule being established in the *Loi du 29 juillet 1881 sur la liberté de la presse*.¹³ These protections have however been seriously undermined in recent years through a combination of restrictions related to religious expression, surveillance overreach, a terrorist attack on a newspaper and expanded powers under the state of emergency.

3.3 In November 2014 France took steps to tighten anti-terrorism measures, even before a wave of deadly terrorist attacks hit the country. *LOI 2014-1353* imposed a sentence of five years and a €75,000 fine for directly provoking or publicly condoning terrorism, or seven years in jail and a €100,000 fine if that is done online.¹⁴ Further sweeping powers granted to authorities in the aftermath of terrorist attacks in 2015, by virtue of *LOI 2015-912*, of 24 July, 2015¹⁵, allow French security services to conduct surveillance of private citizens' phone and internet communications without the need for a court order. The further expansion of these powers in November 2015 raised

¹¹ CCPR/C/GC/34, paragraph 5 of the opinion is particularly relevant to the situation in France at present "Taking account of the specific terms of article 19, paragraph 1, as well as the relationship of opinion and thought (article 18), a reservation to paragraph 1 would be incompatible with the object and purpose of the Covenant...Freedom of opinion is one such element, since it can never become necessary to derogate from it during a state of emergency' <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

¹² English translation of the Declaration available from the Constitute Project here: https://www.constituteproject.org/constitution/France_2008?lang=en

¹³ Loi du 29 juillet 1881 sur la liberté de la presse, as amended: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000877119#LEGIARTI000006419708>

¹⁴ LOI n° 2014-1353 du 13 novembre 2014 renforçant les dispositions relatives à la lutte contre le terrorisme, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029754374&categorieLien=id>

¹⁵ LOI n° 2015-912 du 24 juillet 2015 relative au renseignement

the concerns of five UN Special Rapporteurs about “excessive and disproportionate restrictions on fundamental freedoms” caused by France’s law on electronic communications and surveillance.¹⁶

3.4 In addition, *Loi 2016-731*, adopted on 3 June 2016¹⁷, opens the door to prosecutions against people who visit websites deemed to be inciting or glorifying terrorism, unless those websites are consulted “in good faith, for research purposes or other professional reasons with the aim of informing the general public.”¹⁸ The vague wording of the law allows for people to be prosecuted for legitimate exercise of their freedom of expression.

3.5 In practice, while French people are largely free to voice their opinions and the media is uncensored, concentrated media ownership by big business undermines editorial independence, while the authorities have sometimes restricted the work of journalists covering events in the public interest, such as the 2006 labour strikes or the dismantlement of the ‘Jungle’ refugee settlement in Calais.¹⁹

3.6 The use of legal proceedings to compel media houses to release their sources, or to institute libel claims, is also of continuing concern in France, as highlighted by the 2017 targeting of *Mediapart* by National Front Leader Marine Le Pen²⁰. France’s tough defamation and privacy laws have also been criticised for their negative impact on press freedom.²¹ Losing a libel case against a public official can result in a fine of up to four times the amount imposed for losing a case against a private citizen; a feature of French law which has been criticised for creating a “chilling effect” on the scrutiny of public officials, including elected leaders.

3.7 France also continues to impose an outright ban on wearing of full-face veils in public. The ban, which has the effect of criminalising the wearing of religious dress including the burqa or niqab, has already seen thousands of Muslim women fined, with no evidence that it has succeeded in healing social divisions.²² The ban has been

¹⁶ UN rights experts urge France to protect fundamental freedoms while countering terrorism, 19th January, 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16966&LangID=E>

¹⁷ 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:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032627231&categorieLien=id>

¹⁸ Amnesty International’s annual report for France 2016/17: <https://www.amnesty.org/en/countries/europe-and-central-asia/france/report-france/>

¹⁹ World Press Freedom Index, 2017, Reporters Without Borders, France Country Page:

<https://rsf.org/en/france>

²⁰ France: Legal proceedings threaten news website’s freedom to inform, Reporters Without Borders, 1st June 2017: <https://rsf.org/en/news/france-legal-proceedings-threaten-news-websites-freedom-inform>

²¹ France: Strict defamation and privacy laws limit free expression, IREX, 19th August, 2013, <https://www.indexonensorship.org/2013/08/france-faces-restrictions-on-free-expression/>

²² Five years into ban, burqa divide widens in France, DW, 10th April, 2016: <http://www.dw.com/en/five-years-into-ban-burqa-divide-widens-in-france/a-19177275>

repeatedly criticised by French and international human rights groups as a violation of the right to freedom of expression and religious freedom.

4. (D) Freedom of peaceful assembly

4.1 While there are no explicit references to the freedom of peaceful assembly in France's constitution, the 1789 Declaration on the Rights of Man and the Citizen does contain several clauses on basic human freedoms which, by inference, grant protection to citizens when demonstrating peacefully in public.²³ France also has several commitments under international law relating to the freedom of peaceful assembly: Article 21 of the ICCPR, Article 11 of the the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 12 of the Charter of Fundamental Rights of the European Union.

4.2 Article L211-1 of the *Code de la sécurité intérieure* provides that all assemblies in public places are subject to prior notification²⁴ while Article 431-9 of the *Code Pénal* imposes a possible six-month custodial sentence or a €7,500 fine for people who organise an unlawful public assembly.²⁵ This provision is in contravention of international law and best practice on the management of peaceful public assemblies, including recent expert guidance from two UN Special Rapporteurs , which states that excessive penalties can have a “chilling effect” on the right to freedom of peaceful assembly.²⁶

4.3 Under existing laws either police prefectures or local mayors have the power to allow or prevent peaceful protests from taking place.. Since November 2015, these powers have been significantly expanded through the application of France's state of emergency law, specifically Article 8 of *Loi 55-385 du 3 avril 1955 relative à l'état d'urgence* which allows for protests to be prevented on vague grounds including that the gathering is likely to “provoke or encourage disorder”.²⁷ This wording is problematic and runs contrary to recent UN Special Rapporteur guidance which states that such restrictions must be “sufficiently precise to enable an individual to assess

²³ Declaration on the Rights of Man and the Citizen 1789, Articles 4,5,10 and 11:

<http://www.legislationline.org/topics/country/30/topic/15>

²⁴ French text of the code is available here:

https://www.legifrance.gouv.fr/affichCode.do;jsessionid=739984452B2ECA8507922DDB723FCEA4.tpdila14v_2?idSectionTA=LEGISCTA000025508382&cidTexte=LEGITEXT000025503132&dateTexte=20170112

²⁵ Relevant article from the Code Pénal is available here:

<https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006418472&cidTexte=LEGITEXT00006070719>

²⁶ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, A/HRC/31/66, See Paragraph 48. http://freeassembly.net/wp-content/uploads/2016/02/A.HRC_31.66_E_with_addendum.pdf

²⁷ Full text of the 1955 emergency law (as amended in 2016) is available here:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000695350>

whether or not his or her conduct would be in breach of the law, and also foresee the likely consequences of any such breach.”²⁸

- 4.4** A fact finding mission in 2016 by the International Federation for Human Rights (FIDH) concluded that because of the imposition of the state of emergency, the “framework applicable to the organisation of protests and demonstrations has thus shifted from a system of notification to one of authorisation. This situation increases the risk of violations of the right to demonstrate.”²⁹
- 4.5** Recent research shows that the invocation of these emergency rules since November 2015 is having a real and detrimental impact upon the ability of French people to assemble peacefully in public. In May 2017, international human rights groups reported that, over the previous 18 months, local authorities in France made 155 orders banning demonstrations from taking place. These orders were made through expanded powers given to police and local authorities as part of the state of the emergency which continues in force today in France.³⁰
- 4.6** Concerns have also been raised about police use of force during protests in France in recent years. Since France’s last UPR review, there has been a consistent pattern of reports about police use of disproportionate force against protestors including during labour protests in 2016³¹; anti-racism demonstrations in 2013³²; and, most seriously, in October 2014 when ecologist Rémi Fraisse was killed after police threw a flash grenade into a crowd of demonstrators opposing the construction of a dam in Sivens.³³ Research undertaken by French human rights group ACAT between June 2014 and December 2015 revealed that these incidents are not isolated, documenting numerous cases of serious injury to protestors during this period.³⁴
- 4.7** Further concerns have recently been raised by French civil society organisations when, in February 2017, the French parliament adopted a new law on public security

²⁸ See note 13, Paragraph 30. Guidance from UNSRs here is based upon European Court of Human Rights cases in 1999 and 2010.

²⁹ ‘When the exception becomes the norm – Counter-terrorism measures & human rights, An international fact-finding mission report’, FIDH, June 2016, see page 20:

https://www.fidh.org/IMG/pdf/report_counter_terrorism_measures_human_rights.pdf

³⁰ ‘A right not a threat: Disproportionate restrictions on demonstrations under the state of emergency in France’, Amnesty International, 31st May, 2017:

<https://www.amnesty.org/en/documents/eur21/6104/2017/en/>

³¹ ‘French police watchdog looks into violence during labour protests’, The Guardian, 7th June, 2016:

<https://www.theguardian.com/world/2016/jun/07/french-police-violence-labour-law-protests-watchdog>

³² ‘France: Police brutality, not burkas, the source of tension’, Al Jazeera, 24th July, 2013:

<http://www.aljazeera.com/indepth/opinion/2013/07/2013724132229777442.html>

³³ ‘Ce que l’on sait sur le mort de Rémi Fraisse’, Liberation, 28th October, 2014 :

http://www.liberation.fr/societe/2014/10/28/ce-que-l-on-sait-sur-la-mort-de-remi-fraisse_1131428

³⁴ ‘L’Ordre et la Force’, ACAT, see pages 17-18.

https://gallery.mailchimp.com/ecc3a0462fe2da1f694571804/files/R_VP_INT_BLEU_web_pp.pdf

– *Loi 2017-258 du 28 février 2017 relative à la sécurité publique*³⁵ - which was signed into law by the President François Hollande later that month. In February 2017, the Commission National Consultative des Droits de l'Homme (CNCDH), a statutory body devoted to the independent promotion of human rights in France, released an opinion severely criticising the new law. CNCDH highlighted the alarming expansion of justifications for the use of force by police when maintaining public security and criticised the increased penalties for “contempt” of police and the law’s potential to increase tensions between the police and citizens.³⁶

5. (E) Recommendations to the Government of France

CIVICUS calls on the Government of France to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, freedom of peaceful assembly, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state’s duty to protect. In light of this, the following specific recommendations are made:

5.1 Regarding freedom of association

- Take measures to foster a safe, respectful, enabling environment for civil society, including through removing legal and policy measures, which unwarrantedly limit the right to association.
- End unwarranted raids on civil society groups and unjustifiable disruptions to legitimate, conferences, seminars and other activities organized by CSOs should be stopped.
- Specifically, France’s state of emergency should be suspended as soon as possible and, should there be justifiable cause for its reinstatement in future, the authorities should ensure that powers are exercised as far as possible with prior judicial oversight and that legitimate, peaceful activist groups are not targeted as part of anti-terrorist operations.

³⁵ Full text of the new law (in French) is available here:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034104023&categorieLien=id>

³⁶ ‘La loi sur la sécurité publique "inacceptable"’, Le Figaro, [http://www.lefigaro.fr/flash-](http://www.lefigaro.fr/flash-actu/2017/02/23/97001-20170223FILWWW00325-la-loi-sur-la-securite-publique-inacceptable.php)

<http://www.lefigaro.fr/flash-actu/2017/02/23/97001-20170223FILWWW00325-la-loi-sur-la-securite-publique-inacceptable.php>

5.2 Regarding freedom of expression, independence of the media and access to information

- Ensure freedom of expression and media freedom by all, bringing national legislation into line with international standards.
- Review *LOI 2014-1353* and *Loi 2016-731* in order to ensure that anti-terrorism measures, and specifically punishments for speech related to terrorism, are proportionate and that adequate safeguards are built in to ensure that legitimate expression, online or offline, is not censored as a result of these laws.
- Revisit *LOI 2015-912* to ensure that surveillance powers are subjected to adequate judicial oversight and that the rights to freedom of expression and information of French citizens are not eroded by the untrammelled interception of their private communications.
- Ensure that journalists have the ability to protect their sources, and that the legal system is not abused by powerful public officials to target journalists through drawn out and expensive legal proceedings.
- Reform defamation legislation in conformity with article 19 of the International Covenant on Civil and Political Rights (ICCPR).
- Ensure that journalists are protected from attack when covering events in public places, including during protests.

5.3 Regarding freedom of assembly

- France should review its laws on protest to bring them into line with the guidance issued by UN Special Rapporteurs in their report on the proper management of protests, 4 February 2016, A/HRC/31/66.
- Review Article 431-9 of the *Code Pénal* with a view to reducing the severity of custodial and financial penalties imposed on the organisers of assemblies deemed unlawful.
- Immediately reconsider the prolonged extension of the state of emergency in order to reduce or remove additional barriers to the right to freedom of peaceful assembly.

- While the state of emergency is still in force, ensure that all Police Prefectures and other local authorities do not abuse their expanded powers by preventing requests for legitimate and peaceful protests to be held.
- Review the *Loi 55-385* with a view to removing vague grounds for the prevention of protests during states of emergency.
- Revisit *Loi 2017-258* to ensure that adequate safeguards are put in place for the use of lethal force by police when conducting public order operations.
- All demonstrators, journalists and human rights defenders detained for exercising their right to freedom of peaceful assembly should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.
- All instances of extra-judicial killing and excessive force committed by security forces while monitoring protests and demonstrations should be immediately and impartially investigated, and perpetrators held to account.
- Review and if necessary update existing human rights training for police and security forces with the assistance of independent nongovernmental organizations to foster more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Senior government officials should publically condemn the use of excessive and brutal force by security forces in the dispersal of protests. A formal investigation into such instances should be launched, and perpetrators should be brought to justice.

5.4 Regarding access to UN Special Procedures mandate holders

- The Government should prioritize official visits with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.