



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

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## Committee against Torture

Forty-fourth session

26 April–14 May 2010

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

#### Concluding observations of the Committee against Torture

#### France

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

#### A. Introduction

2. The Committee welcomes the consolidated fourth to sixth periodic reports of France, which broadly comply with the guidelines on the form and content of periodic reports.

3. The Committee appreciated the quality of France's well documented written replies to the list of issues (CAT/C/FRA/Q/4-6 and Add.1) and the additional information provided orally during the consideration of the report. The Committee also appreciated the constructive dialogue that took place with the delegation representing the State party and thanks it for its clear and straightforward answers to the questions raised by Committee members.

#### B. Positive aspects

4. The Committee takes note with satisfaction of:

(a) The State party's ratification of the Optional Protocol to the Convention and the related 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;

(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;

(c) The State party's ratification, on 23 September 2008, of the International Convention for the Protection of All Persons from Enforced Disappearance;

(d) The State party's ratification, on 18 February 2010, of the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

5. The Committee also notes with satisfaction:

(a) The introduction, under the Act of 20 November 2007, of a legal remedy with automatic suspensive effect against any decision to refuse entry following an application for asylum lodged at the frontier;

(b) 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.

6. The Committee also welcomes the construction project now under way aimed at a substantial increase in prison capacity.

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.

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.

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 monitor the reception facilities for complainants in neighbourhood police units.

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.

11. The Committee notes with satisfaction the creation of two telephone hotlines for reporting conjugal ill-treatment and violence and abuse against children (3977 and 3919, respectively). The Committee also commends the bill to introduce a reference to psychological violence in the Criminal Code.

12. The Committee further notes with satisfaction the State party's announcement that it was considering legislative reform aimed eventually at divesting a person of an honour awarded if the person is suspected of having committed a violation of the Convention or any other serious violation of international law.

## **C. Subjects of concern and recommendations**

### **Definition of torture**

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 concerned at the absence in the French Criminal Code of a definition of torture strictly in line with article 1 of the Convention (art. 1).

**The Committee reiterates its earlier recommendation (CAT/C/FRA/CO/3, para. 5) that the State party incorporate in its criminal law a definition of torture that is in strict conformity with article 1 of the Convention. Such a definition would meet on the one hand the need for clarity and predictability in criminal law, and on the other the need 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 Committee reiterates its recommendation that torture be made an imprescriptible offence.**

#### **Non-refoulement**

14. While taking note of the information provided to the Committee by the State party to the effect that the relevant numbers have fallen since 2008, the Committee remains concerned at reports 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). An applicant may therefore be returned to a country where he is at risk of torture before the National Court on the Right of Asylum can hear his request for protection. In the absence of statistics concerning petitions lodged against removal orders 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).

**The Committee recommends that the State party introduce an appeal with suspensive effect for asylum applications conducted under the priority procedure. It also recommends that situations covered by article 3 of the Convention be submitted to a thorough risk assessment, notably by ensuring appropriate training for judges regarding the risks of torture in receiving countries and by automatically holding individual interviews in order to assess the personal risk to applicants.**

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 entry 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 he may defend his case, and of procedural guarantees such as the right to an interpreter and a lawyer (art. 3).

**The Committee recommends that any appeal relating to an asylum application submitted at the border be subject to a hearing at which the applicant threatened with removal can present his case effectively, and that the appeal be subject to all basic procedural guarantees, including the right to an interpreter and counsel.**

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 other documentation from their country of origin (art. 3).

**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 allow sufficient time and provide all essential procedural guarantees for asylum applicants held in an administrative holding centre, without, however, unduly extending the holding period on that account.**

17. Since issuing its previous observations 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 countries of origin”, which do not guarantee absolute protection against the risk of persons 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 how often the list is updated. 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” in 2008 (art. 3).

**The Committee reiterates its recommendation that the State party 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 the provisions of article 3 of the Convention.**

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).

**The Committee reiterates its recommendation that the State party 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**

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 the State party under the French Code of Criminal Procedure, the Committee nevertheless remains concerned about the limitations that the bill imposes on the scope of universal jurisdiction, in particular by introducing a requirement for suspects to be normally resident in France. The Committee is also 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 (arts. 5, 6, 7 and 13).

**The Committee reiterates its recommendation that the State party guarantee the right of victims to effective remedy against violation of the Convention, in particular by establishing its jurisdiction over any offence committed by a suspect present in its territory, in accordance with article 5 of the Convention. The Committee further recommends that the normal residence requirement for alleged perpetrators be replaced by a requirement that they be simply present in the territory, in accordance with article 6.**

### **Training of law enforcement officers**

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 has introduced a Code of Ethics for the prison service, but it remains concerned at the lack of information received about the content of initial and in-service training on the human rights instruments. The Committee would particularly appreciate details of training protocols and of any subsequent evaluation of the training performed (art. 10).

**The Committee would like more information concerning the State party's evaluation of the training given to police, prison and medical officers, with reference to specific indicators. The Committee also recommends that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) be made part of staff training.**

**The Committee would also like to receive details from the State party of any training given to the private security firms used by the State party, both in its home territory and abroad.**

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 in their charge (art. 16).

**The State party should take steps to ensure that all allegations of ill-treatment at the hands of law enforcement officers are promptly investigated in the course of transparent and independent inquiries, and that the perpetrators receive appropriate punishment.**

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*

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 72nd hour of police custody. These provisions are likely to give rise to violations of the terms 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 being held incommunicado. The Committee also remains concerned about the frequent use of pretrial detention and the duration of such detention (arts. 2 and 11).

**The Committee reiterates its previous recommendation that the State party take appropriate legislative measures to guarantee immediate access to a lawyer during police custody, in accordance with article 11 of the Convention. The Committee further recommends that steps be taken to reduce the use of pretrial detention and the duration of such detention.**

*Interrogations*

23. While noting with satisfaction 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, failing special authorization by the Public Prosecutor or investigating judge. In addition, the law does not provide for the installation of video surveillance cameras in all areas of police stations and gendarmeries where persons may be held in custody, including passageways (arts. 11 and 16).

**The Committee recommends that the State party make video recording of interrogations of all persons questioned a standard procedure, and install video surveillance cameras throughout police stations and gendarmeries in order to extend and strengthen the protection afforded to detainees in police custody.**

*Prison conditions and criminal policy*

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 is still seriously concerned about the level of prison overcrowding, which, despite significant improvements in certain establishments, 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 (arts. 11 and 16).

**In addition to the necessary enlargement of the prison infrastructure undertaken by the State party, and in the light of the abundant recent criminal legislation aimed at introducing stricter penalties and reducing recidivism, with as a direct corollary increased use of custodial sentences, 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.**

**In particular, the Committee recommends that the State party 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 State party provide details about specific action taken regularly to implement the recommendations issued by the Inspector-General of places of deprivation of liberty following visits, including in the case of detainees suffering from psychiatric disorders.**

*Waiting areas*

25. While noting the efforts the State party has made to improve the conditions prevailing in waiting areas, including those at airports, by setting up a ministerial working group to deal with the problems of minors in such waiting areas, the Committee remains deeply concerned about the announcement, in connection with the bill on immigration, integration and nationality of 31 March 2010, that waiting areas will be set up at all the State party's borders for foreign nationals entering outside a border crossing point, which means that all such waiting persons will fall under 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).

**The Committee recommends that the State party take steps 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 pay particular 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.

*Suicide in custody*

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 suicides in prisons. Furthermore, according to the figures provided to the Committee, more than 15 per cent of the prisoners who took their own lives in 2009 were being held in disciplinary blocks at the time (art. 16).

**The Committee recommends that the State party take all necessary measures to prevent suicide in custody. In addition, it should, under the supervision of the Public Prosecutor, take steps to ensure that solitary confinement remains an exceptional measure of limited duration, in line with international standards.**

*Imposition of differing detention regimes*

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 on the basis of a classification according to subjective criteria such as a prisoner's personality or the danger he might represent. A regime of this kind can by definition lead to arbitrary treatment of prisoners in the course of 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).

**The Committee encourages the State party to take appropriate steps to exercise supervision over the discretionary element of the powers vested in the prison authorities, and the corresponding risk of arbitrary action. Such supervision should be exercised through regular visits by existing 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**

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 the light of two judgements of the European Court of Human Rights (in *Khider v. France* and *Frérot v. France*), the Committee nevertheless remains concerned at the intrusive and humiliating nature of body searches, especially internal. The Committee is further concerned that the procedure regulating the frequency and methods of searches in prisons and detention centres is determined by the prison authorities themselves. Furthermore, the Committee is concerned at the lack of information available regarding the follow-up to *Khider v. France* and *Frérot v. France*, particularly at the lack of indicators allowing an assessment to be made of any future risk of a violation of article 16 occurring as a result of body searches (art. 16).

The Committee recommends that the State party exercise strict supervision of body search procedures, especially full and internal searches, by ensuring that the methods used are the least intrusive and the most respectful of the physical integrity of persons, and in all cases in compliance with the terms of the Convention. The Committee further recommends the implementation of the electronic detection methods announced by the State party, and the widespread use of such mechanisms, in order to eliminate the practice of body searches altogether.

#### *Secure detention*

29. The Committee is deeply concerned about so-called secure detention (*rétenction de sûreté*), established by Act No. 2008-174 of 25 February 2008 on secure detention, and the declaration of exemption from criminal responsibility for reason of mental disorder, and supplemented by Act No. 2010-242 of 10 March 2010, which seeks to reduce the risk of criminal recidivism and establishes various provisions of criminal procedure. Besides the obvious challenge to the principle of legality in criminal proceedings that this measure implies, 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, the measure, which does not appear to set a time limit on detention, is also likely to raise issues under article 16 (art. 16).

**The Committee strongly recommends that the State party consider repealing this provision, which clearly violates the fundamental principle of legality in criminal law, and may potentially conflict with article 16.**

#### *Use of conducted energy devices during detention*

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 (arts. 2 and 16)

**Reiterating its concern that the use of these weapons may cause severe pain, constituting a form of torture, and in some cases may even lead to death, the Committee would welcome up-to-date information from the State party on the use of this weapon in places of detention.**

#### **Impartial investigation**

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 law enforcement 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, up-to-date information that would make it possible to compare the number of complaints received concerning actions by law enforcement officers that are contrary to the Convention and any ensuing criminal justice or disciplinary responses (art. 12).

**The Committee reiterates its previous recommendation (CAT/C/FRA/CO/3, para. 20) whereby compliance with the provisions of 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 do not remain unpunished.**

32. Apart from 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 (arts. 2, 12 and 13).

**The Committee invites the State party to take all steps to ensure the independence and integrity of judicial proceedings, and of investigations by existing 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**

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).

**The Committee recommends that the State party take steps 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.**

34. The Committee is concerned about the consequences, as part of the constitutional reform of 2008, of establishing a "Defender of Rights" (*Défenseur des droits*) 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, whose functions could also be incorporated into the new institution (art. 13).

**The Committee invites 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, thereby ensuring the implementation of the Convention, each in their particular field of expertise.**

#### **Interim measures of protection**

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)).

**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 alleging a serious risk of torture only theoretical protection, the Committee urges the State party to review its policy in this respect, by**

considering requests for interim measures in good faith and in accordance with its obligations under articles 3 and 22 of the Convention.

#### **Human trafficking**

36. The Committee is concerned at the lack of information provided by the State party regarding the problems of human trafficking and sexual exploitation. The Committee has not yet been adequately informed regarding the prevalence of these practices, nor regarding the measures taken by the State party to combat the trafficking of women and children on its territory (arts. 2 and 16).

**The Committee recommends that the State party adopt a national plan aimed at combating the trafficking of women and children in all its forms, which would include both measures of criminal justice concerning the prosecution of traffickers and measures for the protection and rehabilitation of victims. The Committee recommends to that end that the State party strengthen its international cooperation with the countries of origin, trafficking and transit, and see to the allocation of sufficient resources for policies and programmes in this area. The Committee also recommends that the State party keep it informed of developments in this respect.**

37. The Committee recommends that the State party include in its next periodic report data disaggregated by age, gender and ethnicity on:

(a) The number of complaints received containing allegations of torture or cruel, inhuman or degrading treatment;

(b) The corresponding 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.

38. 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, particularly in the form of complaints for defamation or possible reprisals.

39. The Committee would further welcome information concerning the implementation of the Convention in territories where its armed forces are deployed.

40. The Committee recommends that the State party widely disseminate the Committee's conclusions and recommendations throughout its territory, in all appropriate languages, through official websites, the press and non-governmental organizations.

41. The Committee invites the State party to update its core document dated 7 October 1996 (HRI/CORE/1/Add.17/Rev.1), following the harmonized reporting guidelines recently approved by the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.6).

42. The Committee requests the State party to provide, within one year, information on its implementation of the Committee's recommendations contained in paragraphs 14, 21, 24, 28, 30 and 36 above.

43. The State party is invited to submit its seventh periodic report by 14 May 2014.

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