



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Concluding observations on the seventh periodic report of France\*

1. The Committee against Torture considered the seventh periodic report of France (CAT/C/FRA/7) at its 1396th and 1399th meetings, held on 19 and 20 April 2016 (see CAT/C/SR.1396 and 1399), and adopted, at its 1418th meeting, held on 4 May 2016, the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the seventh periodic report of France, noting its compliance with the established reporting guidelines.
3. It also welcomes the open and constructive dialogue held with the delegation from the State party and expresses its appreciation for the detailed replies provided to the concerns raised by the Committee.

#### B. Positive aspects

4. The Committee notes with satisfaction that, since its consideration of the previous report, the State party has ratified:
  - (a) The Council of Europe Convention on preventing and combating violence against women and domestic violence, on 4 July 2014;
  - (b) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 18 March 2015.
5. The Committee welcomes the State party's continued efforts in amending its legislation to give full effect to the Committee's earlier recommendations, notably through:
  - (a) The Act of 26 May 2014 on the Inspector General of Places of Deprivation of Liberty, which strengthens the powers of that office;
  - (b) The Act of 29 July 2015 on asylum reform, which provides suspensive effect to appeals filed before the National Court on the Right of Asylum when an asylum seeker's

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\* Adopted by the Committee at its fifty-seventh session (18 April-13 May 2016).



request is rejected by the French Office for the Protection of Refugees and Stateless Persons under the fast-track procedure.

6. The Committee welcomes the participation and contribution of the National Human Rights Advisory Commission, the Inspector General of Places of Deprivation of Liberty and the NGO sector during the review of the State party's seventh periodic report.

## **C. Principal subjects of concern and recommendations**

### **Pending follow-up issues from the previous reporting cycle**

7. While taking note of the information provided by the State party on 22 June 2011 concerning implementation of the recommendations contained in paragraphs 21, 24 and 28 of the previous concluding observations (CAT/C/FRA/CO/4-6), the Committee regrets that adequate measures were not taken to address the entirety of the concerns raised.

### **Definition and imprescriptibility of torture**

8. The Committee is concerned that, notwithstanding its previous recommendations (see CAT/C/FRA/CO/4-6, para. 13), the State party continues to consider that the provisions of article 222-1 of its Criminal Code, which classify as crimes all "acts of torture and of barbarity", as interpreted by its courts, meet the requirements of the definition provided in article 1 of the Convention. The Committee observes that article 222-1 does not provide a definition of torture and it regrets that the State party has not included such a definition in its criminal legislation. While taking note of the Court of Cassation ruling dated 21 April 2016, in which the Court acknowledged that the Criminal Code did not define the acts of torture and barbarity that it was classifying as crimes and made a brief reference to article 1 of the Convention, the Committee is of the view that it cannot be deduced therefrom that the Criminal Code is in conformity with article 1 of the Convention. Notwithstanding the explanations provided by the delegation, the Committee finds it regrettable that the State party has not made torture an imprescriptible offence (art. 1).

9. **The Committee reiterates its recommendation that the State party incorporate into its criminal legislation a definition of torture that includes all the elements set forth in article 1 of the Convention. The Committee also reiterates its recommendation that the State party make torture an imprescriptible offence.**

### **Basic legal safeguards**

10. While noting that, under article 63-3-1 of the Code of Criminal Procedure, persons are entitled to be assisted by a lawyer from the moment they are taken into police custody, the Committee remains concerned that, in cases involving terrorism or organized crime, access to a lawyer may be postponed for up to a maximum of 72 hours and that this measure may not be appealed (arts. 2 and 11).

11. **The Committee recommends that the State party amend its Code of Criminal Procedure to guarantee access to a lawyer for persons taken into police custody from the outset of detention and in all cases.**

### **State of emergency**

12. While noting that the State party has instituted legislative and administrative measures to expand the powers of its authorities as part of the fight against terrorism, in particular the state of emergency declared on 14 November 2015, which was extended by legislation dated 20 November 2015 and 20 February 2016 and was still in effect in May 2016, and recalling the non-derogatory nature of torture, the Committee is concerned by

reports of excessive use of force by the police during some search operations, which has in some cases led to psychological sequelae for the persons in question. The Committee is concerned that the use of certain measures under a state of emergency could constitute an infringement of rights ensured under the Convention. Lastly, the Committee regrets that no information was provided on complaints filed concerning acts of violence or excessive use of force during search operations (arts. 2, 11, 14 and 16).

**13. The Committee recommends that the State party take steps to ensure that, in practice, counter-terrorism measures do not infringe on the exercise of rights protected under the Convention. In particular, the State party should ensure that all search operations are conducted in strict respect of the Convention. The Committee further recommends that the State party should ensure that any victim of excessive use of force during such search operations is able to file a complaint, that an inquiry is conducted, that prosecution, as applicable, is pursued and that perpetrators are punished.**

**Protection of marginalized individuals and population groups from violence motivated by hatred**

14. The Committee is concerned about reports of an increase in violence and criminal acts motivated by hatred against certain vulnerable individuals and population groups in the State party, including Roma, Muslims, Jews and migrants, particularly since the recent terrorist attacks which prompted the adoption of the state of emergency (arts. 2 and 16).

**15. The Committee recalls that the protection of vulnerable individuals or groups who are at risk of ill-treatment is one of the protective measures that the State party should adopt in light of the Committee's General comment No. 2 on implementation of article 2 by States parties. It recommends that the State party intensify its efforts to prevent violence and criminal acts motivated by hatred and intolerance and prosecute those responsible for such acts.**

**Alleged excessive use of force by the police and the gendarmerie**

16. The Committee is concerned by the allegations of excessive use of force by the police and the gendarmerie, which has in some instances led to serious injuries or death. It is likewise concerned by: (a) reports of problems faced by victims in filing complaints; (b) the lack of statistical data on complaints filed that would allow for comparisons with inquiries launched and cases prosecuted; (c) the lack of detailed information on related convictions of police and gendarmerie officers and the sentences handed down; and (d) reports of high numbers of cases being dismissed or discontinued, light administrative sanctions being imposed that are not proportionate to the seriousness of the actions, and a very small number of court-ordered penalties being imposed upon police and gendarmerie officers. The Committee is also concerned about the allegations of violence being used against asylum seekers and migrants, and about their situation in Calais and the surrounding area (arts. 2, 12 and 13).

**17. The Committee recommends that the State party enhance its efforts to prevent any excessive use of force by the police and the gendarmerie and to ensure that:**

- (a) The necessary steps are taken to guarantee that, in practice, victims of police violence are able to file complaints, that the complaints are registered and that, if appropriate, the complainants are afforded protection against any risk of retaliation;**
- (b) Any case brought to its attention is promptly investigated in an impartial, independent and transparent manner within a reasonable time frame;**

(c) Cases are prosecuted and, in the event of conviction, punishment proportionate to the seriousness of the actions is ordered;

(d) Complete, disaggregated statistics are kept on complaints filed and reports received of acts of violence or excessive use of force, and on administrative or judicial inquiries opened into police or gendarmerie actions, prosecution proceedings launched, convictions and penalties handed down, and on cases proceedings dismissed or discontinued.

18. The Committee requests the State party to provide information on the follow-up given to (a) complaints filed with the Ombudsman and (b) allegations of police violence towards asylum seekers and migrants, and information on the situation of such persons in Calais and the surrounding area.

#### **Non-refoulement**

19. While taking note of the explanations provided by the State party, the Committee is concerned that use of the numerous criteria established in article L 723-2 of the Code on the Entry and Residence of Aliens and the Right of Asylum, such as provenance from a “safe” country of origin, could lead to a significantly higher number of asylum requests being considered under the fast-track procedure (which represents 25 to 30 per cent of the overall demand, according to the State party), potentially without proper advance assessment. The Committee is of the view that the short time allowed for the review of asylum requests by the French Office for the Protection of Refugees and Stateless Persons, coupled with the number of requests being considered under the fast-track procedure, could lead to cursory or incomplete assessments of risks, including the risk of torture or ill-treatment, to which the asylum seeker might be exposed if deported. The Committee is also concerned that the time allowed for asylum seekers, including unaccompanied minors, to prepare their request — 48 hours for asylum seekers being held in a waiting area and 5 days for those at administrative holding centres — is too short for them to be able to avail themselves of adequate legal or interpretation assistance to defend their request, thus potentially exposing them to the full gamut of risks in case of deportation (art. 3).

20. The Committee recommends that the State party take all necessary steps to ensure that the criteria used for deciding whether a request will be considered by the fast-track procedure, in particular provenance from a “safe” country of origin, do not lead to automatic or systematic assignment to the fast-track procedure. It also recommends that the State party ensure that the risks faced by each asylum seeker are assessed thoroughly in cases where this procedure is used. Lastly, the Committee recommends that the State party take all necessary measures to ensure that, in all instances, asylum seekers enjoy effective access to legal, interpretation and other assistance that will allow them to properly prepare and defend their case. It requests the State party to revisit the time frames in which asylum seekers in waiting areas and administrative holding centres may present their case to the National Court on the Right of Asylum.

#### **Conditions of detention**

21. While noting the steps taken by the State party, the Committee is concerned by the very high level of prison overcrowding evidenced by an occupancy rate of 116 per cent in 2014, and higher still in some prisons, including those of Marseilles (147 per cent) Nîmes (219 per cent), and Polynesia (294 per cent). The Committee deplores the unsuitable physical conditions of detention found at some facilities, such as dilapidated buildings and lack of proper hygiene and sanitation. It is also concerned by continuing violence among prisoners and by allegations of ill-treatment by prison staff. The Committee is further concerned by the problems encountered by some prisoners in filing complaints in cases of

such violence with the administrative or judicial authorities or with the Inspector General of Places of Deprivation of Liberty (arts. 11 and 16).

22. **The Committee recommends that the State party, as a matter of urgency, continue its efforts to improve conditions of detention by implementing the recommendations of the Inspector General of Places of Deprivation of Liberty, including, in particular, to: (a) effectively reduce prison overcrowding by making greater use of alternatives to imprisonment in line with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); (b) improve physical conditions of detention; (c) ensure that all acts of violence at prison facilities are brought to the attention of the appropriate authorities and that thorough and impartial inquiries are conducted into them; (d) strengthen its National Action Plan against Violence in Prisons; and (e) ensure that prisoners are, in practice, able to file complaints with the Inspector General of Places of Deprivation of Liberty without fear of retaliation.**

#### **Access to mental health care in prisons**

23. The Committee is concerned by reports of: (a) insufficient availability of mental health care in prisons; (b) lack of medical staff providing mental health care in prison infirmaries; and (c) frequent use of solitary confinement for prisoners suffering from a mental health disorder and unsuitable physical conditions for their detention. It is also concerned that prisoners with mental health disorders are often placed in seclusion rooms or containment cells when transferred to outside referral hospitals (arts. 11 and 16).

24. **The Committee recommends that the State party take appropriate steps to: (a) improve access to mental health services in prisons and increase the availability of trained, specialized health personnel; and (b) monitor the use of seclusion arrangements both in prison infirmaries and at outside referral hospitals.**

#### **Suicides in prison**

25. While taking note of the information provided by the State party, the Committee remains concerned by the high suicide rate in French prisons despite the steps taken under the 2009 national action plan to prevent suicide in prisons. The Committee shares the concerns of the Inspector General of Places of Deprivation of Liberty with regard to some of the factors contributing to the risk of suicide, such as placement in a disciplinary block, and with regard to the restrictions preventing systematic use of emergency protection measures and safe cells to prevent suicides (arts. 11 and 16).

26. **The Committee recommends that the State party strengthen its policy for preventing suicides in prison, in particular by: (a) reducing the risk factors; (b) placing prisoners at risk of suicide in a disciplinary block solely in exceptional circumstances; and (c) stepping up monitoring and support when a prisoner is placed under emergency protection measures or in a safe cell. The Committee requests the State party to undertake an evaluation of its national action plan to prevent suicide in prisons and to report its findings to the Committee.**

#### **Body searches**

27. While taking note of the explanations provided by the State party, the Committee remains concerned by reports of frequent or even systematic use of full body searches at some facilities. The Committee is also concerned that, notwithstanding the adoption of the Prisons Act of 2009 and the memorandum of 15 November 2013, exceedingly intrusive methods that do not respect prisoners' physical integrity continue to be used, and that the

exceptional practice of conducting a full body search does not appear to be guided in all cases by the principles of need and proportionality (arts. 11 and 16).

28. **The Committee recommends that the State party ensure that full body searches are conducted only when strictly necessary and when proportionate to the intended objective, and that it ensure rigorous monitoring of the rules established in the Prisons Act of 2009 and the memorandum of 15 November 2013. It also recommends that the State party continue its efforts to train staff and provide information to prisoners on the rules governing body searches, and that it adopt a standard approach across all facilities, as suggested by the Inspector General of Places of Deprivation of Liberty, with a view to preventing any risk of arbitrary decision-making in relation to the conduct of searches. The Committee further recommends that the State party ensure that such body searches, when deemed absolutely necessary, are conducted in conditions that respect prisoners' dignity.**

#### **Psychiatric facilities**

29. The Committee is concerned about: (a) the substandard physical conditions of detention of patients in certain psychiatric facilities; (b) the frequent use of seclusion for days on end, whether with or without restraint, notwithstanding the Act of 26 January 2016 on the modernization of the health system and the good practice recommendations issued by the French National Health Authority in 1998 and 2004; (c) the lack of a register on the use of seclusion and restraint, as provided for by the Act of 26 January 2016; (d) the fact that mechanical restraint is not always used according to the same criteria or for the same duration; and (e) the failure to systematically inform patients about their rights prior to placement in seclusion or under restraint and about how to appeal such decisions. While noting the State party's explanations of the measures taken, the Committee is particularly concerned about the findings of the Inspector General of Places of Deprivation of Liberty on the use of seclusion and restraint in the Ain Psychotherapy Centre and the physical conditions in which the persons committed there are kept (arts. 11 and 16).

30. **The Committee recommends that the State party:**

(a) **Improve the conditions of detention of persons committed to psychiatric hospitals;**

(b) **Ensure that there is no systematic or excessively frequent use of seclusion and restraint;**

(c) **Enhance the training of personnel at psychiatric facilities to ensure effective compliance with the rules established by the Act of 26 January 2016 on the modernization of the health system and the good practice recommendations issued by the National Health Authority in 1998 and 2004;**

(d) **Ensure that, in all cases of involuntary hospitalization, the Act of 5 July 2011, as amended on 25 September 2013, is properly enforced in connection with the oversight of such hospitalization and that patients are informed of their rights and of the avenues available to appeal such a decision.**

31. **While noting the measures adopted to change the situation at the Ain Psychotherapy Centre, the Committee calls on the State party to implement, as a matter of urgency, all the recommendations concerning the Centre made by the Inspector General of Places of Deprivation of Liberty.**

#### **Sexual abuse committed in the Central African Republic**

32. The Committee is concerned about the numerous allegations of sexual abuse of children committed by French soldiers during Operation Sangaris in the Central African

Republic — an operation authorized by Security Council Resolution 2127 (2013) — and by recent similar cases that have occurred in the same context. The Committee notes the information that investigations were carried out by the French authorities in 2014 and 2015 but remains concerned that, to date, there have been no trials, no convictions and no sentences (arts. 2, 12 and 16).

**33. The Committee recommends that the State party continue to ensure that all allegations of sexual abuse of children committed by French soldiers in the Central African Republic are investigated promptly and with due diligence and that the perpetrators are brought to justice as soon as possible and given penalties commensurate with the seriousness of the offence. The Committee also recommends that the State party ensure that social and psychological assistance and redress are provided to the victims, and that they receive up-to-date information on the progress of investigations into their cases. The Committee further recommends that the State party strengthen measures to prevent such incidents in the future.**

#### **Intersex persons**

34. The Committee is concerned about reports of unnecessary and sometimes irreversible surgical procedures performed on intersex children without their informed consent or that of their relatives and without their having all possible options always explained to them. It is also concerned that these procedures, which are purported to cause physical and psychological suffering, have not as yet been the object of any inquiry, sanction or reparation. The Committee regrets that no information was provided on specific legislative and administrative measures establishing the status of intersex persons (arts. 2, 12, 14 and 16).

**35. The Committee recommends that the State party:**

**(a) Take the necessary legislative, administrative and other measures to guarantee respect for the physical integrity of intersex individuals, so that no one is subjected during childhood to non-urgent medical or surgical procedures intended to establish one's sex;**

**(b) Ensure that the persons concerned and their parents or close relatives receive impartial counselling services and psychological and social support free of charge;**

**(c) Ensure that no surgical procedure or medical treatment is carried out without the person's full, free and informed consent and without the person, their parents or close relatives being informed of the available options, including the possibility of deferring any decision on unnecessary treatment until they can decide for themselves;**

**(d) Arrange for the investigation of cases of surgical or other medical treatment reportedly carried out on intersex individuals without their informed consent and take steps to provide redress, including adequate compensation, to all victims;**

**(e) Conduct studies into this issue in order to better understand and deal with it.**

#### **Training**

36. While noting the information provided by the State party, the Committee remains concerned that the training for some categories of officers in the police (contractual law enforcement agents and constables) and the gendarmerie (non-commissioned officers and volunteer deputy gendarmes) covers ethics and codes of conduct more thoroughly than it

does human rights and the provisions of the Convention. It is also concerned that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is not part of the training, including for the civilian and medical personnel who are involved in the custody and treatment of anyone who has been arrested or is in prison. Lastly, it regrets the lack of specific information on human rights training for private security personnel and on any reduction in ill-treatment as a result of the training given to the police and the gendarmerie (art. 10).

**37. The Committee recommends that the State party enhance the training courses on human rights and the Convention given to contractual law enforcement agents, constables, non-commissioned officers and volunteer deputy gendarmes and ensure that the personnel of private security companies also receive such training. The Committee also recommends that the State party systematically include the Istanbul Protocol in all training for police officers and members of the gendarmerie, as well as for the civilian and medical personnel who are involved in the custody and treatment of any individual placed under arrest or in prison. The Committee further recommends that the State party establish specific methods of assessing the results of its training programmes on the absolute prohibition of torture and ill-treatment.**

#### **Redress and rehabilitation**

38. The Committee takes note of the information provided by the State party about the mechanisms established to provide redress and rehabilitation for victims, and specifically the Victim Assistance Offices, which for the most part cater for victims of trafficking rather than victims of torture and ill-treatment, and the measures taken to identify and address the particular vulnerability of asylum seekers as part of the asylum procedure provided for in article L-723-3 of the Code on the Entry and Residence of Aliens and the Right of Asylum. However, the Committee is concerned about: (a) information received indicating that the State party lacks a policy for the rehabilitation of victims of torture and that there are problems with access to existing facilities; (b) the failure to systematically assess vulnerability as early on in the asylum process as possible; (c) the shortage of resources available to associations and other entities offering treatment and care tailored to victims of torture, including asylum seekers; (d) the shortage of professionals sufficiently trained in the identification and care of such persons; and (e) the lack of statistical data on the redress and rehabilitation measures ordered by the courts for victims of torture and on the number of asylum seekers who have benefited from such measures (arts. 2 and 13).

**39. Taking into account general comment No. 3 (2012) on the implementation of article 14 by States parties, the Committee recommends that the State party: (a) implement a policy for the rehabilitation of victims of torture and facilitate access to rehabilitation facilities; (b) put in place stronger measures and arrangements for the earliest possible detection and care of asylum seekers who have been subjected to torture or cruel, inhuman or degrading treatment; and (c) provide adequate training and a sufficient number of professionals, increase the availability of care tailored to this population group, and ensure the allocation of the necessary resources to associations and other entities dealing with victims of torture so that they can meet the needs in this area.**

#### **Follow-up procedure**

40. The Committee requests the State party to provide, by 13 May 2017, follow-up information in response to the Committee's recommendations contained in paragraphs 17 (c), 26 and 31.



**Other issues**

41. The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to which it is not yet a party.

42. The Committee encourages the State party to disseminate widely the report submitted to the Committee and these concluding observations, in the appropriate languages, through official websites, the media and NGOs.

43. The Committee encourages the State party to submit its next periodic report, which will be its eighth, by 13 May 2020. As the State party stated during the review that gave rise to these recommendations that it had accepted the simplified reporting procedure, the Committee will in due course transmit to the State party a list of issues prior to reporting, in accordance with that procedure.

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