

FRANCE

Toward a Just and Humane Asylum Policy

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SUMMARY AND RECOMMENDATIONS

When he took office in June, French Prime Minister Lionel Jospin promised to revisit some of the most restrictive elements of immigration and asylum policy adopted in recent years. Acting promptly on this commitment, in July he appointed academic Patrick Weil to head a commission to examine the entire immigration and asylum system and make recommendations for its reform. The Weil report, released on July 31, contains proposals that have been transposed into draft legislation currently under consideration by the French government.

For the past year, Human Rights Watch/Helsinki has investigated and monitored French asylum policies, conducting numerous interviews with lawyers, human rights advocates, refugee assistance organizations, asylum seekers, and government officials. In the course of this work, we have identified several aspects of French asylum policy that contravene governing international standards. In particular, we have found deficiencies in access to the asylum procedure, the procedural rights accorded during that procedure, and the jurisprudence interpreting the scope of France's obligations under the Convention relating to the Status of Refugees (the "Refugee Convention"). We therefore welcome the Jospin government's plans to include asylum policy within its reform effort, and we urge it to seize this opportunity to bring France's policies and practices in line with its international commitments.

Asylum seekers face many obstacles to obtaining protection in France. First, like all European countries, France has adopted strict visa requirements making it virtually impossible for an asylum seeker—regardless of the urgency of his or her need for protection—to travel lawfully to France to obtain protection. These visa requirements, imposed in concert with other European countries, are credited with the dramatic drop in the number of people seeking protection in France in recent years. Those who nonetheless manage to travel to France may have serious problems getting their asylum applications registered with the authorities. We received several credible reports that officials responsible for registering claims at French borders and in regional *préfectures* (administrative offices) unlawfully obstruct access to the procedure, in some cases placing asylum seekers at risk of immediate return to their country of origin with no consideration of the merits of their asylum claims.

Those granted access to the asylum procedure may also face difficulties. France boasts one of the smallest backlogs of asylum cases in Europe, but this has been achieved at a cost. First, asylum seekers receive inadequate information and assistance regarding the procedure. Second, the French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides, "OFPRA"), the agency responsible for deciding refugee status claims, conducts personal interviews in only half of its cases. Particularly prejudiced by this policy are those whose claims are decided pursuant to OFPRA's "priority procedure" for applications deemed fraudulent or abusive, and for those considered the responsibility of a "safe third country," a country other than the asylum seeker's country of origin to which she can be safely returned. Such cases are usually decided within forty-eight hours and without the benefit of an OFPRA interview. All asylum seekers have an opportunity to be heard on appeal by the Refugee Appeals Commission (Commission des recours des réfugiés, "CRR"), but the commission hearings are very brief and their interpreter and translation services are inadequate. Only those who enter the country lawfully—a small minority—are entitled to free legal assistance in the appeal proceedings. Moreover, applicants whose cases are decided via the priority procedure have no right to remain in France pending a decision on their appeal.

A third area of concern for Human Rights Watch/Helsinki is France's restrictive interpretation of its obligations under the Refugee Convention. Contrary to the letter and spirit of the convention, France refuses to accord refugee protection to those persecuted by virtue of their sexual orientation and to those whom governments fail to protect from persecution at the hands of insurgent groups or other non-state agents. Although it extends temporary protection to some of those excluded under this jurisprudence, this temporary protection regime is inadequate.

The Weil report acknowledges some of these problems and, through its proposals, seeks to remedy them. Human Rights Watch/Helsinki welcomes the recommendation that OFPRA provide personal interviews for all asylum seekers. On other points, however, the Weil report is too vague or goes only halfway. For example, it simply recommends that a committee be convened to consider reforming the procedures of the CRR. And rather than conform

France's interpretation of the Refugee Convention to international standards, Mr. Weil would create new, subsidiary forms of protection for victims of non-state persecution. Still other issues remain unaddressed altogether. For example, nothing in the Weil report addresses the obstacles that asylum seekers face in merely obtaining access to the asylum procedure in France. The government's draft law adopts Mr. Weil's proposals almost in their entirety, and is therefore characterized by the same shortcomings.

Human Rights Watch/Helsinki urges the French government to face the problems with its asylum system head-on and incorporate the following much-needed reforms into the package of legislative and administrative proposals currently under consideration.

Regarding border procedures

- Train and instruct border officials unconditionally to refer all asylum seekers to the Border Asylum Division of the Ministry of Foreign Affairs for a decision, together with the Ministry of Interior, on whether they will be admitted to the territory to seek asylum.
- In border area "waiting zones" where asylum seekers and other aliens are detained, provide written information about their rights and obligations, including the right to seek asylum. Such information should include a telephone list of lawyers and organizations available to assist detainees and should be provided in multiple languages.
- Cease detention of aliens in makeshift waiting zones aboard boats.
- Provide refugee assistance organizations with routine access to waiting zones so that they can not only monitor conditions but also provide assistance to detainees.
- Instruct waiting zone personnel unconditionally to direct all asylum claims to the Border Asylum Division of the Ministry of Foreign Affairs for a decision, together with the Ministry of Interior, on whether they will be admitted to the territory to seek asylum.
- Define "manifestly unfounded" asylum claims that can be screened out at the border narrowly. Specifically, an asylum claim should be deemed clearly fraudulent only if the applicant makes what appear to be false allegations of a material or substantive nature; the use of false travel or identity documents should render a claim manifestly unfounded only if the applicant insists they are genuine; and a delayed asylum claim should be manifestly unfounded only if the applicant has had an ample opportunity to apply and has offered no valid explanation for the delay.
- Provide all asylum seekers who are screened out with manifestly unfounded claims with a right of appeal and the right to remain in France to await the outcome of that appeal.

Regarding *préfecture* procedures

- Investigate allegations that *préfecture* officials obstruct the registration of asylum claims, and notify these officials that they may not condition access to the asylum procedure on the quality of the asylum seeker's identity papers or travel documents.
- Make information and assistance available to asylum seekers at the *préfectures*. Ensure that competent and professional interpretation is available for all interviews conducted by *préfecture* officials.
- Circumscribe the screening role of *préfecture* officials, specifically permitting transfer to state signatories to the Schengen and Dublin Conventions¹ and other safe third countries only where (1) the safe third country is a

¹ Several European states, including France, have concluded the Schengen Agreement of 14 June 1985, committing them to

party to the Refugee Convention and has established a refugee determination procedure comporting with the procedural requirements set out in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status; (2) the safe third country has provided an individualized and documented guarantee that the asylum seeker will be admitted to the asylum procedure in that country; (3) the “safe third country” itself applies the “safe third country” concept according to these same guidelines.

- Prohibit transfers of asylum seekers to Dublin, Schengen, or other “safe third countries” where such transfer will result in division of families, defined to include spouses, minor children, and other dependents, such as aged parents.
- Circumscribe discretion of *préfecture* officials to screen applications out of the regular procedure because they deem them to be fraudulent, abusive, or made only to obstruct deportation. Specifically, an asylum claim should be deemed clearly fraudulent only if the applicant makes what appear to be false allegations of a material or substantive nature; the use of false travel or identity documents should warrant screening out an application only if the applicant insists they are genuine; and a delayed asylum claim should be screened out only if the applicant has had an ample opportunity to apply and has offered no valid explanation for the delay. Applications filed after an asylum seeker is returned to France as a “safe third country” should never be screened out merely because the applicant failed to file an asylum claim when in France prior to traveling to the next country.
- As recommended in the Weil report, provide for OFPRA interviews to be conducted in all asylum cases, including those screened out by *préfecture* officials.
- For those screened out by *préfecture* officials, including Schengen or Dublin cases, provide a meaningful right of appeal, including the right to remain in France to await the appeal decision.

Regarding CRR procedures

- Improve the provision of interpretation, ensuring the competent and professional interpretation of the full course of CRR proceedings.
- Accept submissions of supporting evidence in languages other than French and arrange for their translation free of charge to asylum seekers.
- Conduct hearings in a manner designed to assist asylum seekers in putting forward their cases and in fully explaining their opinions and feelings. Asylum seekers should be encouraged to make personal statements, as well as to respond to panelists’ questions; these questions should focus solely on issues relevant to the asylum claim.

Regarding substantive asylum law

- Amend French law to extend convention refugee status to those persecuted due to their membership in a particular social group, such as Roma and homosexuals.
- Amend French law to extend convention refugee status to all asylum seekers with a well-founded fear of persecution at the hands of insurgent groups or other non-state agents, where such forces are knowingly

take various steps toward the abolition of border controls between them. A parallel implementation agreement establishes rules for determining one and only one signatory state responsible for each asylum claim filed in their collective territory. These rules, which essentially codify the “safe third country” concept among the signatory states, have been in effect since March 1995. In 1990, E.U. member states concluded the Dublin Convention, which also codifies rules for determining the signatory state responsible for each asylum claim filed. The Dublin Convention came into force on September 1, 1997, at which time its rules replaced the asylum provisions of the Schengen system.

tolerated by the authorities, or where the authorities refuse, or prove unable, to offer effective protection. A subsidiary protection regime for such refugees cannot substitute for an acknowledgment of France's obligations under the Refugee Convention.

Regarding temporary, non-refugee protection

- Temporary non-refugee protection should not be used as a substitute for the refugee protection guaranteed under the Refugee Convention.
- Any auxiliary non-refugee protection regime employed should be codified in French law, clearly identifying the criteria for such protection, the procedures by which it will be accorded, and the benefits that it will entail.

BACKGROUND: INSTITUTIONS AND LEGAL FRAMEWORK

The entity responsible for initial refugee status decisions in France is the French Office for the Protection of Refugees and Stateless Persons (OFPRA), an independent administrative entity operating formally under the Ministry of Foreign Affairs. The current director of OFPRA is Jean-François Terral. Appeals of negative OFPRA decisions are handled by the Refugee Appeals Commission (CRR), an administrative tribunal in which asylum appeals are heard by three-member panels made up of a professional judge, a representative of the United Nations High Commissioner for Refugees (UNHCR), and a representative of the OFPRA Council consisting largely of government officials. General political responsibility for immigration and asylum policies rests with the minister of interior, currently Jean-Pierre Chevènement.

France experienced a jump in asylum applications earlier than many of its European partners. Applications peaked in 1989 with 61,422, a significant increase over the 34,352 applications filed the year before. The number of those seeking protection in France has dropped annually ever since. In 1996, applications fell to a fifteen-year low at 17,280.² Like other European countries, France has utilized a combination of visa requirements and carrier sanctions to suppress the number of applications. OFPRA has avoided the backlog of asylum cases that has plagued other European countries, but it has done so by according many asylum applications only cursory review, accompanied by inadequate procedural safeguards.

² Statistics provided to Human Rights Watch/Helsinki by OFPRA, April 1997.

French law provides for protection of those whom OFPRA or the CRR recognizes as “refugees” as defined in article 1(A) of the Refugee Convention and articles 6 and 7 of the Statute of the Office of the UNHCR, namely any person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”³ In 1996, OFPRA made 22,121 decisions on asylum applications, granting refugee status in 4,338 cases.⁴ OFPRA and CRR decisions reflect a restrictive interpretation of the Refugee Convention, most notably in their refusal to recognize persecution suffered at the hands of armed groups and other non-state entities, without state complicity. Most rejected asylum seekers exercise their right of appeal to the CRR, although it affirms the OFPRA decision in more than 95 percent of appeals.

Unlike many other European countries, France does not grant residence permits on humanitarian grounds. The constitution recognizes the right to asylum for those who are persecuted because of their activities in support of freedom, but this language has not been given specific content in the asylum law and is rarely invoked. The French government has not enacted a law on temporary protection of refugees in mass influx situations, choosing rather to pursue ad hoc arrangements in limited circumstances. Pursuant to a confidential internal administrative circular sent to all *préfets* (heads of France’s administrative regions) in August 1992, the *préfets* were authorized to grant provisional residence permits to those fleeing the former Yugoslavia for renewable three- or six-month periods. In addition to the cases of former Yugoslavs, a number of Algerians have received temporary protection. Again, there is no basis in the law for this policy, but in certain cases in which Algerians are denied refugee status, OFPRA refers the case to the Ministry of Interior for it to determine whether temporary protection in the form of a renewable provisional residence permit is appropriate.⁵

International harmonization of asylum policies is reflected in various aspects of French law and practice in the asylum field. As contemplated and endorsed by European Union (E.U.) resolutions, France has maintained a “safe third country” policy, meaning that without considering the merits of an asylum claim, it could send an asylum seeker to any “safe” country that would admit the asylum seeker and protect him against persecution or *refoulement*, i.e., return to a country where he fears persecution. This practice has been modified some in the past year since a Council of State decision that France may not refuse an asylum seeker access to its territory solely on “safe third country” grounds. In practice, since the decision, only those border applicants whose asylum claims are otherwise deemed “manifestly unfounded” are returned to “safe third countries.” Procedures in these cases remain in accordance with restrictive policies articulated at the E.U. level: asylum seekers with claims deemed “manifestly unfounded” do not have access to the regular asylum procedure, and they have no right to remain in France during the pendency of an appeal.

International influence on French asylum policies is not limited to the E.U. In addition, France is a party to the 1985 Schengen Agreement aimed at the elimination of border controls among several European states. A parallel implementation convention specifies rules for determining one and only one signatory state responsible for each asylum claim filed in the signatories’ collective territory. As a general rule, the signatory state that permits the applicant to enter the signatories’ collective territory—by issuing the asylum seeker a visa or letting the asylum seeker cross the external border—is responsible for examining the asylum application. In the absence of these factors, the first state in which the asylum seeker applies for asylum must examine the application. If the responsible state denies his asylum application, he may not subsequently apply in another signatory state. Signatory states retain the right, however, to examine an application that is the responsibility of another state. These rules, which essentially codify the “safe third

³ Convention relating to the Status of Refugees, art. 1(A). The text of the UNHCR statute varies slightly from the convention, most notably in its omission of any reference to persecution for reasons of membership of a particular social group.

⁴ Statistics provided to Human Rights Watch/Helsinki by OFPRA, April 1997.

⁵ See Secretariat of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, *Report on Temporary Protection in States in Europe, North America and Australia* (Geneva: Secretariat of the IGC, 1995), pp. 101-05; Human Rights Watch/Helsinki interview, Jean-François Terral, director, OFPRA, Fontenay-sous-Bois, February 26, 1997. In some cases, it is also possible for an asylum seeker to apply directly to the Ministry of Interior for temporary protection.

country” concept among the signatory states, came into effect in March 1995. Similar rules were adopted in the 1990 Dublin Convention determining the State responsible for examining applications for asylum. Agreed among all E.U. member states, this convention came into effect and replaced the already functioning Schengen asylum system on September 1, 1997. Problems with the implementation of these conventions are discussed in greater detail below (*see Problems at the Préfectures*).

ACCESS TO THE ASYLUM PROCEDURE

Access to French asylum procedures represents a significant and multi-faceted problem. Asylum seekers face obstacles in the form of visa requirements that limit their ability to travel to France. If they present themselves at the border, they will likely be placed in detention and, with limited information, assistance, or translation services, may be unable to convince the authorities to acknowledge their claim. Half of those claims that are registered at the border are denied as manifestly unfounded. If they present themselves inside the territory, they may face similar impediments: obstructionist behavior on the part of *préfecture* officials; limited translation services making communication of their claims difficult; and rules for screening certain categories of applications out of the regular procedure and into accelerated “priority procedures.” Each aspect of the access problem is discussed below.

Travel to France: Visa Requirements and Carrier Sanctions

Like other E.U. member states, France requires visas from nationals of most refugee producing states. These are reinforced by the carrier sanctions regime required under the Schengen Convention. Unlike some other countries, France actually enforces these sanctions, which can cost an airline up to 10,000 FF (approximately U.S. \$1,670) per undocumented passenger it brings to France. In a recent report to parliament evaluating the sanctions regime adopted in February 1992, the Ministry of Interior reported that in the first three years of the regime, police filed 4,905 reports of undocumented travelers. Air France, liable for the majority of these reports, has been fined eight million FF (approximately U.S. \$1,338,400).⁶ Visa restrictions and carrier sanctions, while not specifically intended to target asylum seekers and refugees, nevertheless significantly restrict access to French asylum procedures for many people in need of protection.

Problems at the Border

⁶ “Evaluation of Three Years’ Application of Law on Carriers’ Liability,” *Migration News Sheet*, (July 1997), p. 4.

Even when asylum seekers reach French territory, they may have difficulty getting their claims before OFPRA for a decision. The procedure varies for those seeking asylum at the border and those seeking asylum within French territory. For those seeking asylum at the border, French law provides that they may be denied access to the territory to seek asylum only by a decision of the Ministry of Interior, taken in consultation with the Ministry of Foreign Affairs.⁷ In practice, asylum seekers whose claims are recognized by border officials are referred to the Ministry of Foreign Affairs Border Asylum Division, which, after interviewing the asylum seeker, forwards its recommendation to the Ministry of Interior for a final decision. An asylum seeker may be held in a “waiting zone” (i.e. detention center) while these authorities determine whether his or her asylum claim is “manifestly unfounded.”⁸ If it is, the asylum seeker may appeal the decision to the Administrative Tribunal, but this appeal does not suspend deportation, which may take place immediately. If the asylum seeker’s claim is not manifestly unfounded, he will receive documents permitting him to enter the territory to seek asylum. “Manifestly unfounded” is not defined in French law, but a recent report of the Ministry of Interior indicates that the criteria used include whether the applicant may be returned to a “safe third country,” whether the application lacks a legal basis in the Refugee Convention, whether the application clearly lacks sufficient factual basis, whether the asylum seeker has cooperated with the authorities and made a timely claim for asylum, and whether, notwithstanding a manifestly unfounded claim, humanitarian considerations dictate admission for the asylum seeker.⁹ Approximately 500-600 asylum applications are registered at the borders each year and approximately 50 percent of those asylum seekers are admitted to the territory to seek asylum.¹⁰ The majority of decisions regarding admission are based on a combination of the factors cited above.¹¹

Problems with the border procedure are multifold. First, refugee assistance organizations express concern that border authorities may not always recognize or register asylum claims in order to refer them to the Ministry of Foreign Affairs and the Ministry of Interior for a decision on entry to the territory.¹² Officials of the Ministry of Interior deny that this happens. They claim that in cases in which an asylum claim has allegedly been ignored, they have investigated police records and found no record that the asylum seeker claimed asylum. They conclude therefore that the asylum seeker was not ignored or misunderstood, but rather that she failed to state a claim for asylum.¹³ But the absence of a

⁷ Decree of 27 May 1982, art. 12.

⁸ Law of 2 November 1945, art. 35 quater.

⁹ Ministry of Interior, “Waiting zones in ports, airports and train stations, 1996 annual report,” (Paris: Ministry of Interior, 1997) pp. 5-7.

¹⁰ Ibid.; Human Rights Watch/Helsinki interview with Jean-François Terral, director, OFPRA, Fontenay-sous-Bois, February 26, 1997. Although no exact figures are available at this writing, Ministry of Interior officials report a jump in border applications in July and August 1997. Also, during those months, approximately 70 percent of those filing border applications were admitted to the territory to seek asylum. Human Rights Watch/Helsinki interview, Yann Dyèvre, head, Office of Cross-border Traffic and Visas, Ministry of Interior, Paris, September 26, 1997.

¹¹ Ministry of Interior, “Waiting zones in ports, . . .,” p. 5. As previously noted, since a Council of State decision last year, an asylum seeker may not be denied access to the territory solely because he or she can be sent to a “safe third country.” Accordingly, since that decision, all cases in which the applicant is sent to a safe third country cite both the “safe third country” rule and one of the other grounds as a basis for the decision. Amnesty International French Section, France Terre d’Asile, *Droit d’asile en France: état des lieux* (Paris: Amnesty International, 1997), pp. 22-23; Human Rights Watch/Helsinki interview, Yann Dyèvre, head, Office of Cross-border Traffic and Visas, Ministry of Interior, Paris, September 26, 1997.

¹² Institute of Human Rights, Catholic University of Lyon, *The Prevention of inhuman and degrading treatment in France*, (English extracts) (Lyon: Catholic University of Lyon, 1996), p. 24; Amnesty International and France Terre d’Asile, *Droit d’asile en France . . .*, pp. 22-23; Association nationale d’assistance aux frontières pour les étrangers (ANAFE), *Zones d’attente des ports, des aéroports et des gares ferroviaires: visites des associations habilitées, rapport 1996-97* (Paris: Expressions, 1997).

¹³ Human Rights Watch/Helsinki interview, Yann Dyèvre, head, Office of Cross-border Traffic and Visas, Ministry of Interior, Paris, September 26, 1997.

police record of a claim is of course equally corroborative of the asylum seeker's assertion that the police intentionally or unintentionally ignored her claim. Case documentation provided by organizations and lawyers to Human Rights Watch/Helsinki indicates that border officials do sometimes fail to register asylum claims.¹⁴ That only 500-600 asylum applications are registered annually at all French border crossing points (most of them at Paris' Charles de Gaulle airport) lends further credence to these concerns. By contrast, in the first quarter of 1997 alone, the Netherlands registered 1,894 asylum claims at Schiphol Airport outside of Amsterdam.¹⁵

¹⁴ See "Illustrative Cases".

¹⁵ Statistics provided to Human Rights Watch/Helsinki by Asylum Legal Aid—Amsterdam, June 1997.

Representatives of refugee assistance organizations told Human Rights Watch/Helsinki that they receive reports of individuals detained at the borders and unable to claim asylum.¹⁶ In many cases, they report, asylum seekers arrive at the airport and they do not claim asylum immediately, because they do not speak French, do not know whom to ask, or expect to be admitted to the territory and to ask asylum then. In other cases, the border authorities have reportedly ignored statements and documentation indicating that an asylum seeker wishes to seek asylum. Regardless of the reason that an asylum seeker's claim is not immediately registered, when this happens, an undocumented asylum seeker will likely be placed in a waiting zone as an illegal alien awaiting deportation. Once he or she is placed in a waiting zone, it may be even more difficult to register an asylum claim because the police on duty in the zones may not accept it. Information, translation services, and legal assistance are not readily available in the waiting zones. The asylum seeker will receive copies of written detention and deportation decisions, containing reference to her rights; but these are generally available only in French and the oral translation often omits details about the asylum seeker's rights.¹⁷ A 1995 decree authorizes visits to waiting zones by the UNHCR and authorized refugee assistance organizations, but these visitation rights are quite limited. Only five organizations, including UNHCR, have been authorized to visit the zones under the decree. And each organization may visit each zone only once each quarter.¹⁸ While providing a minimal control over conditions in the zones, this limited visitation regime is of no effective assistance to detainees trying to challenge their detention or make a claim for asylum from the waiting zones. One organization told us that they try to place daily telephone calls to the pay phone at the waiting zone at Charles de Gaulle airport to see if anyone needs help and only that way do they learn of asylum seekers whose claims have not been acknowledged.¹⁹ Persistent problems have also been reported at French harbors, where, pending deportation, stow-aways are generally detained on board the boat on which they came to France, with no access to information or assistance and substantial impediments to making an asylum claim.²⁰

¹⁶ Human Rights Watch/Helsinki interview, Patrick Delouvin, Amnesty International French Section, Paris, November 21, 1996; Human Rights Watch/Helsinki interview, Stephane Julinet, National Association for Assistance of Foreigners at the Borders (Association nationale d'assistance aux frontières pour les étrangers, "ANAFE"), Paris, November 20, 1996; Human Rights Watch/Helsinki interview, Olivier Guinabaudet, UNHCR, Paris, November 20, 1996.

¹⁷ Human Rights Watch/Helsinki interview, Stephane Julinet, ANAFE, Paris, November 20, 1996. Government officials told Human Rights Watch/Helsinki that forms used for these decisions are available in seventeen languages. Human Rights Watch/Helsinki interview, Yann Dyèvre, head, Office of Cross-border Traffic and Visas, Ministry of Interior, Paris, September 26, 1997. According to a representative of a non-governmental organization that regularly tours the waiting zones, however, the authorities generally use only the French-language forms. In fact, of all detainees interviewed by representatives of his organization in the course of regular visits conducted between June 1996 and April 1997, all received the form decisions in French except for one detainee who received a blank English version along with the French one. Human Rights Watch/Helsinki interview, Stephane Julinet, ANAFE, Paris, November 20, 1996; ANAFE, *Zones d'attente des ports* . . . , p. 30.

¹⁸ Decree no. 95-507 of May 2, 1995; Human Rights Watch/Helsinki interview, Olivier Guinabaudet, UNHCR, Paris, November 20, 1996.

¹⁹ Human Rights Watch/Helsinki interview, Stephane Julinet, ANAFE, Paris, November 20, 1996.

²⁰ *Ibid.*

If, notwithstanding these problems, the asylum seeker gets his claim registered at the border, it may be screened out as manifestly unfounded and the asylum seeker deported to his country of origin or a “safe third country,” defined as a country to which asylum seekers will be admitted and where they will risk neither persecution nor refoulement.²¹ Approximately 50 percent of the 500-600 annual border applications are screened out as manifestly unfounded, meaning that the Ministry of Foreign Affairs and Ministry of Interior authorities have concluded that the application lacks a sufficient legal or factual basis, is untimely, or some combination of those factors.²² These criteria give the authorities substantial discretion to make substantive asylum determinations. Such determinations, reached quickly and based on an increasingly restrictive interpretation of the Refugee Convention (see discussion below), risk refoulement of legitimate asylum seekers. The five countries from which the most asylum seekers placed asylum applications at the border in 1996 were Iraq, Nigeria, Rwanda, Zaire, and Somalia.²³ Conditions in all of these countries warrant close scrutiny of their nationals’ asylum claims. Yet, asylum seekers at the border are detained in a waiting zone where they often have no legal or other assistance. Officials of the Border Asylum Division of the Ministry of Foreign Affairs conduct an interview, usually lasting one hour, and then make a recommendation on admission to the Ministry of Interior, which the latter usually accepts.²⁴ Ministry of Interior officials maintain that they err on the side of admission in border application cases.²⁵ But, after such cursory procedures, in 1996 the authorities concluded that 68 percent of Nigerians and 67 percent of Zairians had manifestly unfounded claims and should not have access to the territory to seek asylum.²⁶ Iraqis, Rwandans, and Somalis fared better, with admission rates of 93 percent, 88 percent, and 80 percent, respectively.²⁷ Asylum seekers screened out at the border may appeal these decisions to the Administrative Tribunal, but their appeal will not suspend the deportation. After four days in the “waiting zone” they will be brought before a judge, but his jurisdiction only covers the decision to detain them, not the decision to deport them. In practice, many are deported before the four day period expires.²⁸

Problems at the *Préfectures*

²¹ Human Rights Watch/Helsinki interview, Jean-François Terral, director, OFPRA, Paris, February 26, 1997; Human Rights Watch/Helsinki interview, Olivier Guinabaudet, UNHCR, Paris, November 20, 1996; Amnesty International, France Terre d’Asile, *Droit d’asile en France...*, p. 22.

²² Law of 2 November 1945, Art. 35 quater; Ministry of Interior, “Waiting zones in ports...” pp. 5-7.

²³ Ministry of Interior, “Waiting zones in ports . . . ,” p. 4.

²⁴ Human Rights Watch/Helsinki interview, Yann Dyèvre, head, Office of Cross-border Traffic and Visas, Ministry of Interior, Paris, September 26, 1997.

²⁵ Ibid.

²⁶ Ministry of Interior, “Waiting zones in ports . . . ,” p. 5.

²⁷ Ibid., pp. 4-5.

²⁸ Human Rights Watch/Helsinki interview, Stéphane Julinet, ANAFE, Paris, November 20, 1996; Human Rights Watch/Helsinki interview, Olivier Guinabaudet, UNHCR, Paris, November 20, 1996.

Access to the asylum procedure from within French territory is reportedly better than at the borders, but Human Rights Watch/Helsinki has received reports of certain problems, nonetheless. If an asylum seeker is within French territory, in order to seek asylum, he or she must go to the *préfecture*²⁹ to obtain a provisional residence permit and asylum application. The permit allows residence in France for one month, during which time the asylum seeker is supposed to complete and send the application to OFPRA for consideration. French law provides that the *préfecture* may not deny permission to seek asylum for the sole reason that the applicant lacks documents otherwise required for admission into France. Rather, it may deny access to the regular asylum procedure in only four cases: (1) pursuant to the Schengen Agreement or Dublin Convention, another state is responsible for the asylum claim; (2) the asylum seeker is admissible in another country where he will benefit from effective protection against persecution and refoulement; (3) the asylum seeker's presence in France poses a grave risk to public security; and (4) the application is based on deliberate fraud, constitutes an abuse of the asylum procedures or is made for the sole purpose of obstructing imminent expulsion.³⁰ Even so, in cases falling in the last three categories, the *préfecture* will refer the claim to OFPRA, albeit with a request that the claim be adjudicated in its accelerated priority procedure.

Except in the exceptional cases noted above, the *préfectures* are supposed to distribute provisional residence permits and refugee status applications to asylum seekers as a matter of course. In an interview with Human Rights Watch/Helsinki, Jean-François Terral, director of OFPRA, insisted that the *préfectures* have no competence regarding the substance of refugee status claims. He stated, "They are obliged to give a one-month residence permit; they can never deny anything."³¹ Nonetheless, lawyers and advocates for asylum seekers report several problems often encountered at the *préfectures*, suggesting that the *préfectures* sometimes create serious obstacles to those seeking asylum. A UNHCR official based in Paris told Human Rights Watch/Helsinki that "from the moment an application appears malifide, [*préfecture* authorities] are going to make life difficult for [the asylum seeker]. [He/she] might have difficulties even getting the form."³²

Although French law and the Refugee Convention provide that asylum seekers should not be penalized for lacking proper travel documents, sometimes *préfecture* officials reportedly obstruct access to the procedure for those without proper documents.³³ To make matters worse, interpretation services are limited or non-existent at the *préfectures*, making it very difficult for many asylum seekers to explain irregularities in their documents or otherwise communicate their asylum claims to the authorities. A Ministry of Interior official interviewed by Human Rights Watch/Helsinki confirmed that professional interpreters may not always be available at the *préfectures*, but he asserted that in most cases it does not matter because the asylum seekers can find someone—another asylum seeker or other foreigner—in the room to translate for them. He reported that if that does not work, *préfecture* officials will send the asylum seeker away, telling him or her to return in ten days with a friend who can act as an interpreter.³⁴ The use of non-professional interpreters is contrary to international guidelines on asylum procedure and risks material errors in communication of asylum claims.³⁵ The combined effect of these practices is that *préfecture* officials sometimes either

²⁹ An office of France's administrative regions.

³⁰ Law of 2 November 1945, art. 31 bis.

³¹ Human Rights Watch/Helsinki interview, Jean-François Terral, director, OFPRA, Fontenay-sous-Bois, February 26, 1997.

³² Human Rights Watch/Helsinki interview, Olivier Guinabaudet, UNHCR, Paris, November 20, 1996.

³³ Law of 2 November 1945, art. 31 bis; Refugee Convention, art. 31(1).

³⁴ Human Rights Watch/Helsinki interview, Maxime Tandonnet, head of mission, European Affairs and Asylum Law, Ministry of Interior, Paris, September 26, 1997.

³⁵ The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* states that, "The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities

wittingly or unwittingly deny access to the asylum procedure. When *préfecture* officials refuse a provisional residence permit—because they do not understand the asylum seeker or object to some irregularity in her travel documents—the asylum seeker then risks arrest on the street for illegal residence, followed by detention and a deportation order. At that point, any effort to claim asylum could be discounted and denied as an effort to obstruct deportation.

Those asylum seekers who make themselves understood at the *préfectures*, still risk being refused a provisional residence permit and access to the normal asylum procedure for one of the four reasons identified above. Human Rights Watch/Helsinki has identified several areas of concern relating to this screening role that the *préfectures* play in the asylum procedure.

concerned.” Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva: UNHCR, 1992), para. 192.

The first criterion for screening out applications is that the application is the responsibility of another state signatory to the Schengen or Dublin agreements. These conventions raise two significant human rights concerns. First, they can cause considerable hardship during the asylum procedure. Family members that enter the signatories' collective territory by different travel routes or under authorization of different countries may be required by the Schengen and Dublin systems to go through the asylum procedure in different countries. In principle, they should be able to reunite after the procedure, but because substantive and procedural asylum laws are not uniform among signatory states, they are likely to obtain decisions on their applications at different times, and some may get status while others are returned to their country of origin, making reunification practically and legally difficult. Moreover, even if asylum seekers can reunite after the procedure, this can take months and even years, during which they must live apart from their families. In a dramatic example of the harm these asylum rules can cause, a lawyer told Human Rights Watch/Helsinki about a client who traveled to Paris via Germany, accompanied by her daughter, who, though an adult, is severely mentally disabled and unable to care for herself. Because the mother had a visa for France, she was required to seek asylum in France. Unfortunately, the daughter did not have a visa and therefore had to return to Germany (the country that permitted her entrance into the Schengen area) to seek asylum.³⁶ Schengen signatory states have recently agreed on certain guidelines to avoid division of families during the asylum procedure, but these guidelines are reportedly quite restrictive in their identification of family members who may remain together during the procedure. Moreover, no such rules exist for the Dublin system, which has now replaced Schengen asylum rules.

The Schengen and Dublin rules not only split families during the procedures; they also raise the risk that asylum seekers will be returned to a country where they face persecution. This risk arises, because although these agreements designate one state responsible for adjudicating the asylum claim, that responsible state reserves the right to send the asylum seeker to yet another, non-signatory state allegedly responsible for the claim.³⁷ Indeed, under the 1992 E.U. Resolution on a Harmonized Approach to Questions Concerning Host Third Countries, member states agreed to look for a non-E.U. state to which to send asylum applicants *before* applying the Dublin Convention to identify the responsible E.U. state.³⁸ Under this resolution, criteria for identifying such "safe third countries" are quite loose, requiring only that the asylum seeker's life or freedom not be threatened there, that he will not be exposed to torture or inhuman or degrading treatment there, that he has had protection in the third country or will be admitted to the country, and that he will not be returned from the third country to his country of origin. There is no requirement that the third country be a party to the Refugee Convention, that it maintain asylum procedures complying with international standards, nor that it actually agree to consider the merits of the returned asylum seeker's claims. Significantly, the resolution says nothing about the criteria that a "safe third country" must itself use to define additional "safe third countries." In practice, this means that under the Schengen and Dublin systems, signatory states can and do expel asylum seekers to "safe third countries," which in turn expel them to other countries, safe or not, and in some cases even back to their countries of origin, without there ever being any substantive review of the asylum claims.

³⁶ Human Rights Watch/Helsinki interview, Gilles Piquois, lawyer, Paris, July 31, 1997.

³⁷ Schengen Implementation Convention, art. 29(2); Dublin Convention, art. 3(5).

³⁸ Resolution on a Harmonized Approach to Questions concerning Host Third Countries, 30 November - 1 December 1992, art. 3.

The risk of such chain deportation arises not only indirectly pursuant to France's implementation of the Schengen and Dublin agreements, but also when the *préfectures* apply France's own "safe third country" rule—the second basis on which they can screen an application out of the regular asylum procedures. The *préfecture* may apply the "safe third country" rule if there is another country where the asylum seeker is admissible and will not be persecuted nor refouled to his country of origin.³⁹ Exclusion pursuant to the "safe third country" rule is rare for asylum applications submitted at *préfectures*, but the potential for this policy to cause ultimate refoulement remains a cause for concern.

The third basis on which the *préfectures* may screen out asylum claims—the asylum seeker poses a threat to public security—is reportedly rarely used. Human Rights Watch/Helsinki received no reports of human rights concerns raised by this provision.

Finally, the *préfectures* are authorized to screen out applications that are fraudulent, abusive, or made for the sole purpose of obstructing imminent expulsion. This is the basis most frequently cited by *préfecture* authorities for denying a provisional residence permit giving the applicant time to apply for asylum to OFPRA.⁴⁰ The broad language of this provision vests substantial authority in *préfecture* officials, which lawyers and refugee assistance organizations allege they sometimes abuse. An application may be considered fraudulent or abusive because of irregularities in an applicant's documents or any delay between her arrival in France and her application at the *préfecture*, notwithstanding reasonable explanations. Of particular concern is the apparent tendency to apply this provision to applicants who have been returned to France as a "safe third country," and to those who are controlled for identity documents before they have been able to obtain the asylum application and provisional residence permit from the *préfecture*.

³⁹ Law of 2 November 1945, art. 31 bis

⁴⁰ Human Rights Watch/Helsinki interview, Jean-François Terral, director, OFPRA, Fontenay-sous-Bois, February 26, 1997.

Except in cases transferred from France pursuant to the Schengen and Dublin agreements, all cases in which the *préfecture* screens out the asylum claim—because they came through a safe third country (other than the Schengen and Dublin signatories), they pose a threat to public security, or the claim is fraudulent, abusive, or made only to obstruct deportation—the case is nonetheless sent to OFPRA for a final decision prior to deportation. Unfortunately, the procedure accorded such cases is woefully inadequate. The asylum seeker is interviewed at the *préfecture* by the police, usually without the benefit of information about the procedure or the assistance of a lawyer or other counselor, and often without a professional interpreter.⁴¹ These interviews normally last approximately one hour.⁴² The asylum seeker then completes a written refugee status application, which, together with the record of the interview, consisting of the interviewer's notes, is sent to OFPRA, along with the *préfecture's* recommendation that the case be considered in its accelerated priority procedure. OFPRA generally considers the case on the basis of the written record forwarded by the *préfecture*, calling asylum seekers for interviews in only approximately 10 percent of such cases.⁴³ A decision is usually reached within forty-eight hours and in 95 percent of cases it concurs in the *préfecture's* conclusion that the claim should be denied.⁴⁴ An asylum seeker may appeal this decision to the CRR, but the appeal does not suspend the deportation order and she can be deported immediately while the appeal is still pending.

OFPRA Director Jean-François Terral defended the “priority” procedure for cases screened out by the *préfectures*, noting that in 1996 such cases accounted for only 520 out of over 17,000 applications OFPRA received.⁴⁵ This does not obviate the fact that most of those 520 individuals were denied basic procedural rights outlined in UNHCR guidelines, including guidance regarding the procedure, the assistance of a competent interpreter, and the right to remain in the country while an appeal is pending.⁴⁶

Illustrative cases

Case documentation provided to Human Rights Watch/Helsinki by refugee assistance organizations illustrates the impediments to seeking asylum that asylum seekers face in France at both the borders and the *préfectures*.

Ali Iqbal

The case of Ali Iqbal reveals the kinds of problems that can occur under the existing rules. Iqbal, a twenty-six-year-old Pakistani national, sought asylum in March 1996 in the U.K., citing a fear of persecution based on his involvement in Kashmiri separatism. Because he had traveled through France en route to the U.K., British authorities, citing the “safe third country” rule, returned Iqbal to France, where he was detained and almost deported before he was able to access the asylum procedure. The following are excerpts of the London-based Refugee Legal Centre's (RLC) account of the case:

⁴¹ Human Rights Watch/Helsinki interview, Patrick Delouvin, Amnesty International French Section, Paris, November 21, 1996; Human Rights Watch/Helsinki interview, Anne Castagnos, France Terre d'Asile, Paris, November 21, 1996.

⁴² Human Rights Watch/Helsinki interview, Maxime Tandonnet, head of mission, European Affairs and Asylum Law, Ministry of Interior Paris, September 26, 1997.

⁴³ Human Rights Watch/Helsinki interview, Sylvia Celestin, communications officer, OFPRA, Fontenay-sous-Bois, February 26, 1997.

⁴⁴ Human Rights Watch/Helsinki interview, Maxime Tandonnet, head of mission, European Affairs and Asylum Law, Paris, September 26, 1997.

⁴⁵ According to a recent report by Amnesty International and France Terre d'Asile, applications subject to the priority procedure numbered 620 in 1995 and 581 in 1996. Amnesty International French Section, France Terre d'Asile, *Droit d'asile en France . . .*, p. 30.

⁴⁶ UNHCR, *Handbook on Procedures . . .*, paras. 192-200.

[Iqbal] said he had traveled from Pakistan, by car, with an agent who held a false passport for him. Whilst uncertain of his route he believed he had crossed Turkey, Greece and Italy before entering France. He remained in a safe house in France (almost certainly Paris) for 2-3 weeks before coming to the UK. He was provided with another false passport, a Dutch one, before he was put on the Eurostar train to London. He said he had been advised by his agent that he should not try to claim asylum in France because the French authorities would send him back to Pakistan.

The [UK] Secretary of State certified that the case was “without foundation” on safe third country grounds, and stated that Iqbal was readmissible to France (on the basis of an informal readmission agreement between the UK and France, the so-called “Gentleman’s Agreement” of 20 April 1995). Iqbal appealed against the decision to remove him to France, and was detained pending the hearing of his appeal.

. . . .

[Iqbal’s administrative appeal was denied and on 10 April 1996, leave to apply for judicial review was also refused.] Removal directions had already been set for the evening of that day. [RLC] contacted a French lawyer, Christian Bourguet, who agreed to take the case; [RLC] faxed him case documents. . . .

Dr. M [a friend of Iqbal] had given Iqbal sufficient cash to survive in France for a few days. Ms. Z [another Iqbal friend] went to see Iqbal whilst he was awaiting removal at Waterloo. Whilst she was there [RLC] spoke to him on the phone and made it clear that he had to ask repeatedly for asylum from the moment of arrival. [RLC] faxed him our standard document, in French (explaining that his application for asylum in the UK had not been considered substantively), a list of contacts including Bourguet’s details, and a copy of the determination. Ms. Z confirms that these were passed to him by the Immigration Service.

Following Iqbal’s return to France, Christian Bourguet sent a bundle of case papers to RLC. These show that Iqbal had been arrested on arrival at Gare du Nord and detained under a provision of French law related to illegal aliens

The police records show clearly that he asked for asylum and that the police were aware that he had been removed from the UK to France on third country grounds. Despite this, removal directions to Pakistan were set without any consideration whatever of his request for asylum. The case was not referred to the competent authority (the Ministry of the Interior, for claims at the border), and there was no asylum interview of any kind. His attempt to claim asylum was simply ignored. Furthermore, the Orders of removal (and detention pending removal) were served on Iqbal without an interpreter present, in flagrant violation of French law. These breaches are evident on the face of the police documents. He was therefore unaware of the import of these orders, and of the appeal rights which the documents of service contained...

[Iqbal then managed to contact Bourguet, who launched parallel legal challenges against the detention and deportation orders. His appeal against the deportation order was denied, but the challenge to the detention order was successful and Iqbal was released.]

Accompanied by Bourguet, Iqbal then tried to get the necessary asylum application form from the *préfecture*, so he could lodge his asylum claim with the competent authority (OFPRA). The police refused to issue him with a form, citing his lack of (a) identity documents and (b) any legitimate address. Having spent many hours preparing papers and attending Court, without any payment, Bourguet was unable to do more. He therefore advised Iqbal to go to France Terre d’Asile (FTDA), an NGO, for assistance in obtaining the application form from the *préfecture*. He went there, but was unable to gain assistance.

With the money he had, Iqbal was able to find lodgings with a family about 20 miles outside Paris. Dr. M. sent him more money. When Iqbal's ID finally arrived in London, Dr. M forwarded it to Bourguet. On 22 April Bourguet wrote directly to OFPRA urging them to ignore the usual procedures (since the police were refusing to issue the appropriate documents) and allow Iqbal to make an asylum claim.

On April 23 or 24, Iqbal went to the *préfecture* again, taking with him proof of his residence and the ID document. As he was afraid to go alone in case he was arrested and sent back to Pakistan, he was accompanied by Bourguet's secretary. The *préfecture* again refused to issue him with an application form on the ground that he was not residing in central Paris. They said he must move into the area, and that he could not get a form from a Préfectoral office near where he was staying. They also said he had to give evidence that someone in France was supporting him financially.

. . . .

On May 3 the *préfecture* wrote to Iqbal requiring him to attend their offices on May 9, at 8:30 a.m. He went there with David Boratov of FTDA, apparently expecting to be given the asylum application form previously denied him. Instead he was arrested and given a detention order, authorizing his detention (again under [a legal provision related to illegal aliens]), and was sent to the detention centre at Vincennes, pending removal to Pakistan (FTDA apparently reported to Bourguet that the flight was to leave on 10 May). Bourguet immediately wrote to RLC by fax asking [it] to seek the intervention of the Home Office to prevent this refoulement.

Bourguet telephoned [RLC] later on the same day. He informed [RLC] that he was notified by ANAFE (an NGO which operates at airports) that Iqbal had been taken to Roissy airport that morning (i.e. 9 May) for immediate removal to Karachi. The authorities attempted to remove him on a plane due to leave at 12:35. He told [RLC] that Iqbal had refused to board the plane and the attempt to remove him was unsuccessful.

Ms. Z subsequently reported to [RLC] a telephone conversation she had with Iqbal on the evening of 9 May, and further information about the attempted removal was later provided by FTDA in David Boratov's fax to [RLC] of 29 May. Iqbal complained that the French authorities had used violence against him before and during the removal attempt. He resisted but was forced on to the aircraft. He was so distressed, and the passengers on the plane so shocked, that the Captain of the plane refused to take responsibility for him, and ordered the French authorities to take Iqbal off the plane.

In the meantime FTDA had contacted the press. A spokeswoman from the Ministry of the Interior telephoned FTDA and told them the authorities had decided to abandon their efforts to remove Iqbal, and that he would finally be allowed to claim asylum in France. This assurance was given at the very time when the attempt to remove Iqbal was taking place at Roissy.

Following this attempted refoulement, the Ministry of the Interior agreed that Iqbal could lodge his asylum claim. Despite this decision, the Removal Order remained in force.

. . . .

Iqbal was summoned to attend at the *préfecture* on 15 May. Prior to this appointment FTDA interviewed Iqbal about his fear of persecution in Pakistan and prepared a written statement in French. This was because FTDA anticipated that the priority procedure would be applied to Iqbal, and that there would be no interpreter available at the *préfecture* and therefore he would not be properly

interviewed before his application was sent to OFPRA. Furthermore, generally OFPRA expects asylum applications to be submitted in French. David Boratov of FTDA accompanied Iqbal to the *préfecture* on 15 May and took the statement with him. At the *préfecture*, Iqbal was not provided with an interpreter. He was merely told to write his application out in Urdu and had only about 15 minutes to do this. The officer refused to accept the written statement from Boratov. Normally OFPRA will not accept such a statement submitted separately from the application form; however, Boratov contacted OFPRA later and they agreed, exceptionally, to consider the statement, which was then sent to them.

On 24 May Iqbal was issued with a certificate of registration issued by OFPRA . . . which effectively placed him in the normal procedures This document normally entitles an asylum applicant to a temporary residence permit, renewable pending the determination of the application.

On 29 May Boratov and Iqbal returned to the *préfecture* to request that the residence permit be issued. However, the *préfecture* refused to issue the permit because the expulsion Order was still in force.⁴⁷

According to Christian Bourguet, Iqbal's lawyer, Iqbal's refugee status application is still pending with OFPRA.⁴⁸

Sajjad Saeed

In September 1996, another Pakistani asylum seeker returned to France from the U.K. faced similar treatment. On September 3, 1996, Sajjad Saeed was sent from the U.K. to France, re-entering French territory at Calais. He had several documents indicating his wish to seek asylum, and a French lawyer, retained on his behalf by the Refugee Legal Center in London, contacted border police at Calais to inform them of his request. Nonetheless, upon arrival at Calais, Saeed was placed immediately in custody. The next day, the *préfecture* of Calais issued a deportation order based on Saeed's unlawful entry into the territory. Like Iqbal, Saeed was placed in administrative detention pursuant to article 35 bis of the Law of 1945, the provision of French law relating to detention of illegal aliens. On September 5, 1996 he was brought before a judge to review the lawfulness of his detention, which the judge extended because Saeed lacked identity documents. On September 10, Saeed was transferred to Paris and taken to the Pakistani embassy. Because the embassy refused to issue him a *laissez-passer*, he was unable to take a September 11 flight to Pakistan on which the French authorities had reserved him a seat. On September 11, he was released from detention because the lawful period for such detention had expired. He then made contact with FTDA, which assisted in the preparation of his asylum claim and in making arrangements for an appointment at the *préfecture* of Paris in order to register that demand. Because FTDA and others working on the case thereafter lost contact with Saeed, we do not know whether his claim was ever registered. In subsequent correspondence with British immigration authorities, officials of the French Ministry of Interior claimed that the record of Saeed's interview with the authorities at Calais indicated that he did not wish to seek asylum and that he agreed to being deported to his country of origin. This assertion is contradicted by the statements made to the Calais authorities by Saeed's lawyer, and by Saeed's subsequent efforts to submit his claim for asylum with the assistance of FTDA.⁴⁹

Afghan woman

A representative of FTDA responsible for assisting asylum seekers in submitting their claims reported that in December 1996 she sent an Afghan woman to the *préfecture* at Creteil to obtain her provisional residence permit and asylum application form. The woman returned to the reception center and reported that *préfecture* officials had refused

⁴⁷ Refugee Legal Centre, "Ali Iqbal: Case Summary" (1996); see also, France Terre d'Asile, "Note de synthese sur le cas de M. Ali Iqbal" (October 1996).

⁴⁸ Human Rights Watch/Helsinki telephone interview, Christian Bourguet, lawyer, October 1, 1997.

⁴⁹ France Terre d'Asile, "Note de synthese sur le cas de M. Sajjad Saeed," (October 1996).

to give her the permit or form, but that since she did not speak French and there were no translators available, she did not understand why they had refused. The France Terre d'Asile representative then telephoned the *préfecture*, where an official told her that the provisional residence permit and application forms had been withheld because the woman lacked a passport (the false one under which she had traveled to France had been confiscated by the French border police) and her other documents reflected two different birthdates (probably attributable to the different calendar utilized in Afghanistan). The France Terre d'Asile representative offered explanations and the asylum seeker subsequently received permission to remain in the territory and to apply for asylum.⁵⁰ Without such intervention, this asylum seeker would have had little hope of gaining access to the procedure.

⁵⁰ Human Rights Watch/Helsinki interview, Nathalie Munter, temporary case worker, FTDA, Paris, February 25, 1997.

The instances of nonfeasance, misfeasance, and malfeasance by border and *préfecture* officials described above raise serious concerns about access to the French asylum procedure. Under international standards relating to asylum practices, "[t]he competent official (e.g., immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority."⁵¹ French policies and practices sometimes fall below this standard, creating a dangerous risk that those legitimately seeking asylum from persecution will be summarily returned to their country of origin with little or no consideration of their asylum claim. The problem is seriously exacerbated by the systematic inadequacy or unavailability of interpretation services at the borders and *préfectures*. These issues should be a priority for reform of French asylum policies and practices. Unfortunately, they figure nowhere in proposals currently under consideration.

REGULAR ASYLUM PROCEDURE

Notwithstanding the problems noted above, most asylum seekers make it past obstacles at French borders and at the *préfectures* and obtain the one-month permit to remain in France while they prepare their refugee status application for the regular OFPRA procedure. While asylum seekers who are admitted to the normal asylum procedure stand a better chance of proper adjudication of their claims than do those screened out at the borders and *préfectures*, Human Rights Watch/Helsinki has identified a number of serious defects in the procedural rights they enjoy.

UNHCR guidelines indicate that asylum seekers must be given the guidance necessary for submitting an application to the relevant authorities. To submit an application in France, asylum seekers must complete the form provided by the *préfecture* authorities and send it to OFPRA. Instructions for the form are available only in French, English, and Spanish. Moreover, these instructions request that the asylum seeker complete the form in French, although OFPRA officials told us that they will accept applications and documentation in any language.⁵² Free legal assistance is not available for OFPRA proceedings, and few asylum seekers are represented at this stage of the procedure.⁵³ In many cases, the written application is an asylum seeker's best chance to make his or her case, because OFPRA conducts interviews of only 50 percent of asylum seekers.⁵⁴

⁵¹ UNHCR, *Handbook on Procedures* . . . , para. 192.

⁵² Human Rights Watch/Helsinki interview, Sylvia Celestin, communications officer, OFPRA, Fontenay-sous-Bois, February 26, 1997.

⁵³ Human Rights Watch/Helsinki telephone interview, Patrick Delouvin, Amnesty International French Section, September 22, 1997. Free legal assistance is available for appeal proceedings, but only for the minority of asylum seekers who enter the country legally. France Terre d'Asile, *Reception and Accommodation of Asylum Seekers in Europe*, (Paris: France Terre d'Asile, 1997), p.26.

⁵⁴ Human Rights Watch/Helsinki interview, Jean-François Terral, director, OFPRA, Fontenay-sous-Bois, February 26, 1997.

The inadequacy of information and assistance provided to asylum seekers, in a procedure that is largely conducted on paper, prejudices many of their cases. Many asylum seekers do find assistance from France Terre d'Asile, a non-governmental organization that runs reception centers in which many asylum seekers live, and from other refugee assistance organizations. The difference in the success rates of those asylum seekers assisted by France Terre d'Asile is telling. Approximately 99 percent of applicants assisted by FTDA get an interview with OFPRA, as compared to 50 percent for asylum seekers generally. Even more striking, 50 percent of those assisted by FTDA obtain refugee status in France, as compared to 17 percent for all asylum seekers.⁵⁵

OFPRA Director Jean-François Terral argues that the difference reflects mere self-selection among asylum seekers. He told Human Rights Watch/Helsinki:

My opinion is that the good cases go to those specialized structures. Those who use the procedure to stay, don't go to those structures. It's quite clear. The poor Chinese peasant who comes to France under control of the mafia won't go to France Terre d'Asile; and if he wanted to, he's not free to. The Romanians, also. If they file a claim for asylum, they get an additional FF2000 [approximately US \$340], which is very interesting to them. After maybe six months in appeal they are refused. In some cases they are sent back. And in many cases they will come back. Obviously it is not in their interest to go to France Terre d'Asile. They stay in houses by themselves. They stay outside of the official structures for as long as possible. The Chinese, when by exception they have a very good file—we are happy when we find those people—go to France Terre d'Asile.⁵⁶

Regarding OFPRA's policy of interviewing only select asylum seekers, Terral told Human Rights Watch/Helsinki that when he started at OFPRA last year, he thought they should interview all applicants, but that he had since changed his mind. He explained:

When I came to the office, I thought [interviewing all applicants] was the right idea. Now, I think it is the wrong idea. OFPRA is organized by region and all of the files are seen by the head of the division or deputy and they decide about the interview. Some nationalities always get an interview, for example, Turkey, Sri Lanka, Iran, Iraq, and some others—certain nationalities, where we know there is always a need to go very deeply. Others, we look at the file and it depends on what's there. I have opened many of the files and there is nothing. It is a bad use of state money to have interviews in every case. For example, with the Chinese, the quality of the files is very low. And we know that most of the guys come in a very bad way. The demand is always the same way, made in very poor words. We must be cautious, so from time to time we make an interview during one week and we make our control. They will say that they are for democracy and that they were in Tiananmen. Then we ask more questions and he knows nothing about Tiananmen and democracy. Obviously these are poor peasants acting through illegal mafia. We feel we are being more true to the Geneva Convention to spend our money this way.⁵⁷

Although probably accurate in the case of some asylum seekers, Terral's arguments disregard the ways in which French asylum practice and procedure are stacked against many asylum seekers. Given that France requires visas for nationals of nearly every refugee-producing country and that, owing to their feared persecution, many asylum seekers are unable to obtain such travel documents, one can hardly hold it against them if they have to look to criminal gangs to ensure

⁵⁵ Human Rights Watch/Helsinki interview, Daniel Tardiff, France Terre d'Asile, Creteil, November 22, 1996.

⁵⁶ Human Rights Watch/Helsinki interview, Jean-François Terral, director, OFPRA, Fontenay-sous-Bois, February 26, 1997.

⁵⁷ Ibid.

their escape. Similarly, given that asylum seekers often lack legal assistance, information about the procedure, and translation services, it is not surprising that one opens "many of the files and there is nothing." The remedy—a personal, in-depth interview with an official competent in asylum matters—is systematically denied to half of all asylum seekers.

Regarding OFPRA's interview policy, Terral explained further, "We feel safe to act this way because we have a safety net—90-95 percent of negative decisions go to the CRR, and there he is always present before the court, present before the court and lawyers."⁵⁸ Unfortunately, monitoring CRR hearings for two afternoons, we discovered several substantial holes in this safety net.⁵⁹ CRR proceedings hardly constitute serious interviews. They commence with a brief summary of the case presented by a rapporteur. If the applicant is represented, then the lawyer makes a brief statement, followed by questions put to the lawyer and/or the asylum seeker. The whole proceeding lasts on average twenty-five minutes. Only those who have entered the French territory legally are entitled to free legal assistance. The others must hire lawyers with their own funds or represent themselves. At only half of the hearings we attended were the applicants represented. The CRR will only accept documentation that has been translated into French and such translations must be made at the asylum seeker's expense. At CRR hearings, interpretation services are available but they are inadequate. We observed that interpreters rarely translated any part of the proceeding other than questions put directly to the asylum seeker. Many asylum seekers are therefore ignorant of statements of the rapporteur, lawyer, or judges that they could either support or rebut.

Questions put to asylum seekers by the CRR panelists are often only indirectly related to the merits of their asylum claim. In some cases, these questions were rude and abusive; they were certainly not designed to elicit stories that, even in the best of circumstances, refugees might find difficult to relate. The judges repeatedly asked asylum seekers about their travel routes and why they had not sought asylum elsewhere. For example, we observed the hearing of an Algerian asylum seeker whose mother had allegedly died in police custody. After pressing the asylum seeker for documentation regarding his military service, as well as his mother's death, which he did not have, the president of the CRR panel retorted, "Did you think that you could come to France to claim asylum without any documents to show?" The president then noted that the asylum seeker's father lives in France and goes to Algeria for two weeks every year, with no problems except that he is shaken down for money by Islamist groups. In response, the asylum seeker explained that his father lives in France and wants to reunite his family there. To that, the president commented to her colleagues in open court, "It's okay to accept Algerians, but this one, no. We have enough like that. Your father should go back and fight for liberty and democracy. That's what an Algerian should do."⁶⁰

We also observed the hearing of the case of a Congolese man who first sought asylum in France in 1989. He claimed that he had been arrested, detained, and tortured in the Democratic Republic of Congo (then Zaire) in 1988. After he was released, he stated, his house was searched and he knew he was wanted by the authorities, so he fled to France. In 1990, OFPRA rejected his claim without the benefit of an interview. In 1991, he requested review of his claim, citing new facts including more details of his arrest, the claim that he had been involved in union activities, and evidence that after he left Zaire, his brother and uncle were arrested, tortured, and killed. His claim was denied again. The hearing we attended was convened to consider a second request to review the case, this time presenting a new medical certificate supporting his claim of torture. The president of the panel only asked how he had been able to live in France since 1989. When the asylum seeker's lawyer explained that he had worked legally until 1991 (when he had the right to do so), and then he worked illegally until 1993, after which he relied on the support of friends. The president responded, "That's the problem in France now."⁶¹

⁵⁸ Ibid.

⁵⁹ Human Rights Watch/Helsinki -attended hearings before three different CRR panels on February 25 and February 26, 1997. Our observations have been confirmed by others familiar with CRR proceedings.

⁶⁰ Human Rights Watch/Helsinki observations, CRR, Fontenay-sous Bois, February 25, 1997.

⁶¹ Ibid.

In another Congolese case, the asylum seeker sought asylum in France when he was apprehended by French authorities while traveling through France en route to Belgium, where, due to family connections, he intended to claim asylum. Pressing him about his travel route, the president asked, "Why didn't you go to Belgium directly from Congo? You'd have a better chance in Belgium. If you get refugee status will you go to Belgium?" The asylum seeker said that he did not really care about which country; that he had a visa to Italy and that friends in Italy told him that he should travel through France to reach Belgium; and that in the process of following those directions, he had been apprehended in France. Later in the hearing, when the asylum seeker made reference to contact he had had with Belgians running a school in his village, the president interjected, in apparent disregard of France's commitments under the Schengen agreement, "That makes me think again that your real reception country should be Belgium."⁶²

The UNHCR handbook prescribes the kind of fact-finding necessary for asylum determinations. It calls for "one or more personal interviews," providing the examiner an opportunity "to gain the confidence of the applicant in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings." It cautions examiners against being "influenced by the personal consideration that the applicant may be an 'undeserving case.'" And, noting the difficulty of documenting an asylum claim, the handbook stipulates that examiners should, when no other evidence is available, give asylum seekers the benefit of the doubt.⁶³

OFPPRA procedures do not meet this standard, and CRR review is no remedy. The procedures in both institutions need to be overhauled to ensure that asylum seekers receive information about the procedure and assistance in navigating it. All such information and assistance should be made available in a language with which the asylum seeker is familiar, through written or oral translations. OFPPRA should provide an opportunity for each asylum seeker to be heard in a personal interview. And the CRR should provide complete and professional translation services.

ASYLUM DECISIONS

In addition to the procedural problems identified above, Human Rights Watch/Helsinki has a number of concerns relating to the substantive law of asylum as applied by the French authorities. Lawyers and advocates for asylum seekers report an increasingly restrictive interpretation of the Refugee Convention that makes it virtually impossible for certain categories of refugees to be recognized as such in France. Three issues of particular concern are discussed below.

Membership in a Particular Social Group

⁶² Human Rights Watch/Helsinki observations, CRR, Fontenay-sous-Bois, February 26, 1997.

⁶³ UNHCR *Handbook on Procedures* . . . paras. 200-04.

The Refugee Convention guarantees protection for those who fear persecution due inter alia to their membership in a particular social group. France employs a narrow interpretation of this criterion, maintaining, for example, that Roma and homosexuals targeted by repressive laws and practices in Romania are not members of a social group deserving refugee protection.⁶⁴ In 1996, OFPRA granted refugee status to only 1 percent of the 3,356 Romanian asylum cases it adjudicated.⁶⁵ Director Terral cited this low acceptance rate as evidence that conducting interviews in these cases is generally a waste of OFPRA resources. The exceedingly low acceptance rate reflects not only the quality of Romanian asylum claims, however, but also France's abdication of its responsibilities under the Refugee Convention toward certain categories of Romanian refugees.

Persecution by Non-State Agents

French jurisprudence interprets the Refugee Convention to protect only those who fear persecution by state authorities or with their tacit approval.⁶⁶ This interpretation of the convention arbitrarily excludes those who fear persecution by armed groups from whom their government cannot protect them. It also prevents protection of those victimized in situations where governmental authority has simply collapsed. There is no basis for this jurisprudence in either the letter or the spirit of the Refugee Convention and the UNHCR has criticized it.⁶⁷ Nonetheless, it has had a significant effect on French asylum practice, most notably preventing many Algerians from obtaining protection in the face of persecution by armed Islamist groups. In 1996, OFPRA granted refugee status to only 4.5 percent of the 1,080 Algerians whose claims it considered.⁶⁸ While Algerians are probably the largest group currently victimized by this policy, it has also constituted a bar to refugee protection to, for example, Somalis fleeing their anarchic state and Russian Jews targeted by antisemitic groups. The following cases illustrate the devastating impact this policy can have.

*Sasha Smirnov*⁶⁹

A Russian Jew who was repeatedly attacked by militants of the Popular Russian Front, Sasha Smirnov fled to France and sought asylum. He claimed that before he fled there had been four incidents in which he was beaten and threatened with death if he did not leave the neighborhood. He was twice hospitalized with broken bones. In the final attack, his assailants strangled him with a cord until he lost consciousness, ransacked his apartment, and set it afire, leaving him there to perish in the flames. Fortunately he regained consciousness in time to escape. Smirnov reported each of the attacks to the police. Although they assured him that they would take action, there was no sign that the attacks would abate; in fact, they escalated and posed a real threat to his life. Smirnov produced medical records, as well as a police report, to substantiate all of his claims. In denying his request for refugee status, OFPRA did not question the factual basis of his claim, but rather, found no obligation to protect him under the Refugee Convention. Its decision stated:

[Smirnov] presented many medical certificates attesting to the attacks he suffered, as well as an attestation from the police, summarizing the several complaints that he made to their local bureau. In

⁶⁴ Human Rights Watch/Helsinki interview, Jean-François Terral, director, OFPRA, Fontenay-sous-Bois, February 26, 1997.

⁶⁵ OFPRA Statistics provided to Human Rights Watch/Helsinki, March 1997.

⁶⁶ As an exception to this rule, the French authorities have recognized refugees persecuted by non-state entities who they deemed to have attained the status of *de facto* state authorities. Human Rights Watch/Helsinki interview, Jean-François Terral, director, OFPRA, Fontenay-Sous-Bois, February 26, 1997.

⁶⁷ UNHCR, *An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR*, (Geneva: UNHCR, 1995), pp. 28-30; UNHCR *Handbook on Procedures*. . . , para. 65.

⁶⁸ OFPRA Statistics provided to Human Rights Watch/Helsinki, March 1997.

⁶⁹ This is a pseudonym.

his OFPRA interview, [Smirnov] made no statement of personal political involvement or activity, nor of persecution by actual Russian authorities. Moreover, no element permits us to conclude that the attacks that he suffered at the hands of the nationalist militants were either tolerated or encouraged by the authorities of his country of origin, nor that they have refused him protection. Therefore, his situation does not warrant protection under the Geneva Convention.⁷⁰

⁷⁰ OFPRA Decision (December 1996). (unofficial translation)

Sama Nur⁷¹

Nineteen-year-old Sama Nur fled her native Somalia with her mother and siblings and sought asylum in France. In her refugee status application, she claimed that her father had been an army officer and prominent government minister between 1988 and 1990, but that as a member of the government of Siad Barre, he had been arrested and detained by rival ethnic groups after Barre's fall in 1991. After her father's arrest, the rest of the family fled Mogadishu for Bosaso. They remained there for one year, but being constantly harassed, they fled on to Yemen. In April 1993, she returned to Somalia and was, on arrival in Bosaso, arrested by militia loyal to General Aideed and detained for three months, during which time she was mistreated and raped. In July 1993, she escaped and fled to Yemen, where she rejoined her family and then fled to Europe. Denying her claim for asylum, the CRR held:

Considering that, given current conditions in Somalia, the fears expressed by its nationals are a function of the general climate of insecurity prevailing in the country, where, after the disappearance of the legal government, the clans and sub-clans and factions of the same ethnicity fight to create zones of influence within the country, without ever exercising in these zones the degree of organized authority that would permit us to consider them as de facto authorities; that the fears cannot, therefore, be considered fears of persecution in the sense of the provisions of the Geneva Convention, which require for the recognition of refugee status the existence of a personal fear of persecution emanating from the authorities of the country of which the asylum seeker is a national, or encouraged or knowingly tolerated by those authorities; therefore, even assuming that the facts alleged could be established by the appellant, the appeal cannot be accepted.⁷²

The interpretation of the Refugee Convention used to deny these asylum seekers protection they clearly need stands in stark contrast to the UNHCR's views on the issue. Regarding agents of persecution, the UNHCR handbook unequivocally states:

Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbors. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, *or prove unable*, to offer effective protection.⁷³

Under French jurisprudence, no refugee protection is available where the government in the country of origin has simply collapsed or otherwise failed to protect the asylum seeker. This position violates the Refugee Convention and puts those rejected on these grounds at serious risk.

Temporary protection

France has a limited program of providing temporary protection to certain categories of asylum seekers. The temporary protection regime is not based in law, but in a number of ministerial circulars and directives providing for ad hoc non-refugee protection. The primary beneficiaries of the regime have been those fleeing the conflict in Bosnia and Hercegovina, who were not otherwise eligible for refugee status, and some Algerians who have fallen afoul of the restrictive jurisprudence on agents of persecution discussed above.

⁷¹ This is a pseudonym.

⁷² CRR Decision (February 1997). (unofficial translation)

⁷³ UNHCR, *Handbook on Procedures*, . . . , para. 65 (emphasis added).

Human Rights Watch/Helsinki has identified several problems with France's temporary protection regime. First, providing only renewable three- or six-month provisional residence permits, in many cases without the right to work or enjoy social benefits, the regime falls short of ensuring the protection mandated by the Refugee Convention.⁷⁴ As such, it must not be used—as it often is with Algerians—as a cheap substitute for refugee status, a status denied only because France refuses to apply the Refugee Convention properly. The concept of temporary protection was developed by the UNHCR to address the practical difficulties presented when a country experiences a mass influx of asylum seekers in need of protection. The policy was designed to enable countries to provide temporarily the protection needed until a permanent solution could be found, without overburdening their asylum procedures.⁷⁵ Human Rights Watch/Helsinki has observed a dangerous trend in Europe toward perversion of the temporary protection concept. As western European countries pursue increasingly restrictive interpretations of the Refugee Convention in their asylum decisions, they are nonetheless constrained by binding prohibitions—in the European Convention on Human Rights, as well as in the Refugee Convention—against returning people to countries where they risk persecution, torture, or inhuman or degrading treatment or punishment. To avoid breaching these obligations, a number of countries, including France, have employed temporary protection regimes, which, while avoiding refoulement, deprive refugees of social rights to which they are entitled under the Refugee Convention and prolong the hardship they have suffered by living in uncertain and insecure circumstances. Thus temporary protection risks becoming a subsidiary form of protection for the victims of an overly restrictive interpretation of the Refugee Convention. This is a wholly unacceptable application of the temporary protection concept. The solution is for France, and other European countries, to step up to their obligations under the Refugee Convention—particularly to victims of non-state persecution—and reserve temporary protection for the truly mass influx situations for which it was designed.

Another problem with the temporary protection regime is that such protection is accorded in a secretive and seemingly arbitrary procedure. When OFPRA concludes that due to its restrictive interpretation of the Refugee Convention it cannot grant refugee status to certain applicants who nonetheless require protection—notably Algerians, Somalians, and Liberians—it can refer these cases to a special committee consisting of representatives of the Ministry of Interior, Ministry of Social Affairs, and Ministry of Foreign Affairs. This committee then decides whether the applicant will obtain temporary protection.⁷⁶ There is no way for an asylum seeker to know the criteria by which temporary protection is accorded. OFPRA Director Terral described the procedure as “secret,” stating further:

⁷⁴ Human Rights Watch/Helsinki interview, Isabelle Denise, Ligue Francaise des Droits de l'Homme, Paris, July 31, 1997. According to an official of the Ministry of Interior, the length of residence permits and the benefits they accorded were initially variable, but the practice has now stabilized so that all beneficiaries of temporary protection receive six-month permits with the right to work. Human Rights Watch/Helsinki interview, Maxime Tandonnet, head of mission, European Affairs and Asylum Law, Ministry of Interior, Paris, September 26, 1997. Even these more generous rights are not comparable to convention refugee protection.

⁷⁵ See generally UNHCR, *The State of the World's Refugees* (New York: Oxford University Press, 1995), p. 85.

⁷⁶ Human Rights Watch/Helsinki interview, Jean-François Terral, director, OFPRA, Fontenay-sous-Bois, February 26, 1997; It is also possible for an asylum seeker to approach the Ministry of Interior directly to obtain temporary protection. Some Algerians have reportedly chosen this route. Human Rights Watch/Helsinki telephone interview, Patrick Delouvin, Amnesty International French Section, September 22, 1997.

I can't say anything about the criteria, but all [Algerian] journalists have benefitted. The numbers are much higher than anyone imagines. We prefer to be criticized and remain closed. I consider we do what we have the duty to do. I don't have to be talkative. If in OFPRA we get a request that we can't recognize, but if it is a serious problem then it goes to the other procedure.⁷⁷

Without transparency, the French temporary protection program risks appearing arbitrary. Indeed, French human rights groups complain that in practice, they see arbitrary distinctions, not only between those who get temporary protection and those who do not, but also in the length of the temporary protection permits and the benefits that accompany them.⁷⁸

PROPOSED REFORMS

On July 31, Patrick Weil delivered his report and proposed reform of immigration and asylum policies and practices to Prime Minister Jospin. One section of the report was devoted to asylum issues. At this writing, the government is considering the Weil report and is expected to submit draft legislation to the National Assembly by the end of October. On the question of asylum, the government's current draft follows Mr. Weil's proposals closely.

The Weil report recommends a number of reforms aimed at fortifying the right to asylum by clarifying the distinction between asylum and immigration, and eliminating incentives for economic immigrants to abuse the asylum procedure. To this end, the report recommends: (1) consolidating all laws relating to the right of asylum in one section of the 1952 law establishing OFPRA; (2) creating two new categories of subsidiary protection for those requiring protection but falling outside of the narrow definition of convention refugee prevailing in French jurisprudence; (3) providing OFPRA interviews for all applicants, reforming CRR procedures, and improving integration for recognized refugees; and (4) countering abuse of the procedure by applying priority procedures to claims made by those from countries for which OFPRA has concluded that refugee status may be withdrawn.⁷⁹ The government's draft text would adopt all of these proposals except those relating to procedural reform. While some of these proposed changes are a welcome improvement, Human Rights Watch/Helsinki believes that they fall short of the reform needed to bring French asylum policy in line with its international commitments.

⁷⁷ Ibid.

⁷⁸ Human Rights Watch/Helsinki interview, Isabelle Denise, Ligue Francaise des Droits de l'Homme, Paris, July 31, 1997.

⁷⁹ Patrick Weil, "For a Fair and Effective Immigration Policy: Report to the Prime Minister," July 1997, pp. 12-16.

Much of the government's draft legislation on asylum is devoted to implementing Mr. Weil's proposal to consolidate asylum provisions in one law. Although this consolidation may clarify the law, it will do little to eliminate the blurring between immigration control and refugee protection that occurs in practice at French borders, waiting zones, and *préfectures*. Officials working on France's front line against illegal immigration must distinguish between economic immigrants and asylum seekers and unconditionally accord the latter access to the asylum procedure. Both the Weil report and the government's draft legislation are unfortunately silent on questions of access to the asylum procedure.⁸⁰ As discussed in this report, we believe that there are substantial problems with the discretion exercised by border and *préfecture* officials—lawfully and unlawfully—to inhibit access to regular asylum procedures. Measures to circumscribe that discretion should be included in the proposed reform of asylum policies. The reform effort should also be expanded to include necessary changes in administrative practices at the borders and *préfectures* to improve access to the asylum procedure and provide asylum seekers with the procedural guarantees to which they are entitled.

The Weil report accurately describes prevailing French jurisprudence on the Refugee Convention as contrary to France's principles. Unfortunately, it does not acknowledge that this jurisprudence is also contrary to the Refugee Convention. Moreover, neither the Weil report nor the government's draft legislation proposes to restore the proper interpretation of the convention in French law. Rather, both the report and the draft law would create two new protection statuses. As currently conceived in the government's draft law, the first status would cover those persecuted because of their "activities in support of freedom," as referenced in the preamble to the French constitution. OFPRA would have sole authority to recognize those falling in this category and could accord them the same status as convention refugees. The second new status proposed would cover those who would, if denied permission to remain in France, be exposed to inhuman or degrading treatment or would face a major risk to personal security. This second group of asylum seekers would, upon a decision of the Minister of Interior, be entitled to temporary non-refugee protection, consisting of a residence permit lasting up to one year and the right to work.

⁸⁰ The government's draft law contains some ambiguity on this point. On the one hand, it would delete a provision that currently gives OFPRA competence to act on an asylum case only after the asylum seeker has registered with the *préfecture*. It would also delete a provision that gives OFPRA no jurisdiction over Schengen/Dublin cases. In principle, this suggests that an asylum seeker who was unable to register his claim at the border or the *préfecture*, or was screened out of the regular asylum procedure on the basis of the Schengen/Dublin rules could, under the proposed law, nonetheless go to OFPRA to request recognition as a refugee. At the same time, the proposed legislation retains provisions giving *préfectures* sole authority over requests to remain in France to seek asylum, as well as provisions giving asylum seekers screened out under the Schengen/Dublin rules no right to request refugee status from OFPRA. Therefore, while the purpose of the proposed amendments dropping current limitations on OFPRA's authority is not clear, it appears that they are not intended to alter the procedure by which asylum seekers obtain access to the asylum procedure or to address the kinds of concerns about that procedure that we have raised in this report. An official of the Ministry of Interior confirmed that nothing in the proposed law would address our concerns about access. Human Rights Watch/Helsinki interview, Maxime Tandonnet, head of mission, European Affairs and Asylum Policy, Ministry of Interior, Paris, September 26, 1997.

Although these proposals address a defect in existing French asylum law, they do not bring it into compliance with governing international standards. Some of those excluded from refugee protection because they fear persecution by non-state actors would be recognized as refugees under the proposed law because they could demonstrate a threat of persecution resulting from their “activities in support of freedom.” Others excluded because of France’s restrictive interpretation of the Refugee Convention would not meet that criterion, however, and under the proposed reform, they would receive only temporary non-refugee protection. The government’s draft provision creating this temporary non-refugee protection has clearly been inspired by article 3 of the European Convention on Human Rights, which has been interpreted to prohibit states from sending someone to a country where they face a real risk of being subjected to torture or inhuman or degrading treatment or punishment. While we welcome France’s explicit recognition of its obligation under the European Convention, it does not excuse derogation from the Refugee Convention. Many of those who would benefit from this new status are entitled to the traditionally more durable convention refugee status. Instead, they would receive temporary protection for up to one year. The Ministry of Interior would apparently retain the discretion to give temporary residence permits for shorter periods of time. The guarantee of a work permit is a welcome improvement over the current temporary protection regime. At the same time, the proposed new status falls short of convention refugee protection, which comes with a full range of social rights and can only be withdrawn upon an individualized assessment taking into consideration reasons for continued protection arising out of past persecution.⁸¹ Our concerns are amplified by the apparently wide discretion that the proposed law would accord the Ministry of Interior in its decisions regarding this temporary non-refugee status. In particular, the proposed law says nothing about the procedure the ministry must follow in reaching its decisions regarding this status, nor whether negative decisions would be subject to a right of appeal and the right to remain in France pending that appeal. In short, the proposed reform can only be called a modest improvement on the current temporary protection regime discussed earlier in this report. Specifically, it implicitly condones a restrictive interpretation of the Refugee Convention that finds no support in the text of the convention and has been criticized by the UNHCR; it substitutes temporary non-refugee protection for convention refugee status; and it leaves open the possibility for the continued appearance of arbitrariness in ministry decisions regarding temporary non-refugee protection.

The Weil report contains some important recommendations regarding the asylum procedure. These measures have been omitted from the government’s draft law, but could still be taken up as part of administrative reform. Human Rights Watch/Helsinki urges the government to do so. In this regard, we welcome Mr. Weil’s recommendation that OFPRA conduct interviews of all asylum seekers. This proposal addresses one of the most serious problems with existing practice. We note that the right to an OFPRA interview should extend to asylum seekers in the accelerated or priority procedure, as well as those in the regular asylum procedure. Human Rights Watch/Helsinki also welcomes Mr. Weil’s proposal for reform of the CRR, although the elements of that reform remain vague. We urge any commission convened to study reform of the CRR to consider carefully the findings and recommendations contained in this report.

The Weil report’s final proposal in the asylum field was to call for priority procedures in all cases in which the applicant’s country of origin is one for which OFPRA has concluded that it may withdraw refugee status. The government has accepted this proposal, which would effectively import into French law the “safe country of origin” rule endorsed by E.U. member states in two 1992 resolutions.⁸² The proposed law would create a rebuttable presumption against asylum seekers from particular countries. By definition, such rules impinge on an asylum seeker’s right to an individualized assessment of his fear of persecution. Under governing international standards, asylum seekers from “safe countries of origin” must have a meaningful opportunity to defeat the presumption against them. At present, French procedures do not provide this opportunity. Applicants subject to the proposed rule must have access to information and adequate interpretation services at the *préfectures*; they must have an opportunity for an interview with OFPRA; and they must have the right to appeal negative decisions to the CRR and to await the outcome of their appeal

⁸¹ Refugee Convention, Art. 1(C)(5).

⁸² See Resolution on manifestly unfounded applications for asylum, adopted Nov. 30, 1992; Conclusions on countries in which there is generally no serious risk of persecution, adopted Nov. 30, 1992.

in France. In the absence of such additional procedural reforms, the proposed rule would run afoul of France's international commitments.

CONCLUSION

Human Rights Watch/Helsinki welcomes Prime Minister Jospin's willingness to revisit some of the restrictive asylum and immigration policies adopted in recent years. The right to seek and enjoy asylum has been under assault in France. In part, this has been a function of increasingly restrictive asylum policies, often adopted in concert with France's E.U. partners. Limitations on asylum rights in France can also be traced to a general anti-immigrant atmosphere, which breeds suspicion of all foreigners, including refugees. Prime Minister's Jospin's initiative offers an important opportunity to reverse these trends. Human Rights Watch/Helsinki has identified several priority issues for the reform. Of particular importance are (1) improved access to the asylum procedure; (2) access to information and assistance, including adequate translation services, necessary for submitting an asylum claim; (3) personal OFPRA interviews in all asylum cases, including those considered manifestly unfounded or subject to the priority procedure; (4) an opportunity to remain in France pending all appeals, including those from the priority procedure; and (5) amendment of prevailing interpretations of the Refugee Convention that deny refugee protection for those persecuted in circumstances where their government fails to protect them.

The Weil report identifies many of the concerns raised in this report, but its recommended reforms do not adequately address them. The government's current draft law, which draws heavily on the Weil report, also comes up short. Its recodification of the aliens law to collect all asylum provisions in one place is largely symbolic. Its proposed temporary non-refugee protection for those fearing inhuman or degrading treatment or risk to personal security would simply paper over defects in existing asylum jurisprudence. Mr. Weil's proposal for interviews in all asylum cases is welcome and should be incorporated into the government's proposed reform, together with other procedural reforms recommended in this report. Without those procedural reforms, the government's proposed codification of the safe country of origin concept raises a risk of *refoulement*.

On the right track to reform, the Jospin government should take this opportunity to bring French asylum policies in line with governing international standards. Human Rights Watch/Helsinki urges careful consideration of its recommendations to achieve that end.

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