Human Rights Watch Concerns and Recommendations on France

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

June 2015

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 review of France.

Abuses by law enforcement officials against migrants and asylum-seekers (article 7, paragraph 8 in the list of issues)

In November and December 2014, Human Rights Watch documented abuses by French police against migrants and asylum-seekers in the port city of Calais, in breach of the prohibition of torture or other cruel, inhuman or degrading treatment or punishment under article 7.The abuses described to Human Rights Watch included beatings and attacks with pepper spray as migrants and asylum seekers walked in the streets or hid in trucks in the hope of traveling to the United Kingdom. In response to these findings, French government officials either denied that such abuse took place, or claimed they did not have enough evidence to conduct investigations.

On May 11, 2015, members of the local group Calais Migrant Solidarity posted a video filmed on May 5 that appears to show officers of the French riot police (Compagnies Républicaines de Sécurité, CRS) pushing, kicking and beating migrants who tried to hide in trucks while they seemed to pose no threat, and spraying pepper spray in their direction even as the migrants were leaving the road. On May 12, the Directorate of the National Police (Direction générale de la police nationale, DGPN) announced that it had seized the national police's internal inspectorate (Inspection générale de la police nationale, IGPN) of the matter, as did the public prosecutor of Boulogne-sur-mer. The Defender of Rights also seized himself of the case.

(For more information, please see http://www.hrw.org/news/2015/01/20/france-migrants-asylum-seekers-abused-and-destitute).

The Committee should urge France to immediately investigate allegations of abuse by law enforcement officials in Calais against migrants and asylum seekers in Calais. The French government should send clear instructions to law enforcement officials working in Calais that they should only use force as a last resort, and only when strictly necessary and proportionate to achieving a legitimate aim, such as protecting their safety or the safety of others.

International justice (articles 6 and 7, paragraph 9 in the list of issues)

French courts have universal jurisdiction over grave international crimes committed abroad where neither the victim nor the perpetrator is a French national, but Article 689-11 of the French Code of criminal procedure places limits on jurisdiction for certain crimes including genocide, crimes against humanity, and war crimes.[1] Parliamentarians presented a legislative proposal to harmonize the jurisdictional requirements for all grave international crimes in September 2012, but the bill has stalled.

If adopted, the bill would give French courts jurisdiction to pursue grave international crimes committed abroad when a suspect is present on French soil (as opposed to resident), without requiring the crime to be punishable in the place where it occurred at the time of commission (double criminality), and without giving priority to the courts of the country where the crime occurred or international criminal tribunals (subsidiarity).[2] In addition, victims could file civil party complaints directly with investigative judges, ensuring that a judicial investigation is opened and not left to the discretion of prosecutors.[3] The reinstatement of the civil party procedure has been the most controversial part of the bill.

In February 2013, the senate adopted an amended version of the bill dropping three of the requirements but maintaining the gatekeeping function of prosecutors.[4] The bill was sent to

[1] On August 9, 2010, the French Code of Criminal Procedure was amended to incorporate the Rome Statute and extend the jurisdiction of French courts to include genocide, crimes against humanity, and war crimes committed after that date. **Loi n° 2010-930 du 9 août 2010 portant adaptation du droit pénal à l'institution de la Cour pénale internationale, No. 2010-930**, entered into force on August 11, 2010, http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=DA7956739FD101F26E23CD144B032676.tpdjo02v_1?cidTexte=JORFTEXT000022681235

[2] For more information on these requirements, see Human Rights Watch, *The Legal Framework for Universal Jurisdiction in France*, September 17, 2015, pp. 2-7, http://www.hrw.org/sites/default/files/related_material/IJ0914France.pdf

[3] Proposition de loi tendant à modifier l'article 689-11 du Code de Procédure Pénale relatif à la compétence territoriale du juge français concernant les infractions visées par le statut de la Cour pénale internationale, French Senate, September 6, 2012, http://www.senat.fr/leg/ppl11-753.html.

[4] The civil party procedure would remain intact for torture, enforced disappearance, and crimes committed in the former Yugoslavia and Rwanda. Proposition de loi adoptée, n° 191, French senate, February 26, 2013, http://www.senat.fr/leg/tas12-101.html. During the parliamentary debate discussing the proposal, Minister of Justice, Christiane Taubira, noted diplomatic problems faced by other countries as a result of universal jurisdiction cases but expressed support for reinstating the civil party procedure. Senate debate, French senate, February 26, 2013, http://www.senat.fr/seances/s201302/s20130226/s20130226004.html

the National Assembly for consideration but never went to a vote, due initially to a reshuffling of the government but more recently to what appeared to be a lack of political will.[5]

A diplomatic row with Morocco in February 2014 over cases filed in France alleging torture by Moroccan security service agents resulted in the suspension of all judicial cooperation by Morocco. In April 2015, the French government proposed a bill aimed at divesting French courts of jurisdiction in cases where the crimes are alleged to have been committed in Morocco by a Moroccan national (regardless of whether the victims are French nationals).[6] The bill was under consideration by the French parliament at the time of writing.

France should make passage of the 2012 legislative proposal, including reinstatement of the civil party procedure, a priority. Parliament should also reject the draft bill to amend its legal assistance agreement with Morocco on the grounds it would seriously restrict access to justice for victims of grave human rights violations and potentially breach its international legal obligations.

Counterterrorism law of November 2014 (articles 12, 14, 15 and 19)

In November 2014 the French parliament adopted a "Law reinforcing measures relating to the fight against terrorism." The law raises issues of compatibility with the rights to free movement, to the presumption of innocence and to free expression under articles 12, 14 and 19, as well as the principle of legality under article 15.

The law allows the French authorities to prevent anyone from leaving France if they suspect that he or she would participate in terrorist activities abroad or threaten national security upon their return. The law is worded in overly broad terms and does not comply with the requirement of proportionality under Article 12. Under article 1 of the law, the Minister of the Interior can bar people from leaving France for up to six months if there are "serious reasons to believe" they are planning to go abroad with the aim of "participating in terrorist activities" or if authorities suspect they are traveling to a place where terrorist groups operate and in conditions conducive to their posing a threat to public safety upon their return to France. Once a decision is made, the person's passport and identity card are invalidated and he or she must hand them over them to the authorities within 24 hours. The person is prevented from leaving the country.

[5] The first step toward consideration by the National Assembly would have been for the National Law Commission to appoint a representative to study the proposal, which never happened.

[6] Questions/Réponses: Projet de Protocole additionnel à la Convention d'entraide judiciaire en matière pénale entre la France et le Maroc, *Human Rights Watch, Amnesty International, Federation Internationale des Ligues des Droits de l'Homme (FIDH), Ligue des droits de l'Homme, 27 avril 2015, http://www.hrw.org/fr/news/2015/04/27/francemaroc-votez-non-l-accord-d-entraide-judiciaire-entre-la-france-et-le-maroc*

The law also created a new criminal offense of "possessing, searching for, obtaining or making," as part of an "individual terrorist undertaking," objects or substances that would be harmful to others and gathering information or taking part in training in view of preparing a terrorist act or having spent time abroad in a place where terrorist groups operate (Article 6). As noted by the French National Consultative Human Rights Commission in its opinion on the draft law, this provision criminalizes the "the preparation of the preparation" of an offense. The lack of clarity of this offense could lead to someone facing criminal charges, and possibly imprisonment, for conduct they did not know was unlawful. This would breach the principle of legality under Article 15 and the presumption of innocence under Article 14.

Article 5 of the counterterrorism law has also removed the criminal offenses of publicly "inciting" or "glorifying" terrorism from the French press law of 1881 and included them in the criminal code, making France's counterterrorism procedure, which can seriously reduce access to a lawyer in pre-charge detention, as explained below, applicable to those offenses. It also makes it possible to prosecute someone through summary proceedings (*comparution immédiate*) under Article 395 of the Code of criminal procedure.

The terms of "inciting" and "glorifying" terrorism are overly broad and can capture speech that has no direct causal link to a terrorist act, in breach of the right to freedom of expression under Article 19."Incitement to" or "glorification of" terrorism are punished by up to five years in prison and a fine of up to €75,000. The law has increased the punishment in cases where those offenses are committed online to seven years' imprisonment and a €100,000 fine.

Following the attacks of January 7 to 9 on the Charlie Hebdo magazine, police officers and a kosher supermarket in Paris, the French judiciary had opened 69 cases into alleged "glorification of terrorism" and threats to commit terrorist acts by January 14. Several people were sentenced to imprisonment following summary proceedings and some were detained pending trial. On January 12, the Minister of Justice instructed prosecutors to take a "systematic, adapted and individualized" response to speech "glorifying terrorism" as well as racist and anti-Semitic speech. [7] The instruction explicitly referred to the attacks of January 7 to 9 (for more information, please see: http://www.hrw.org/news/2015/01/16/dispatches-france-country-freedom-expression-some)

Article 12 of the counterterrorism law allows the government to block websites on the broad grounds that they "incite" or "glorify" terrorism without prior, independent judicial

[7] Circulaire du 12 janvier 2015 de la garde des sceaux, ministre de la justice : Infractions commises à la suite des attentats terroristes commis les 7, 8 et 9 janvier 2015, http://www.justice.gouv.fr/publication/circ_20150113_infractions_commises_suite_attentats201510002055.pdf

authorization and in breach of the requirements of necessity and proportionality under article 19. Article 12 of the counterterrorism law, and the decree of February 5, 2015, that puts it into effect, can lead to breaches of free expression by enabling the government to block access to websites that do not pose a threat to national security, and have a chilling effect on free speech (for more information, please see: http://www.hrw.org/news/2014/10/09/france-counterterrorism-bill-threatens-rights).

The Committee should urge France to repeal the provisions of its counterterrorism law of November 2014 law that are not compatible with the rights to free movement, free expression, the principle of legality and the presumption of innocence, and to ensure that any measure taken in the name of counterterrorism is justified, necessary and proportionate.

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

Under French law, unaccompanied foreign 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 otherwise enjoyed by unaccompanied children in France, 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.[8]

An asylum bill before the senate at the time of writing would end the detention of unaccompanied children in transit zones if they apply to enter France in order to seek asylum, but the bill lists a number of exceptions. Those exceptions include children who come from a "safe country of origin," who have presented fake travel or identity documents or withheld information in order to mislead the authorities, or if the child's presence poses a threat to national security. Under the new asylum bill, detention in transit zones would remain possible for unaccompanied children falling in one of those categories and for those who are not asylum applicants.

(For more information, please see: http://www.hrw.org/news/2014/04/08/france-unaccompanied-children-detained-borders).

[8] 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; *Ammur v France*, Application No.19776/92, Judgment June 25,1996, Reports 1996-III, para. 52

The Committee should call on France to stop detaining children in transit zones or any other place of detention, whether or not they intend to apply for asylum in France, in line with the recommendation by the Committee on the Rights of the Child that "states should expeditiously and completely cease the detention of children based on their immigration status."[9] When an unaccompanied child arrives at the border, the authorities should admit them and then assess their immigration status.

Limited access to a lawyer in pre-charge detention (Article 14, paragraph 2 in the list of issues)

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. Access to a lawyer from the outset of detention, without exceptions, is key to ensure a suspect's due process rights and respected and the preparation of an effective defense as well as a fundamental safeguard against torture and other ill-treatment.

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.

France should grant anyone in police custody access to a lawyer from the start of their detention, regardless of the offense they are suspected of. France should also remove the time limit on interviews with lawyers, and not impose arbitrary limits on the time defendants can spend with their lawyer in preparation of their case.

Surveillance and the right to privacy (Article 17)

If passed, a government-sponsored bill on intelligence, before parliament at the time of writing, would allow French intelligence agencies to conduct sweeping digital surveillance that would be breach the right to privacy under article 17.

[9] Committee on the Rights of the Child, report of the 2012 Day of General Discussion, "The rights of all children in the context of international migration," http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf

The bill, under consideration by parliament under an accelerated legislative procedure that precludes a second reading, would allow the prime minister to authorize surveillance on overly broad grounds that go far beyond those recognized in international human rights law and without the involvement of a judicial authority. Under article 1 of the bill, those grounds include preventing terrorism as well France's "major economic, industrial and scientific interests," preventing "interferences with the republican form of institutions," and collective acts of violence that could interfere with national security.

Article 2 of the bill would also allow the prime minister, for the purpose of preventing terrorism, to require internet service providers to install secret and unspecified means of detecting suspicious patterns by their users. As noted by the National Consultative Human Rights Commission (Commission Nationale Consultative des Droits de l'Homme, CNCDH) in its opinion on the bill, such a measure could lead to data relating to people who have no link with the preparation of terrorist acts being detected and potentially collected and kept, possibly on a mass scale.

Despite the sweeping surveillance powers provided under the intelligence bill, it grants the prime minister sole discretion to authorize these powers. The prime minister is supposed to consult in advance a new executive body, the National Control Commission on Intelligence Techniques (Commission nationale de contrôle des techniques de renseignement, CNCTR), but he is not obliged to follow its advice. The bill does not require any involvement of a judicial authority before these surveillance measures are put into effect (for more information, please see: http://www.hrw.org/news/2015/04/06/france-bill-opens-door-surveillance-society).

French law already allows for surveillance of communications, which Human Rights Watch believes is neither necessary nor proportionate and therefore would breach article 17. In December 2013, France enacted Law No. 2013-1168 on Military Planning for the years 2014 to 2019. Article 20, which entered 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 information, please see: http://www.hrw.org/news/2013/12/26/french-contradictions-data-surveillance).

The Committee should urge France to refrain from enacting legislation that could breach the rights to privacy and to free expression by authorizing surveillance on a mass scale, on overly broad and vague grounds in the absence of adequate oversight. France should also reform its existing legislation of 2013 to bring it in line with the Covenant. Any collection or use of communications data should be authorized by a judicial authority and should be strictly proportionate to achieving one of the legitimate aims recognized under international human rights law, such as the protection of national security and public safety.

Discriminatory restrictions on religious symbols (Articles 18 and 26, paragraph 26 in the list of issues)

A ban on students from wearing Muslim headscarves (hijabs), Jewish kippahs, Sikh turbans, and large Christian crosses under Act No. 2004/228 of March 15, 2004, which prohibits the wearing of ostentatious religious symbols in public schools, breaches the rights to freedom of religion (Article 18) and to freedom of expression (Article 19), as well as rights under other human rights instruments (notably the right to education). The ban has a disproportionate impact on Muslim girls and women who wear the Muslim headscarf and is therefore discriminatory, in violation of the rights to equality before the law, including equality of men and women, and to freedom from discrimination (Articles 2, 3, and 26). We are concerned by reports that it 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 in those schools. For instance, in a case reported by the media in April 2015, a 15 year-old Muslim girl was refused access to her school because the principal considered that her long black skirt was an "ostentatious" religious symbol.

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 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 fine (for more information, please see: http://www.hrw.org/news/2014/07/03/france-face-veil-ruling-undermines-rights)

Human Rights Watch disagrees with the July 2014 ruling by the European Court of Human Rights in the vase of *S.A.S. v. France*, in which the Court upheld the ban. The prohibition is neither necessary nor proportionate, and in Human Rights Watch's view breaches the right to freedom of religion and expression of those who choose to conceal their face in public. It disproportionately impacts Muslim women and is, as such, discriminatory (for more

information, please see: http://www.hrw.org/news/2010/12/21/questions-and-answers-restrictions-religious-dress-and-symbols-europe).

The Committee should urge France to repeal the bans on ostentatious religious symbols in public schools and on clothing that is intended to conceal the face in public. The Committee should also call on France to ensure that its laws are not applied in a way that discriminates against Muslim girls and women, and that no child is prevented from attending school on the grounds that their clothes are considered to be religious symbols.

Discrimination against Roma (Articles 2 and 26, paragraph 5 in the list of issues)

Under the presidencies of both 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. According to a survey conducted by the European Roma Rights Center and the Ligue des droits de l'Homme, 13,483 Roma or people identified as Roma were evicted by the French authorities from 138 different places in 2014. Even though French law lacks necessary safeguards against forced evictions, following its Universal Periodic Review (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 information, 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 information, please see: http://www.hrw.org/news/2011/09/28/france-s-compliance-european-free-movement-directive-and-removal-ethnic-roma-eu-citi).

Prime Minister Manuel Valls also used discriminatory rhetoric when talking in an official capacity about Roma while he was Minister of the Interior. He claimed that the lifestyle of

Roma was "extremely different from ours" and that only a minority wanted to integrate in France. Valls claimed that the only solution was to progressively dismantle the camps and return Roma to the border (for more information, 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 6th *arrondissement* (district) of Paris, raised serious concerns that the discriminatory practice of targeting Roma for eviction has continued notwithstanding assurances from Minister of the Interior Bernard Cazeneuve that the order had been rectified (for more information, please see: http://www.hrw.org/news/2014/04/16/dispatches-it-s-deja-vu-france-targets-roma-eviction).

The Committee should urge France to end all forced evictions and discriminatory expulsions of Roma, including on grounds of "abuse of the right to free movement" under the immigration law of 2011. France should also ensure that high level officials refrain from public speech that is stigmatizing and contributes to negative stereotypes of Roma.

Abusive Identity Checks (Article 26, paragraph 27 in the list of issues)

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 information, 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. An opinion survey in May 2014 found that persons of North African descent were five times more likely to be stopped and

searched by police (for more information, 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 more meaningful reforms. In February 2015, Jacques Toubon, the French Defender of Rights submitted observations before the Paris Court of Appeal that was hearing a complaint of discriminatory identity checks by 13 people. Toubon noted that by failing to adopt concrete measures to prevent and punish discriminatory identity checks, the French authorities were closing their eyes on the seriousness of those acts and threating them as ordinary (for more information, please see:

http://www.hrw.org/fr/news/2015/02/13/france-les-observations-du-defenseur-des-droits-doivent-aboutir-une-reforme-en-profo

Human Rights Watch urges the Committee to recommend to France that it introduce the use of 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.