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**Committee against Torture**

**Forty-fourth session**

26 April–14 May 2010

 Draft

 Consideration of reports submitted by States parties under article 19 of the Convention

 Concluding observations of the Committee against Torture

 France

1. 1. The Committee against Torture considered the sixth periodic report of France (CAT/C/FRA/4-6) at its 928th and 931st meetings, held on 27 and 28 April 2010, and adopted the following conclusions and recommendations at its 946th meeting, held on 10 May 2010.

 A. Introduction

1. 2. The Committee welcomes the sixth periodic report of France, which broadly complies with the guidelines on the form and content of periodic reports.
2. 3. The Committee appreciates the quality of France’s written replies to the list of issues and the supporting documentation, and also the additional information provided orally during the consideration of the report. The Committee welcomes the constructive dialogue that took place with the delegation sent by the State party and thanks it for its clear and straightforward answers to the questions raised.

 B. Positive aspects

1. 4. The Committee takes note with satisfaction of:
2. (a) The State party’s ratification of the Optional Protocol to the Convention and the subsequent establishment, under the Act of 30 October 2007, of the post of Inspector-General (*Contrôleur général*) of places of deprivation of liberty, which constitutes a national preventive mechanism within the meaning of the Optional Protocol;
3. (b) The State party’s accession, on 2 October 2007, to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
4. (c) The State party’s ratification, on 23 September 2008, of the International Convention for the Protection of All Persons from Enforced Disappearance;
5. (d) The State party's ratification, on 18 February 2010, of the Convention on the Rights of Persons with Disabilities and its Optional Protocol.
6. 5. The Committee also notes with satisfaction:
7. (a) The introduction, under the Act of 20 November 2007, of a legal remedy with automatic suspensive effect against a decision to refuse entry following an application for asylum lodged at the frontier;
8. (b) The adoption by the Senate in June 2008 of a bill — yet to be considered by the National Assembly — to bring French law into line with the Rome Statute of the International Criminal Court;
9. (c) The fact that video recording of questioning by a judge or the police has been made compulsory under the Act of 5 March 2007;
10. (d) The adoption of the Act of 4 April 2006, which strengthens the prevention and punishment of conjugal violence and violence against children and increases the penalties for violence against women.
11. 6. The Committee also welcomes the extensive construction project now under way that aims to considerably increase prison capacity, and which has already made it possible to reduce prison overcrowding by 11 per cent since 2008, with the addition of some 5,000 places in one year.
12. 7. The Committee also notes the proactive measures taken by the State party to increase the number of convicted persons eligible for alternative sentencing, in part as a result of the introduction, under the Prisons Act of 24 November 2009, of house arrest with electronic surveillance as an alternative to pretrial detention.
13. 8. The Committee notes with satisfaction the Ministry of Justice action plan of 2009 to prevent suicide in prison, and would welcome regular updates on its implementation, including in the overseas territories.
14. 9. The Committee notes with interest the establishment of a procedure to allow the newly created Office of the Inspector-General of the National Gendarmerie to make unannounced visits to police custody facilities and to the reception facilities for complainants in neighbourhood police units.
15. 10. The Committee welcomes the abolition on 16 August 2007 of the “security rotation” system in prisons, whereby prisoners were subjected to repeated transfers. The Committee also notes that the matter of *Khider v. France* (European Court of Human Rights judgement of 9 July 2009) was placed on the agenda of the Committee of Ministers in March 2010 and would like to be kept informed of developments in that case.
16. 11. The Committee takes note of the State party’s efforts to improve waiting areas, particularly at airports, in part by setting up a ministerial working group on the issue of minors in waiting areas.
17. 12. The Committee notes with satisfaction the creation of two telephone hotlines for reporting conjugal abuse and violence (3977 and 3919, respectively). The Committee also commends the bill to introduce a reference to psychological violence in the Criminal Code.

 C. Subjects of concern and recommendations

 Definition of torture

1. 13. While the Committee recognizes that the State party’s criminal law punishes acts of torture and acts of barbarity and violence, and while it takes note of the judgements brought to its attention in which acts of torture have been penalized, the Committee remains convinced of the need for a definition of torture strictly in line with article 1 of the Convention to be introduced into the French Criminal Code (art. 1).
2. **The Committee reiterates its earlier recommendation (CAT/C/FRA/CO/3, para. 5) requesting the State party to incorporate into its criminal law a definition of torture that is in strict conformity with article 1 of the Convention. Such a definition would meet the need for clarity and predictability in criminal law, on the one hand, and the requirement under the Convention to draw a distinction between acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity, and acts of violence committed by non-State actors. The definition should also make torture an imprescriptible offence.**

 Non-refoulement

1. 14. While taking note of the information provided to the Committee by the State party to the effect that numbers have dropped since 2008, the Committee remains concerned at the fact that 22 per cent of asylum applications submitted in 2009 were dealt with under the so-called priority procedure, which does not allow for an appeal with suspensive effect against an initial rejection by the French Office for the Protection of Refugees and Stateless Persons (OFPRA). The applicant may therefore be returned to a country where they are at risk of torture before the National Court on the Right of Asylum can hear their request for protection. In the absence of any data giving figures for petitions against a removal order on grounds of risk of torture, or for annulments of removal orders by the administrative court under article 3, the Committee is not convinced that the priority procedure offers adequate safeguards against removal where there is a risk of torture (art. 3).
2. **The Committee recommends that the State party should introduce an appeal with suspensive effect for asylum applications under the priority procedure. It also recommends that situations covered by article 3 of the Convention should be subjected to a thorough risk assessment, notably by ensuring appropriate training for judges on the risks of torture in receiving countries and by automatically holding individual interviews in order to assess the personal risk to applicants.**
3. 15. The Committee notes with satisfaction that, following the entry into force of the Act of 20 November 2007, asylum-seekers at the border now have the right of appeal with suspensive effect against a decision refusing leave to enter for the purposes of asylum, but is concerned at the very short time limit for submitting such an appeal (48 hours), at the fact that the language used for the appeal must be French and at the fact that the administrative judge may reject the appeal by court order, thereby depriving the applicant of a hearing at which they may defend their case, and of procedural guarantees such as the right to an interpreter and a lawyer (art. 3).
4. **The Committee recommends that an appeal relating to an asylum application submitted at the border should be subject to a hearing at which the applicant threatened with removal can present their case effectively, and that the appeal should be subject to all basic procedural guarantees including the right to an interpreter and counsel.**
5. 16. The Committee is also concerned at the particular difficulties encountered by asylum-seekers in places of deprivation of liberty, such as holding centres, who are required to submit their application within five days of being notified of their right to do so under the Code on the Entry and Residence of Aliens and the Right of Asylum. Such a time limit is not compatible with applicants’ need to submit a credible case establishing a risk in the event of return, which requires, among other things, the gathering of evidence and testimony, as well as documentation of other kinds from their country of origin (art. 3).
6. **Like the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to France from 27 September to 9 October 2006, the Committee recommends that the State party should extend the time limit for application for asylum by a person held in an administrative holding centre to at least 10 days, without, however, extending the maximum holding period of 32 days.**
7. 17. Since issuing its previous comments and recommendations, the Committee remains concerned at the provisions of the Act of 10 December 2003 that introduce the concepts of “internal asylum” and “safe country of origin”, which do not guarantee a person absolute protection against the risk of being returned to a State where they might be tortured. This is borne out by the absence of precise information regarding the documentary sources used in drawing up the list of “safe” countries of origin or, on the periodic review of the list. Moreover, it is interesting to note that, according to OFPRA, refugee status or subsidiary protection was granted to around 35 per cent of persons from so-called “safe countries of origin” (art. 3).
8. **The Committee repeats its recommendation that the State party should take appropriate measures to ensure that applications for asylum by persons from States to which the concepts of “internal asylum” or “safe country of origin” apply are examined with due consideration for the applicant’s personal situation and in full conformity with article 3 of the Convention.**
9. 18. The Committee deplores the fact that it has received several documented allegations regarding the return of persons to countries where they risked being subjected to acts of torture or cruel, inhuman or degrading treatment or punishment, and from persons sent back to their country of origin who reported being arrested and subjected to ill-treatment on arrival, in some cases despite interim protection measures ordered by the Committee or the European Court of Human Rights (art. 3).
10. **The Committee repeats its recommendation that the State party should take the necessary steps to guarantee at all times that no person is expelled who is in danger of being subjected to torture if returned to a third State.**

 Universal jurisdiction

1. 19. While acknowledging that any person present in French territory who is suspected of having committed acts of torture may be prosecuted and tried in France pursuant to the French Code of Criminal Procedure, the Committee remains concerned that the bill to bring French law into line with the Rome Statute of the International Criminal Court is still not on the National Assembly’s agenda for adoption, despite having been adopted by the Senate in June 2008. The Committee is also concerned about the limitations that the bill imposes on the scope of universal jurisdiction, and in particular the fact that it introduces a requirement for suspects to be normally resident in France (arts. 5, 6, 7 and 13).
2. **The Committee reiterates its recommendation that the State party should guarantee the right of victims to an effective remedy against violation of the Convention, in particular by guaranteeing their right to take legal action through criminal indemnification proceedings.** **The Committee further recommends that the “normally resident” requirement be replaced by a requirement for the alleged perpetrator to simply be present in the State party’s territory, in accordance with article 6.**

 Training of police officers

1. 20. The Committee takes note of the information provided by the State party regarding the new initial training curricula for officers and constables, and of the fact that the Prisons Act of 24 November 2009 introduces a Code of Ethics for the prison service, but it remains concerned at the lack of information that it has received about the content of initial and in-service training on the human rights treaties. The Committee would particularly appreciate information about training protocols, and about any ex post evaluation of the training performed (art. 10).
2. **The Committee would like the State party to provide more information about how it evaluates the training given to police, prison and medical officers, with reference to specific indicators. The Committee would also like to receive information about any training given to the private security firms used by the State party, both in and outside its territory.**
3. 21. The Committee remains particularly concerned about the persistent allegations that it has received regarding ill-treatment by law enforcement officers of detainees and other persons with whom they come into contact (art. 16).
4. **The State party must adopt the measures necessary to ensure that all allegations of ill-treatment at the hands of law enforcement officers are promptly investigated in transparent and independent inquiries, and that the perpetrators are appropriately punished;**
5. **The Committee would also appreciate information about the Note apparently circulated by the Office of the Inspector-General of the National Police in October 2008 concerning the methods used by law enforcement agencies to restrain suspects or persons against whom removal orders have been issued, which have already resulted in cases of death by asphyxiation (Mohamed Saoud in 1998 and Abdelhakim Ajimi in 2007).**

 Provisions concerning the custody and treatment of arrested, detained and imprisoned persons

 Police custody

1. 22. The Committee remains concerned about the amendments to the Act of 9 March 2004, which, under the special procedure applicable in cases of terrorism and organized crime, delay access to a lawyer until the seventy-second hour of police custody. These provisions are likely to give rise to violations of article 11 of the Convention, since it is during the first few hours after an arrest that the risk of torture is greatest, particularly when a person is held incommunicado. The Committee also remains concerned about the frequent use of pretrial detention and the duration of such detention (art. 11).
2. **The Committee reiterates its previous recommendation that the State party should take appropriate legislative measures to guarantee immediate access to a lawyer within the first few hours of police custody, in accordance with article 11 of the Convention. The Committee further recommends that measures should be taken to reduce the use of pretrial detention and the duration of such detention**.

 Interrogations

1. 23. While welcoming the fact that the Act of 5 March 2007 makes video recording of questioning by the police or a judge compulsory, except in cases involving minor offences, the Committee notes that the Act does not apply to persons accused of terrorism or organized crime and does not provide for the installation of video surveillance cameras in all areas of police stations and gendarmeries where there may be detainees, including in corridors (art. 11 and 16).
2. **The Committee recommends that the State party should make video recording of interrogations of all persons questioned a standard procedure, and should install video surveillance cameras in all areas of police stations and gendarmeries in order to extend and strengthen the protection afforded to detainees in police custody.**

 Prison conditions and criminal policy

1. 24. The Committee welcomes the creation of the post of Inspector-General of places of deprivation of liberty by the Act of 30 October 2007, as well as the steps taken by the State party to address the critical problem of prison overcrowding, notably by building new prison facilities, including in its overseas territories. The Committee also takes note of the State party’s research into the possibility of wider use of alternative non-custodial measures. However, the Committee still has serious concerns about the level of prison overcrowding, which, despite significant reductions, remains alarming, especially in the overseas territories. While acknowledging the information provided by the State party in relation to the Ministry of Justice Action Plan of June 2009, the Committee is also concerned about the reported suicide rate, as well as about the frequency of violent incidents among detainees (art. 11 and 16).
2. **In addition to the necessary enlargement of the prison infrastructure undertaken by the State party, the Committee notes that much of the State party’s recent criminal legislation[[1]](#footnote-2) is aimed at toughening penalties and reducing recidivism, with, as a direct corollary, increased use of custodial sentences. Given this situation, the Committee invites the State party to carry out a major review of the effects of its recent criminal policy on prison overcrowding, in the light of articles 11 and 16.**
3. **In particular, the Committee recommends that the State party should aim for wider use of non-custodial measures as an alternative to the prison sentences handed down at present. The Committee further recommends that the necessary resources should be assigned to the Office of the Inspector-General of places of deprivation of liberty, and asks the State party to provide information about specific action taken to regularly implement the recommendations issued by the Inspector-General following visits.**

 Waiting areas

1. 25. The Committee notes the steps that the State party has taken to improve living conditions in waiting areas, including the living conditions of unaccompanied minors and minors travelling with asylum-seeking parents. However, the Committee remains deeply concerned about the announcement in the bill on immigration, integration and nationality of 31 March 2010, that waiting areas will be set up at all borders of the State party for foreign nationals arriving other than at a border crossing point, which means that all those waiting in these areas will be subject to a regime devoid of the procedural guarantees applicable outside such areas, notably the right to see a doctor, to speak to a lawyer, and to be assisted by an interpreter (arts. 11 and 16).
2. **The Committee recommends that the State party should take the steps necessary to ensure that living conditions in waiting areas are in conformity with the requirements of articles 11 and 16 of the Convention, ensuring in particular that minors are shielded from acts of violence by maintaining a strict segregation between minors and adults, and rigorously applying the provisions stipulating that an ad hoc guardian must be assigned to all minors and that any removal proceedings must guarantee their safety, taking account of their vulnerability and with due respect for their person. In addition, the State party is encouraged not to extend the current waiting areas, and to give due attention to the implementation and follow-up of the recommendations made by the Inspector-General of places of deprivation of liberty after visits to existing waiting areas.**

 Suicides in custody

1. 26. The Committee is deeply concerned by the fact that the State party is described as one of the countries of Europe with the highest number of prison system suicides. Furthermore, the figures provided to the Committee reveal that more than 15 per cent of prisoners who took their own lives in 2009 were being held in disciplinary blocks at the time (art. 16).
2. **The Committee recommends that the State party should, under the supervision of the Public Prosecutor, take the necessary measures to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international standards.**

 Imposition of differing detention regimes

1. 27. The Committee is concerned to note that the Prison Act of 24 November 2009 appears to give the prison authorities broad discretion, under article 89, to place prisoners under different detention regimes based on classification according to subjective criteria such as the prisoner’s personality or the danger they represent. A regime of this kind can by definition lead to arbitrary treatment of prisoners in serving their sentences. It is possible, for example, to envisage a situation in which a disciplinary punishment or denial of access to certain entitlements while in detention could, if repeated and imposed without due justification or in an arbitrary manner, constitute cruel, inhuman or degrading treatment or punishment under article 16 (art. 16).
2. **The Committee encourages the State party to take appropriate steps to exercise control over the discretionary element of the powers vested in the prison authorities, and the corresponding risk of arbitrary action. This control should be exercised through regular visits from the independent supervisory mechanisms, which should, in turn, immediately report to the competent judicial authorities any irregularity or practice that could be considered an arbitrary measure, particularly when the measure in question involves solitary confinement.**

 Body searches

1. 28. The Committee takes note of the information submitted by the State party, to the effect that the current search procedure under the Prisons Act of 24 November 2009 is more restrictive than the previous one. In light of two judgements of the European Court of Human Rights (*Khider v. France* and *Frérot v. France*), the Committee nevertheless remains concerned that the procedure regulating the frequency and methods of searches in prisons and detention centres is determined by the prison authorities themselves, and that this may perpetuate or reinforce detainees’ feeling of vulnerability in relation to prison authorities. Furthermore, the Committee is concerned that the Prisons Act allows the detainee’s “personality” and the danger they represent to be taken into account when sentencing – vaguely defined criteria that leave too much room for arbitrary decisions (art. 16).
2. **The Committee recommends that the State party should rigorously enforce the procedure for body searches, and even more so for full and internal searches, in particular by guaranteeing regular visits to all places of detention by independent, competent supervisory authorities. The Committee also requests more information on the implementation of the judgement in the *Frérot* case. Has the State party developed indicators to assess the risk of further violations of article 3 of the Convention in the future, in similar circumstances to *Khider* and *Frérot*? The Committee would also welcome specific information on the implementation of the electronic detection methods announced by the State party, and on any obstacles preventing the widespread use of such mechanisms, which could end the practice of body searches.**

 Secure detention

1. 29. The Committee is deeply concerned about so-called “secure detention”, established by Act No. 2008-174 of 25 February 2008 on confinement and supervision and exemption from criminal responsibility by reason of mental disorder, and supplemented by Act No. 2010-242 of 10 March 2010, which seeks to reduce the risk of recidivism and establishes various provisions of criminal procedure. Besides the obvious challenge to the principle of legality in criminal proceedings that this measure poses, due to the lack of objectively definable and predictable material criteria, the lack of a causal link between the offence and the possible penalty, and the fact that it can be applied retroactively, it is also likely to raise issues under article 16, as it does not appear to set a time limit on detention (art. 16).
2. **The Committee strongly recommends that the State party should consider repealing this provision, which clearly violates the fundamental principle of legality in criminal law, and may also conflict with article 16.**

 Use of conducted energy devices during detention

1. 30. The Committee is particularly concerned by the State party’s announcement of its decision to test conducted energy devices (tasers) in places of detention. The Committee notes that the Council of State, in a decision of 2 September 2009, repealed the decree of 22 September 2008 authorizing the use of tasers by municipal police officers. The Committee further notes a lack of detailed information on their use, the status of persons who have already used them, and specific precautions, such as training and supervision of staff concerned (art. 16)
2. **The Committee would welcome up-to-date information from the State party on the use of this weapon in places of detention.**
3. **Furthermore, the Committee reiterates the position it has taken with regard to other States parties, to the effect that it is concerned that the use of these weapons causes severe pain, constituting a form of torture, and in some cases may even cause death. The State party should therefore consider abandoning the use of tasers, as their impact on victims’ physical and mental state would constitute a violation of articles 1 and 16 of the Convention.**

 Impartial investigation

1. 31. The Committee remains concerned about the system of discretionary prosecution, which allows the State prosecutor to determine whether or not to prosecute the perpetrators of acts of torture and ill-treatment involving police officers, or even not to order an investigation, which is clearly contrary to article 12 of the Convention. The Committee further notes with concern the lack of specific and up-to-date information that would enable a comparison between the number of complaints received concerning police actions that are contrary to the Convention and any ensuing criminal justice or disciplinary responses (art. 12).
2. **The Committee reiterates its previous recommendation (CAT/C/FRA/CO/3, para. 20) that compliance with article 12 of the Convention requires a derogation from the system of discretionary prosecution, so as to oblige the competent authorities to launch impartial inquiries systematically and on their own initiative wherever there are reasonable grounds for believing that an act of torture has been committed in any territory under its jurisdiction, in order to effectively ensure that the perpetrators of such crimes are punished.**
3. 32. In addition to the principle of discretionary prosecution vested in the State prosecutor, which limits the possibility of prosecution *proprio motu*,the Committee is concerned about the consequences of the Léger report of 1 September 2009, whose findings, if ratified by Parliament, could ultimately lead to the abolition of investigating judges, which would mean that all investigations would be directed by the public prosecutor’s office, with direct consequences for the independence of investigations.
4. **The Committee urges the State party to take all steps to ensure the independence and integrity of judicial proceedings, and of investigations by independent supervisory mechanisms, in particular by permitting direct referral and providing them with the means to carry out their supervisory mission independently, impartially and transparently.**

 Right of complaint

1. 33. The Committee remains concerned about the way cases are referred to the National Commission on Security Ethics (CNDS), which cannot accept complaints directly from a person who has been subjected to torture or cruel, inhuman or degrading treatment, but only through a member of Parliament, the Prime Minister or the Children’s Ombudsman (art. 13).
2. **The Committee recommends that the State party should take the necessary measures to allow the National Commission on Security Ethics to accept complaints directly from anyone claiming to have been subjected to torture or cruel, inhuman or degrading treatment in any territory under its jurisdiction, in accordance with article 13 of the Convention.**
3. 34. The Committee is concerned about the consequences of establishing, as part of the constitutional reform of 2008, a “general ombudsman” combining, according to the draft constituting legislation, the mandates of the Ombudsman of the Republic, the Children’s Ombudsman and the National Commission on Security Ethics. The plan also appears to include the eventual disappearance of the Inspector-General of places of deprivation of liberty, who functions could also be incorporated into the new institution (art. 13).
4. **The Committee urges the State party to take all necessary measures to ensure the effective and uninterrupted functioning of the supervisory mechanism established under the Optional Protocol to the Convention (i.e. the Inspector-General of places of deprivation of liberty) and of other complementary independent bodies which, in addition to their mediating role, have an essential part to play in monitoring rights and ensuring the implementation of the Convention, each in their particular field of expertise.**

 Interim measures of protection

1. 35. The Committee is concerned that the State party considers that it is not required to respond to requests for interim measures made by the Committee (with reference to communications Nos. 195/2002, *Brada* *v.* *France* (17 May 2005) and 300/2006, *Tebourski* *v.* *France* (1 May 2007)).
2. **Recalling that rule 108 of the Committee’s rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would offer asylum-seekers claiming a serious risk of torture purely theoretical, protection, the Committee urges the State party to review its policy on this matter, by considering requests for interim measures in good faith and in accordance with its obligations under articles 3 and 22 of the Convention.**
3. 36. The Committee recommends that the State party should include in its next periodic report data disaggregated by age, gender and ethnicity on:
4. (a) The number of recorded complaints containing allegations of torture or cruel, inhuman or degrading treatment;
5. (b) The number of investigations, prosecutions and convictions for acts of torture or ill-treatment that have occurred since the last report was submitted to the Committee;
6. (c) While taking note that defendants have the right to lodge a complaint themselves against what they consider to be libellous or defamatory complaints, the Committee would also welcome data on the specific measures taken by the State party to protect persons who report violence by law enforcement officials against acts of intimidation, defamation or possible reprisals.
7. 37. The Committee would also welcome information on the implementation of the Convention in territories outside the jurisdiction of the State party, but where its armed forces are deployed.
8. 38. The Committee recommends that the State party should widely disseminate the Committee’s conclusions and recommendations throughout its territory, in all appropriate languages, through official websites, the press and non-governmental organizations.
9. 39. The Committee requests the State party to provide, within one year, information on its implementation of the recommendations contained in paragraphs 8, 10, 21, 24, 28, and 30 above.
10. 40. The State party is invited to submit its seventh periodic report by 14 May 2014.

1. [Act of 12 December 2005 concerning the treatment of repeat offenders; Act of 10 August 2007 concerning measures to counter recidivism among adults and minors; Act of 25 February 2008 concerning confinement and supervision and exemption from criminal responsibility by reason of mental disorder; and the Act of 10 March 2010 concerning measures to reduce the risk of recidivism and establishing various provisions of criminal procedure]. [↑](#footnote-ref-2)