



# Human Rights Watch Concerns and Recommendations on France

Submitted to the UN Human Rights Committee in advance of its Pre-Sessional  
Review of France

May 2014

Human Rights Watch welcomes the upcoming review of France by the Human Rights Committee. This **briefing provides an overview of our main concerns with regard to France's** compliance with the International Covenant on Civil and Political Rights (ICCPR). We hope it **will inform the Committee's** pre-sessional review of France and that the areas of concern highlighted here will be reflected in the list of issues submitted to the French government ahead of the review.

## **Non-suspensive appeal and the risk of *refoulement* (Articles 7 and 13)**

French law continues to exclude certain categories of persons from accessing a suspensive appeal against their removal from France, exposing them to a risk of *refoulement* and denying them a right to an effective remedy. These include persons considered to pose a serious threat to public order and asylum seekers whose **application under the “priority asylum procedure” is rejected. This procedure applies to nationals of countries considered by France to be “safe”,** persons deemed to be a serious threat to public order or whose applications are considered fraudulent, and those against whom an expulsion order is already pending.

For non-EU nationals held in a French “holding area” at the border (*zone d'attente*) who are denied entry onto the French territory, appeals do not have suspensive effect. While French law provides for an appeal with suspensive effect for those in a holding area who apply to enter France in order to seek asylum, the appeal must be lodged within 48 hours and written in French, raising concerns about the effectiveness of such an appeal.

## **Situation of unaccompanied migrant children in transit zones (Articles 9, 10, 13, 24, 26)**

Under French law, unaccompanied children—who arrive at an airport or seaport without parents or guardians to protect them—can be held in one of more than 50 transit zones for up to 20 days, during which time the government claims they have not entered France. This legal fiction allows the French government to deny due process rights to the children in the transit zones that unaccompanied children in France enjoy, in violation of article 24 of the Covenant.

France has not changed its practice despite a 2009 French court ruling that the transit zones are in fact part of French territory, and the weight of international law, including a 1996 European Court of Human Rights binding judgement, indicating that international zones at airports and elsewhere do not have extraterritorial status.<sup>1</sup>

Children detained in the transit zones, including at Roissy Charles de Gaulle airport near Paris, **France's largest transit zone**, can be required to sign papers initiating their deportation without the assistance of a guardian, and face an expedited asylum procedure.<sup>2</sup> They are sometimes detained with unrelated adults—in violation of international standards—making them vulnerable to **exploitation and abuse**. **Unaccompanied children already “in” France** are not detained and are given full asylum hearings (for more on this, please see: <http://www.hrw.org/news/2014/04/08/france-unaccompanied-children-detained-borders>).

By law, the public prosecutor must assign a guardian to every unaccompanied child, yet some children go without help at key points in their detention. These ad hoc administrators, typically **volunteers, have very limited resources to respond to the children's need for assistance with** complex procedures, including immigration claims and age assessment, and are not always assigned to assist children with sufficient speed. Particularly in more remote transit zones, such as Marseilles or Lyon, children may not receive any assistance prior to their return to their home country, in violation of articles 24 and 26.

### **Limited access to a lawyer in pre-charge detention (Article 14)**

While a reform of the French code of criminal procedure in 2011 has guaranteed those in police custody access to a lawyer from the outset of their detention, the law allows prosecutors to delay access in exceptional cases involving persons suspected of serious crimes for up to 12 hours. A “liberty and detention” judge can postpone access to a lawyer for up to 24 hours in such cases.

The “liberty and detention” judge can postpone access to a lawyer for national security suspects for up to three days, as was the case prior to the 2011 reform and about which the Committee expressed concerns during its review of France in 2008. Access to a lawyer from the outset of detention, without exceptions, is key for the preparation of an effective defense and a fundamental safeguard against torture and other ill-treatment.

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<sup>1</sup> Cour de cassation, Première chambre civile, Arrêt n°327 du 25 mars 2009 (08-14.125), [http://www.courdecassation.fr/jurisprudence\\_2/premiere\\_chambre\\_civile\\_568/327\\_25\\_12330.html](http://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/327_25_12330.html); Ammur v France, **Application No.19776/92**, Judgment June 25, 1996, Reports 1996-III, para. 52

<sup>2</sup> “France: Unaccompanied Children Detained at Borders”, Human Rights Watch news release, April 8, 2014, <http://www.hrw.org/news/2014/04/08/france-unaccompanied-children-detained-borders>

In all cases, detainees are only allowed an interview with their lawyer for up to 30 minutes **which can undermine the right to an effective defense by limiting lawyers' ability to provide advice at a critical stage in the procedure.**

### **Surveillance and the right to privacy (Article 17)**

French law allows for surveillance of communications which is neither necessary nor proportionate, in breach of the right to privacy under Article 17. In December 2013, France enacted Law No. 2013-1168 on Military Planning for the years 2014 to 2019. Article 20, which will enter into force on January 1, 2015, allows the government to conduct far reaching surveillance without any judicial oversight. The law allows designated officials at the Ministries of the Interior, Defense, Economy, and Budget to request communications data from operators and hosts of internet services on broad grounds, including national security as well as **“safeguarding the essential elements of France’s scientific and economic potential”** and the prevention of terrorism and crime. The law does not require a judicial authorization (for more on this, please see: <http://www.hrw.org/news/2013/12/26/french-contradictions-data-surveillance> ).

Surveillance by French intelligence agencies is currently governed by the Law of 1991 on the Secrecy of Electronic Communications, codified in the Code of Internal Security. This law allows the ministers of defense, the interior or customs, or a person designated by them to request an interception authorization, delivered by the Prime Minister following an opinion by the National Commission for the Control of Security Interceptions (CNCIS), on grounds of **national security, “safeguarding essential elements to France’s scientific and economic potential”, with no judicial involvement** (for more on this, please see: <http://www.hrw.org/news/2013/08/06/letter-french-prime-minister-data-surveillance-claims-and-right-privacy> ).

### **Discriminatory restrictions on religious symbols (Articles 18 and 26)**

Act No. 2004/228 of March 15, 2004, which prohibits the wearing of ostentatious religious symbols in public schools and about which the Committee raised concerns when it reviewed France in 2008, remains in force. By banning students from wearing Muslim headscarves (hijabs), Jewish kippah, Sikh turban, and large Christian crosses, this law breaches the rights to freedom of religion (Article 18) and to freedom of expression (Article 19). The ban also has a disproportionate impact on Muslim women who wear the Muslim headscarf and is therefore discriminatory in practice. We are concerned by reports that the ban has led to the suspension or exclusion of girls who wear the Muslim headscarf from schools as well as of some girls who wear long skirts, considered to be religious dress.

Following its Universal Periodic Review (UPR) in January 2013, France rejected calls by other states to reconsider this ban (for more on this, please see:

<http://www.hrw.org/news/2013/06/06/un-human-rights-council-adoption-outcome-upr-france> ).

In October 2010, France enacted a law which bans the concealment of the face in public, except for places of worship. Act No. 2010-1192 of 11 October 2010, which entered into force on **April 11, 2011, provides for a fine of up to 150 Euro and/or a compulsory “citizenship” course** for those who wear clothing intended to cover the face in public. The law also makes coercing another person to conceal their face a criminal offense **punishable by one year’s imprisonment** and a 30,000 Euro fine. According to the annual report of the Observatory on Secularism (Observatoire de la laïcité) published on May 15, 2014, between the entry into force of the ban and February 21, 2014, law enforcement officials had conducted 1,111 identity checks on the basis of that law, the majority (594) on women wearing full face veils, leading to 1038 fines. Many of the women were checked more than once.

The prohibition is neither necessary nor proportionate, and breaches the right to freedom of religion and expression of those who chose to conceal their face in public. As the French government stated in its fifth periodic report, the aim behind the ban is to prohibit the wearing of the full face veil (the niqab or burqa). It disproportionately impacts Muslim women and is, as such, discriminatory in practice (for more on this, please see:

<http://www.hrw.org/news/2010/12/21/questions-and-answers-restrictions-religious-dress-and-symbols-europe> ).

### **Discrimination against Roma (Article 26)**

Under both presidencies of Nicolas Sarkozy and François Hollande, migrant Roma have faced discriminatory expulsions and evictions and stigmatizing public statements by high level officials.

An August 2010 circular of the Ministry of the Interior ordering prefects to systematically dismantle unauthorized camps and prioritize those inhabited by Roma was leaked to the press in September 2010. While the government removed it and replaced it by another circular that did not specifically mention Roma, the circular revealed a government policy clearly targeting Roma for discriminatory evictions and removals which have continued since. Indeed, despite calls by François Hollande for an end to discriminatory measures while he was a presidential candidate, in 2013, evictions of Roma living in unauthorized camps reportedly doubled compared to 2012. In most cases they were conducted without offers of adequate alternative

housing. Even though French law lacks necessary safeguards against forced evictions, following its UPR review in January 2013, the French government rejected a recommendation to amend existing laws and enact new ones in order to end forced evictions of Roma (for more on this, please see: <http://www.hrw.org/news/2013/06/06/un-human-rights-council-adoption-outcome-upr-france> ).

A reform of the immigration law in 2011 introduced an offense of “abuse of the right to free movement” by EU citizens, making it easier in practice for the authorities to expel Roma who are citizens of Romania or Bulgaria on the assumption that they repeatedly exercise their right, as EU citizens, to short stays in France with a view to, one day, receiving social benefits (for more on this, please see: <http://www.hrw.org/news/2011/09/28/france-s-compliance-european-free-movement-directive-and-removal-ethnic-roma-eu-citi> ).

Roma were also the subject of discriminatory rhetoric by Prime Minister Manuel Valls while he was Minister of the Interior, when he claimed that the lifestyle of Roma was “extremely different from ours” and that only a minority wanted to integrate in France. Manuel Valls claimed that the only solution was to progressively dismantle the camps and return Roma to the border (for more on this, please see: <http://www.hrw.org/news/2013/09/27/dispatches-shameful-rhetoric-against-roma-france> ).

An internal order leaked to the media in April 2014, instructing police officers in a Paris police station to locate and “systematically evict” Roma living on the streets of the 6<sup>th</sup> *arrondissement* (district) of Paris, raised serious concerns that the discriminatory practice of targeting Roma for eviction has continued (for more on this, please see: <http://www.hrw.org/news/2014/04/16/dispatches-it-s-deja-vu-france-targets-roma-eviction> ), notwithstanding assurances from Minister of the Interior Bernard Cazeneuve that the order had been rectified.

### **Abusive Identity Checks (Article 26)**

Despite campaign promises by President Hollande and a commitment undertaken at France’s 2013 UPR, the authorities have taken insufficient steps to address abusive identity checks by police, including the use of ethnic profiling, and repetitive and discriminatory identity checks targeting minorities (for more on this, please see: <http://www.hrw.org/reports/2012/01/26/root-humiliation> ).

Law enforcement officers in France have overly broad powers to stop and check individuals regardless of whether they suspect criminal activity. This discretion leads to abuses, including repeated checks, lengthy questioning, orders to empty pockets, bag searches, and intrusive

pat-downs, as well as verbal and physical abuse. The threat of criminal sanction adds a coercive dimension to identity checks, with failure to cooperate during an identity check potentially leading to administrative or criminal charges, ranging from the minor offense of “refusal to cooperate” to the more serious charges of “insulting an officer” (*outrage*) and “assaulting an officer” (*rebellion*).

Statistical and anecdotal evidence indicates that young Blacks and Arabs living in economically disadvantaged areas are particularly frequent targets for such stops, suggesting that police engage in ethnic profiling to determine whom to stop. A recent opinion survey found that persons of North African descent were five times more likely to be stopped and searched by police (for more on this, please see: <http://www.hrw.org/news/2014/05/09/france-survey-flags-concerns-over-police-checks>).

The government has taken limited steps to correct abuses and improve accountability, including updating the police code of ethics to provide guidelines on the use of pat-downs and require officers to use the polite form of address, as well as introduce the use of identification numbers on police uniforms. However, the authorities have rejected proposals to introduce stop forms—a written record of the procedure—and implement legal, binding reforms to ensure that all identity checks are based on objective, individualized criteria and to create an appropriate legal framework for pat-downs during identity checks.