

**UPR Submission: France
June 2017****Summary**

Discrimination on grounds of origin or religion remains a significant problem in France. Abusive police identity checks disproportionately affect minorities, which France has failed to address despite a commitment to do so at its last UPR. Migrants and asylum seekers lack access to basic services and are subject to harassment and abuse and France is failing to adequately protect unaccompanied children. Counterterrorism laws, including exceptional powers exercised under the state of emergency, undermine fundamental rights and lead to human rights abuse.

1. Discriminatory Identity Checks

In 2012, Human Rights Watch research showed that the identity check system is open to abuse by the police, and found that recurrent and abusive identity checks and searches targeting minority youth nurtured a sense of exclusion and discrimination among those stopped. France accepted recommendations to adopt measures to stop racial and ethnic profiling by law enforcement officials, in particular during identity checks.

In France's 2016 [mid-term follow-up report](#) to the Human Rights Council, France outlines the measures taken to fulfill its commitments. In 2013, France adopted a Code of Ethics for the Police and National Gendarmerie, prohibiting police from basing decisions on who to stop solely on physical characteristics and distinctive signs.

However, these measures have not prevented the use of ethnic profiling by the French police when performing identity checks. According to two recent studies by independent French institutions, the [French Ombudsman](#) and the [French National Consultative Commission of Human Rights](#) (CNCDH), young men from visible minorities are overrepresented in police checks and are 20 times more likely to be stopped by the police than members of the majority population. In November 2016, the Court of Cassation ruled against the State in three cases of police identity checks involving ethnic profiling, finding that the checks were "discriminatory" and that the state committed a "gross fault."

In July 2016, the National Assembly rejected a proposal to require police officers to draw up stop forms—a written record of each identity check—on the grounds it would be too costly. Stop forms are a simple yet effective way to measure stops and promote accountability; their use has shown positive results in other countries.

On February 16, 2017, the French parliament adopted a law on public security that increases the penalty for insulting an officer and for refusing to cooperate. Human Rights Watch [research](#) found that people complaining about discriminatory treatment during identity checks are often charged with these offenses. The new higher penalties create a risk that young people expressing their discontent at recurrent police stops they perceive as discriminatory and abusive, will face increased sanctions.

These new measures also threaten to further discourage people from reporting abuse, which will affect not only their right to access a remedy, but also the capacity of law enforcement to ensure discipline and accountability. The Ombudsman warned against this increase in the severity of sentences, which he said would threaten to "widen the existing gap between law enforcement and the population."

Recommendations

- Reform the Code of Criminal Procedure to require that all identity checks be based on a reasonable, individualized suspicion.
- Introduce stop forms and ensure that these forms include at a minimum the name and age of the person stopped, information allowing the identification of the law enforcement officer(s) conducting the stop, the legal basis for the stop, whether a pat-down or search of belongings was conducted, and the outcome of the procedure.
- Adopt clear guidance for law enforcement officers with respect to identity checks, including a requirement to inform anyone stopped of the legal basis for the stop and of their rights during a stop, as well as instructions on stops and searches of children.
- Take concrete steps to document, analyze, and address ethnic profiling by the police. Ensure that abuse during police stops is systematically investigated and prosecuted, and hold officers to account through internal mechanisms for failure to abide by instructions.
- Monitor use of the offense of *outrage*, or insulting an officer, to detain and/or prosecute persons stopped for identity checks, in particular with a view to assessing whether the offense is used in retaliation for those who complain about treatment, or as a means to deter complaints. Reverse the penalty increases for the offences of insulting an officer and for refusing to cooperate.

2. Concerns in the treatment of migrants and asylum seekers, including unaccompanied minors

Human Rights Watch welcomes France's implementation of one of the recommendations made at its previous UPR by reforming in 2015 its asylum law to institute a suspensive appeal before the National Court of Asylum for all asylum seekers, including those whose claims are examined under the priority procedure.

Since France's last UPR, Human Rights Watch has documented abuses against migrants and asylum seekers by the French police forces, and lack of access 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.

Early in 2015, Human Rights Watch [documented](#) cases of harassment and abuse against asylum seekers and migrants in Calais, in northern France, by French police. These abuses included beatings and use of pepper spray by police as migrants and asylum seekers walked in the street or hid in trucks trying to reach the United Kingdom. Until the camp was dismantled in October 2016, several thousand asylum seekers and migrants were living in dire conditions in makeshift camps or on the streets. Some said that their treatment by police, a lack of housing for asylum seekers, and delays in the French asylum system had deterred them from seeking asylum in France.

In 2013, France accepted the recommendation to "limit the use of detention of migrants and asylum seekers, especially when families with young children are concerned." In its response, France mentioned a circular adopted on July 6, 2012, instructing administrative authorities not to place children in detention. Human Rights Watch [reported](#) in April 2014 that France was detaining each year up to 500 unaccompanied children in transit zones at the borders, where they were being denied the protection and due process rights afforded other unaccompanied children on French territory. French NGOs [report](#) that children, both unaccompanied and with their families, continue to be detained in transit zones.

France accepted the recommendation to “pay particular attention to unaccompanied migrant children to undertake specific measures to ensure their adequate protection.” Although French law provides that unaccompanied children may not be deported and must be integrated into the regular child protection system, Human Rights Watch is concerned that the French authorities created a parallel system for unaccompanied children from the migrant camp in Calais that is separate from the regular child protection system after it closed the camp.

Following the camp’s closure, an estimated 1,900 unaccompanied children were registered in Calais and [moved to](#) provisional reception centers across France. There, they were interviewed by the UK Home Office to assess their eligibility for family reunion under European regulations or UK’s 2016 immigration law. These centers were established under the Interior Ministry, outside of the regular child protection services. Human Rights Watch [found](#) that children in the provisional centers did not have access to full information about asylum procedures or the regular child protection system in France, pending transfer decisions by UK authorities. Some centers lacked staff experienced in refugee support, translators, and, systematic, professional support by psychotherapists despite the clear need for such support. In January 2017, the French government informed Human Rights Watch that it had started the process of age assessment, transfer to the child protection system, and asylum processes.

Since January 2017, many unaccompanied migrant children have left the reception centers and [returned to Calais](#) and the surrounding areas. As of June 2017, there are [reportedly](#) between 400-600 migrants, including up to 200 unaccompanied minors, in Calais.

The French Ombudsman [reports](#) after a visit in the area on 12 June 2017 that many of these migrants in Calais, including unaccompanied children, have no access to shelter and are sleeping outside. They also lack access to sanitation, food and in the case of children, education. Local organizations [report](#) that police harassment against migrants in Calais has worsened in recent months. Volunteers report that they have seen unaccompanied children who have sustained [injuries as a result of police treatment](#), including from being teargassed.

Recommendations:

- Investigate reports of police abuse against asylum seekers and migrants and hold anyone found responsible for abuse to account, and issue clear guidance to police officers clarifying the prohibition of unjustified and disproportionate use of force.
- Ensure that unaccompanied migrant children on French territory have full access to asylum procedures, guardianship, mental health support, family reunification under the Dublin regulations, and other essential services, and are not placed in detention in transit zones.
- Comply with its obligations under the EU reception directive and immediately provide accommodation to all asylum applicants while their claims are processed.

3. [Counterterrorism laws and state of emergency](#)

In its [2012 UPR submission on France](#), Human Rights Watch expressed concerns about France’s broad counterterrorism laws that allowed the authorities to investigate, detain and prosecute suspects with insufficient fair trial safeguards. Since 2012, those concerns have intensified. France adopted additional counterterrorism laws and declared a state of emergency following the November 2015 attacks, which has since been renewed five times,

In November 2014, France adopted [counterterrorism law n° 2014-1353](#) allowing authorities to prevent anyone from leaving France if they suspect that he or she would participate in terrorist activities abroad or threaten national security upon their return without providing sufficient opportunity for the affected person to challenge the decision. The law also transferred the criminal offenses of publicly “inciting” or “glorifying” terrorism from the French press law of 1881 to the criminal code. The terms of “inciting” and “glorifying” terrorism are overly broad and can capture speech that has no direct causal link to directly inciting violence or a terrorist act, in breach of the right to freedom of expression. In 2015, France adopted [intelligence law n° 2015-912](#) and [surveillance law n° 2015-1556](#) allowing the government to conduct sweeping digital surveillance on broad grounds and without prior judicial authorization, in breach of the right to privacy.

Human Rights Watch [documented](#) repeated abuses during policing operations carried out under the state of emergency, which allows police to search homes and place people under house arrest without prior judicial approval. Some Muslims appear to have been targeted mainly on the basis of their religious practice, with no evidence pointing to their involvement in any criminal behavior. Administrative authorities are empowered to order house arrest, conduct searches of residential and commercial premises, seize computers and devices containing data found during raids, and to block websites deemed to glorify terrorism without prior judicial authorization. As of December 2016, at least 612 people had been put under house arrest, some for over a year, but [none of them had been prosecuted on terrorism charges](#). The state of emergency also allows authorities to ban gatherings as a precautionary measure on very broad and undefined grounds of ‘threat to public order.’ In a June 9, 2017, ruling, [the Constitutional Council found](#) the provision that allows barring people from participating in protests to be too broad and lacking sufficient safeguards.

The July 2016 law extending of the state of emergency also [toughened](#) several terrorism-related provisions in France’s laws. One measure increases allowable pretrial detention periods for children by one to two years. It re-instated warrantless seizures of computer and cellphone data that the Constitutional Council had earlier in the year [struck down as unconstitutional](#), adding safeguards that still fall short of proper judicial oversight. It significantly expanded emergency powers of police search, seizure and detention.

A draft law presented to the Council of Ministers on June 21, 2017 proposes incorporating several of the above powers introduced temporarily under the state of emergency into regular domestic law. These include powers that have led to significant abuse, such as the power to order people considered a threat to national security to live in an assigned place of residence and to carry out house searches. The inclusion of these powers in the regular domestic law without adequate judicial oversight would weaken safeguards over the exercise of police and prosecutorial powers in ways that undermine human rights and the rule of law.

Recommendations

- Lift the state of emergency and do not incorporate powers intended for limited use in times of emergency into regular domestic law.
- Ensure that counterterrorism measures are carried out in a non-discriminatory and proportionate manner and that raids, house arrests and other intrusive actions are subject to prior judicial authorization.
- Ensure that rights are fully respected in all security and counterterrorism measures, in particular the rights to due process, non-discrimination, freedom of speech, and privacy.
- Review all surveillance and intelligence gathering laws, including the 2015 surveillance law, with the purpose of passing reforms needed to ensure that all surveillance is strictly necessary and proportionate, and subject to safeguards to guarantee privacy protections. Cease using any existing mass surveillance programs.

4. Lack of adequate and appropriate mental health services in prisons

In 2013, France accepted a recommendation to address high suicide rates in prisons and to improve detention conditions for prisoners with psychosocial disabilities. Thousands of men and women detained in French prisons are estimated to have a psychosocial disability such as severe depression, bipolar disorder or schizophrenia. Yet they are held in conditions that do not accommodate their disability and can worsen their physical and mental health, and even put them at a heightened risk of suicide.

In 2015, Human Rights Watch visited eight prisons across France and [documented](#) the inadequate conditions for prisoners with psychosocial disabilities. The lack of adequate and appropriate mental health services and reasonable accommodation for prisoners with psychosocial disabilities in French prisons results in the deterioration of prisoners' mental health, and abuse of their rights. Human Rights Watch found that the situation is exacerbated by overcrowding, stigma, and isolation. A shortage of mental health professionals in many prisons means that appointments are infrequent and often brief and limited to prescribing medication. The lack of adequate conditions and care also results in difficult working conditions for prison staff. Human Rights Watch found particularly harsh conditions for women prisoners, including discrimination in accessing mental health care.

In her [2016 activity report](#) published in March 2017, the Inspector of Prisons found that "women face difficulties in ... accessing psychiatric care." In April 2016, the UN Committee against Torture, following the Inspector of Prisons' findings, urged France to improve detention conditions, including with regard to "factors contributing to suicide risks [and] the difficulty to access psychiatric care for prisoners."

Recommendations

- Commission an independent study of mental health condition of prisoners in French prisons with details on the number of prisoners (disaggregated by gender) who have psychosocial disabilities and the type of disability.
- Provide more effective daily care and appropriate living conditions to prisoners with psychosocial disabilities based on their needs and wishes and an assessment of the current shortcomings.
- Introduce policies that ensure prisoners with psychosocial disabilities cannot be held in solitary confinement.

5. Discrimination and hate crimes affecting members of religious minorities

France rejected recommendations made during its previous UPRs to repeal the 2004 ban on students wearing ostentatious religious symbols in public schools and the 2010 law prohibiting the concealment of one's face in public.

By declaring the aim to counter full-face Muslim veils, the ban violates the fundamental rights to freedom from discrimination, freedom of religion and the right to autonomy. The measure is neither necessary nor proportionate. It has a disproportionate impact on Muslim women, is discriminatory in practice on both gender and religious grounds and interferes with women's rights to express their religion and beliefs freely and to personal autonomy.

In August 2016, mayors in about 30 towns adopted decrees prohibiting women from wearing full-body covering swimsuits (known as "burkinis") or any other skin concealing outfits on the beach, arguing that they may pose a risk to public order. The French Human Rights League and the Collective against Islamophobia in

France contested those bans before administrative courts. In August 2016, the Council of State, France's highest administrative court, ruled that the ban in one town illegally breached fundamental freedoms and ordered it to be suspended. Some bans were subsequently withdrawn by some towns or struck down by lower courts, while other courts upheld bans despite the Council of State ruling.

In 2013, France accepted recommendations to step up its efforts to fight against discrimination, racism, xenophobia and anti-Semitism. France adopted a National Action Plan against racism and anti-Semitism for 2012-2014, renewed for 2015-2017. The April 2015 CNCDH annual report still recorded an increase of over 100 percent in Anti-Semitic acts, including violent attacks and threats, in 2014 compared with 2013. The National Observatory against Islamophobia publishes annual reports on anti-Muslim acts, based on figures from the Interior ministry. It recorded a spike of anti-Muslim acts in 2015 (429 recorded acts) compared with 2014 (133 recorded acts). Despite a decrease in 2016, numbers remain higher than in previous years.

Recommendations

- Repeal or amend the law instituting the ban on full-face concealment in public spaces to ensure that women who choose to veil their faces for religious reasons may do so without fear of legal sanction.
- Ensure an effective state response to anti-Semitic and anti-Muslim attacks and incidents and to wider racism, discrimination and xenophobia in society, and ensure that authorities investigate and hold to account those responsible for these attacks.