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This submission has been prepared by Amnesty International in advance of the UN Human Rights Committee's review of France's sixth periodic report under the International Covenant on Civil and Political Rights (the ICCPR).

This submission focuses on France's obligation to respect and ensure racial equality and the right to be free from racial discrimination and its derivative effects on protection of other intersecting rights guaranteed by in the Covenant. It is not an exhaustive list of Amnesty International's concerns.

1. INTRODUCTION

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2. RACIAL PROFILING

The French authorities have failed to take necessary steps to prevent and remedy ethnic profiling by the police based on physical characteristics associated with a real or presumed ethnic or racial origin during identity checks, amounting to a form of systemic discrimination.²

The Human Rights Committee has held, on multiple occasions, that racial profiling constitutes racial discrimination and constitutes a persistent problem in France aggravated by the lack of measures taken by the State to remedy the situation.³

As it has overwhelmingly been demonstrated by research, and denounced by international human rights institutions, in France, experiences of identity checks are more frequently reported by people perceived as Arab/North African and/or black people. According to a survey by the Defender of Rights, an independent administrative authority responsible for ensuring respect for the freedoms and rights of citizens by public administrations and bodies, 17.4% of the men surveyed testified that they had been the subject of an identity check by the police forces in the last five years, rising to over 50% (i.e. more than twice as likely) for men perceived as Arab/North African or black, claiming to have been subjected to such a check at least once. They also reported being six to eleven times more concerned by frequent checks (more than five times) than the rest of the male population.⁴

The European Commission against Racism and Intolerance has repeatedly reported, over the past two decades, on the prevalence of racial profiling in France.⁵

In 2021, *Amnesty International France* and 6 other civil society groups, *Communautaire pour un développement solidaire* (hereinafter "MCDS"), *Pazapas Belleville*, *Réseau- Egalité, Anti-discrimination, Justice - Interdisciplinaire* (hereinafter "REAJI"), Open Society Institute, Open Society Foundation London and *Human Rights Watch*, launched a class action lawsuit, or "action de groupe en cessation de manquement" against the French State in 2021.⁶

The claimants sought recognition by France's highest administrative court, the Conseil d'Etat, of the French State's failure to fulfil its obligations to guarantee equality and non-discrimination, as well as an injunction to take the necessary measures to put an end to this long-standing and systemic problem and thus ensure the protection of the victims who suffer from it.

In its judgment of 11 October 2023, the Conseil d'Etat acknowledged the systematic nature of racial profiling upon review of the available evidence determining it to be "*sufficiently established the existence of a practice of identity checks motivated by the physical characteristics, associated with a real or supposed origin, of the people checked, which cannot be considered as being limited to*

¹ Sixth periodic report submitted by France under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2022, UN Doc. CCPR/C/FRA/6, 10 January 2023, <https://documents.un.org/doc/undoc/gen/g23/001/54/pdf/g2300154.pdf>

² Amnesty International, [France: Class action lawsuit against ethnic profiling filed over systemic racial discrimination](#), 22 July 2021

³ Human Rights Committee, View, Communication No. 1493/2006, *Ms. Rosalind Williams Lecraft v Spain*, UN Doc. CCPR/C/96/D/1493/2006, 17 August 2009, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhstcNDCvDan1pXU7dsZDBaDVI0gWdngWFe%2fW5PvftFZsuDtKuR900IT%2b5lYrTjLbzLzGz1gGTmdpk0%2bTzjKwqEJTQbj%2fNZ8JEXhZ3iqlojF7DYn14NVtekjx6qqb%2fFwQ07qAb06np%2bADhh84S2ZU%3d> and Human Rights Committee, "Concluding observations France", (2015), U.N. doc. CCPR/C/FRA/CO/5. para. 15."

⁴ Défenseur des Droits, [Enquête sur l'accès aux droits Volume 1, Relations police / population : le cas des contrôles d'identité, January 2017](#)

⁵ European Commission against Racism and Intolerance (ECRI), Fourth and Fifth Reports on France (2016 and 2010).

⁶ Amnesty France, [Une procédure historique contre l'inaction de l'État français face aux contrôles d'identité discriminatoires](#), 27 January 2021



isolated cases". However, in recognising the French State's failure to fulfil its obligation the Conseil d'Etat did not order the State to take concrete, relevant and effective measures to remedy the persistence of this systemic problem, to put an end to the violations of the principles of equality and non-discrimination, and thus to ensure the prevention, promotion and protection of victims of racial discrimination by the French State.

The Conseil d'Etat failed to apply France's treaty obligations correctly, particularly with regards the positive obligations of the Member States under international law, and in doing so deprived the applicants of the only domestic legal means of compelling the French state to comply with its international commitments and obligations, and fulfil its responsibility to enable effective enjoyment of the rights and protection provided France's treaty obligations, including the right to non-discrimination.

Additionally, the French State continues to deny the existence of systemic racism in its police, and to acknowledge the widespread existence of discriminatory identity checks as a manifestation of systemic racism. The latest demonstration of this refusal is verifiable in the French State's public communication on the 8th July 2023, inviting the Committee on the Elimination of Racial Discrimination (CERD) to "show more discernment and restraint in its comments, which it regrets are one-sided and approximate",⁷ following a statement by CERD expressing its concerns and making a number of recommendations to France regarding racial profiling and excessive use of force by law enforcement officials.⁸

Facing this situation, claimants submitted in April 2024 an individual communication to CERD, in which they sought the committee's intervention to address racial profiling by law enforcement authorities in France. This communication is still pending.

France's violation of its positive obligations can be summarised as:

- Continuing to deny or minimise the problem, and failing to recognise its systemic nature
- Perpetuating the status quo through a lack of transparency and accountability
- Failing to examine laws, regulations, policies and practices that encourage racial profiling
- Failing to provide an effective remedy against repeated discrimination in breach of the international human rights law

Under existing legal and administrative provisions, the French police are not required to justify the use of their powers for identity checks, nor to make any record or public information concerning their use of stops and searches. In addition, France does not collect or publish any statistics based on ethnicity that might reveal unequal treatment.

In the vast majority of cases, individuals who have been stopped are not given any written record, official report or receipt of the stop, nor are they told why they have been stopped. It is only when the check leads to legal or administrative action that any trace is kept.

Such practices hinder both the detection of discriminatory identity checks and the collection of data enabling the extent of such identity checks to be measured. Furthermore, it is impossible to evaluate the measures put in place to put an end to them, or to supervise their deployment internally or externally.

⁷ France Diplomatie, Déclaration du Comité pour l'élimination de la discrimination raciale, <https://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/la-france-et-les-nations-unies/evénements-et-actualites-lies-aux-nations-unies/article/declaration-du-comite-pour-l-elimination-de-la-discrimination-raciale-08-07-23>, 8 July 2023

⁸ OHCHR, [Statement on France by the UN Committee on the Elimination of Racial Discrimination](#), 7 July 2023

2.1 A LEGISLATIVE FRAMEWORK THAT PROMOTES AND FACILITATES RACIAL PROFILING

Identity checks are governed by article 78-2 of the Code of Criminal Procedure (hereinafter CPP). The current wording of this article establishes an imprecise and vague regulatory framework. It gives a wide margin of discretion to law enforcement officers to decide who to check, without having to justify any specific, objective and individual reason for this choice. It thus creates fertile ground for the development of discriminatory and abusive behaviour, and yet the State does not act to have these provisions amended or repealed in breach of its obligations. Article 78-232 authorises four types of identity check, three of which are described below.

2.2 INSPECTIONS AT THE REQUEST OF THE PUBLIC PROSECUTOR

According to article 78-2, paragraph 2 of the Criminal Procedure Code, "On the written instructions of the public prosecutor for the purposes of investigating and prosecuting offences that he or she specifies, the identity of any person may also be checked, in accordance with the same procedures, [provided for in paragraph 1] in places and for a period of time determined by this magistrate. The fact that the identity check reveals offences other than those referred to in the public prosecutor's requisition does not constitute grounds for invalidity of the incidental proceedings.

The requisitions are often issued by public prosecutors at the request of the police authorities, and authorise checks for a very large number of offences and very broadly defined places and periods of time, allowing the police to check any person. Officers do not have to justify checks or base them on the behaviour of the person being checked. As the Defender of Rights pointed out, police officers "rely to a large extent on subjective criteria, such as feeling or instinct".⁹

This is also what police officers reported during interviews conducted by Amnesty International in 2020: "(...) you can check absolutely anyone you want. There are no grounds, we don't have to suspect anyone, we can check them at any time. So inevitably, in the interests of profitability, to try and catch people who have committed offences, the police use their prejudices. And regrettably, the police's prejudice is that anyone who is racialised, from a working-class neighbourhood or from a minority background, is more likely to commit crimes than others".¹⁰

In addition, the public prosecutor has virtually no control over the execution of identity checks carried out in response to a requisition. As the law currently stands, there is no legislative or regulatory requirement for the police to draw up a report of any kind after carrying out identity checks on requisition. The police send prosecutors a simple accounting report of the checks carried out, with no information about the reasons for the check or how it was carried out. This information does not enable the public prosecutor to ensure that the checks are non-discriminatory, as there is no indication of the criteria used to select the persons to be checked.

2.3 ADMINISTRATIVE IDENTITY CHECKS

According to article 78-2 paragraph 3 of the Criminal Procedure Code, "The identity of any person, regardless of their behaviour, may also be checked, in accordance with the procedures set out in the first paragraph, in order to prevent a breach of public order, in particular the safety of persons or property". These so-called "preventive" checks, which by their very nature are disconnected from the behaviour of the person being checked, entail a major risk of arbitrariness and discrimination. The concept of the risk of "breaching public order" leaves a very broad interpretation to the police. These checks are widely criticised as "the heart of police discrimination on an ethnic basis"¹¹, because they

⁹ Décision du Défenseur des droits n° 2021-195, Observations devant le Conseil d'État présentées dans le cadre de l'article 33 de la loi n° 2011-333 du 29 mars 2011, 29 October 2021, p.12.

¹⁰ Amnesty International France, « Contrôles d'identité discriminatoires en France—entretiens conduits auprès de membres de la police nationale française », p. 10, December 2020

¹¹ Assemblée nationale, [Rapport d'information sur l'émergence et l'évolution des différentes formes de racisme et les réponses à y apporter, Mission d'information 9 mars 2021, Audition de M. Sebastian Roché](#), 9 July 2020, p. 137,

can be decided without any link to the individual's behaviour having to be established. National human rights institutions and organizations have noted the lack of adequate supervision of administrative checks, leaving the way open to subjective racist criteria chosen by police officers.

2.4 JUDICIAL SUPERVISION

Article 78-2 paragraph 1 of the French Criminal Procedure Code (CPP) allows checks to be carried out on persons in respect of whom there are one or more reasonable grounds for suspecting that they have committed, attempted to commit or are preparing to commit an offence. Work carried out in recent years has shown the need to tighten up this legal framework in order to make the choice of person to be checked more objective and thus avoid discriminatory checks.

2.5 NO SPECIFIC PROTECTION FOR CHILDREN CATEGORISED AS MINORS

Despite their young age, minors are often subjected to discriminatory identity checks, including very young minors as young as 12.¹² However, there are currently no measures in French law to provide specific protection for minors during identity checks.

2.6 LACK OF SPECIFIC ADDITIONAL INSTRUCTIONS TO THE POLICE

The permissive legal framework, which encourages discriminatory checks, operates in a vacuum as it is not substantiated by any other instruction given to police forces to carry out checks. Moreover, the CPP is not accompanied by any additional instructions to the police on the criteria to be applied when carrying out identity checks. By failing to set out clear instructions prohibiting discrimination, even though it has been recognised and demonstrated that the vague legal framework for identity checks encourages discrimination, the State is in breach of its obligations under the Covenant in multiple intersecting ways.

2.7 FAILURE TO TAKE ACTION TO DETECT AND ELIMINATE THE ORGANISATIONAL POLICIES THAT PRODUCE DISCRIMINATORY IDENTITY CHECKS

The authorities have not taken any steps to detect and modify organisational policies that encourage discriminatory checks. The lack of recording of data relating to checks makes this type of analysis particularly difficult, helping to mask the organisational factors that contribute to the perpetuation of racial profiling.

However, comparative studies reveal a significant correlation between certain institutional objectives, policies and racial profiling. In France, experts and testimonies from certain police officers¹³ identify quantitative performance targets, known as the "numbers policy", as a factor in discriminatory checks. Questioning of police officers implicated in criminal proceedings concerning racial profiling practices revealed that they regularly carried out identity checks to carry out orders "to remove 'undesirables'" from the public space.

2.8 DISCRIMINATION ENCOURAGED BY THE MAINTENANCE OF AN INEFFECTIVE ADMINISTRATIVE AND JUDICIAL INVESTIGATION SYSTEM

France's system to investigate complaints of discriminatory identity checks is overwhelmingly considered by experts and rights holders as contributing to the perpetuation, acceptance, minimisation and impunity of these practices within the police.

¹² Human Rights Watch, [Ils nous parlent comme à des chiens : contrôles de police abusifs en France](#), 18 juin 2020

¹³ Amnesty International France, « Contrôles d'identité discriminatoires en France – entretiens conduits auprès de membres de la police nationale française », p. 11, December 2020

One of the main reasons for the inefficiency of this system is the lack of independence of the Inspectorate General of the National Police (IGPN), which is responsible for conducting administrative and judicial investigations into complaints against members of the police force, while at the same time being placed under the direct authority of the head of the police force: the Ministry of the Interior. In other words, police officers investigate police officers.

An analysis of the rare official data available, presented in an incomplete and unusable manner, shows that there are virtually no administrative or criminal investigations into discriminatory identity checks, and even fewer sanctions.

The absence of effective sanctions for discriminatory identity checks leads to a feeling of impunity which, in the event of misconduct, ensures the protection of peers and goes so far as to discredit, and even prosecute, certain police officers who have the courage to denounce the existence of discriminatory practices within the police. Whistleblowers who denounce the discrimination that plagues police work receive no support from their superiors. Moreover, they are stigmatised and even punished.

2.9 RECOMMENDATIONS

French authorities must end racial profiling and make the police and prosecuting authorities more accountable, by:

- Prohibiting racial profiling and instead using a standard of “reasonable suspicion”;
- Ensuring accountability for acts of racism by police officers and take steps to guarantee the right to access to justice for victims, including by monitoring incidents of racial profiling by the police; investigating alleged cases of racial discrimination by the police through an independent body and ensuring perpetrators face justice; and providing support for victims of racial discrimination by the police;
- Gather and monitor arrest and stop and search data so as to establish whether discriminatory patterns are emerging
- Introduce an explicit ban on all discrimination during checks.
 - The fact that the prohibition on discrimination in identity checks is not included in articles 78-2 et seq. of the French Criminal Procedure Code (CPP) is a grave omission which must be corrected.
- Require an objective and individualised reason for all inspections
 - Article 78-2 of the Criminal Procedure Code, which defines and governs identity checks, must be reformed. As a precondition for all identity checks, there must be an objective and individualised reason, unrelated to the origin or appearance of the person, that is likely to give rise to a reasonable suspicion that the person being checked is directly linked to the commission of an offence or that he or she is in possession of useful information concerning that person.
- Abolish the checks on requisitions provided for in paragraph 2 of article 78-2 of the CPP
 - To put an end to discriminatory checks, this category of checks should be abolished or, failing that, strictly regulated. This framework should include a stricter definition of the scope of the operation, its duration, the offences sought, the content of the link to be required between the person being checked and the offence(s) committed or sought, and strict compliance with all these requirements.
 - The law should also provide for effective monitoring by the public prosecutor, through the submission by the police of a report describing how the operations were carried out, including the objective and individualised criteria used to select the persons to be checked in relation to the offences committed or sought. Without each of these guarantees, the principle of non-discrimination will continue to be flouted by this

category of checks. Only all of these safeguards can put an end to discrimination in the implementation of these checks.

- Abolish preventive public order identity checks
 - Paragraph 3 of article 78-2 of the Criminal Procedure Code, which authorises so-called "preventive" administrative identity checks, is often used as an alibi for arbitrariness and discrimination. This category of checks should therefore be abolished.
- Take action to protect minors
 - The best interests of the child must be the primary criterion for police action, and minors must be protected from the destructive consequences of such identity checks. It is therefore necessary to close the current legal loophole relating to the protection of minors to ensure that any identity check targeting a minor, including for example in a school context, is governed by specific rules protecting their interests.
- Establish up a system for recording, analysing and tracing identity checks
 - The State must set up a system for providing proof of identity checks to each person checked, including the date, time and place of the check, the number of the officer carrying out the check, the legal basis and detailed reasons for the check, the announcement of any follow-up, the person's ethnic origin on the basis of self-identification and whether he or she consents, and the officer's perception of the person's origin.
 - All identity check data should be anonymised, collected and analysed by an independent authority, in order to allow a quantitative and qualitative study of the compliance of the identity checks carried out with the legal framework, including the prohibition of discrimination. Data must be collected in compliance with the principles of confidentiality and self-identification of individuals, including their origin, under conditions to be defined if they give their consent.
- Identify and amend all policies that authorise or facilitate racial profiling
 - The State must take action to identify and change policies, at both national and local level, that encourage discriminatory checks. Any objective leading to identity checks that does not respect the principles of equality and prohibition of discrimination must be prohibited and abolished. To this end, quantitative performance targets must be reviewed in view of the negative consequences they have on the criteria for carrying out identity checks, as some police officers themselves have testified (see above). More generally, identity checks must cease to be the main mode of interaction between the police and the public.
- Create an effective and independent complaints mechanism responsible for all administrative and criminal investigations
 - Independently of the complaint that victims of identity check may lodge with the police or the public prosecutor, they must be able to lodge a complaint with an independent body that will be solely responsible for all administrative and criminal investigations.
 - Independence must be ensured both for the body responsible for ruling on the complaint and for the teams responsible for carrying out the research and investigations.

3. UNLAWFUL USE OF LETHAL FORCE

The legal framework regarding the use of lethal force and firearms by the National Police and Gendarmerie is not sufficiently precise and falls short of international human rights law and standards. While attempts have been made to bring France's legislation in line with the European Court of Human Rights' jurisprudence in recent years, there remains far too much discretion and arbitrariness regarding when the police are justified in using lethal force.

Historically, the framework governing the use of force by law enforcement in France was established in Article L122-5 of the Penal Code.¹⁴ This article specified that an officer would not be criminally liable if resorting to legitimate defense of themselves or others at risk from an immediate unjustified attack, providing the force used was proportionate with the gravity of the attack, or if performing an act of self-defense – other than voluntary homicide - to disrupt the execution of a crime or offence against property if the force was strictly necessary to achieve an objective and proportionate goal commensurate to the gravity of the offence.

The grounds for use of firearms were expanded in 2017 with the addition of Article L. 435-1 to the Internal Security Code, which introduced five new scenarios in which firearms can legally be deployed by the National Police and Gendarmerie.¹⁵

The law frames the use of force in permissive terms, rather than taking the more restrictive approach that is required under international law and standards, which sets out a presumption that lethal force should not be used unless certain stringent circumstances apply.

In France, the unlawful use of firearms in the context of traffic stops appears to be associated with a racist bias, as Black and Northern African men disproportionately constitute the victims of unlawful killings occurring in this context (see below).

Unlawful killings of drivers and passengers by French police is a long-standing human rights concern. In 2018, the European Court of Human Rights ruled against France for the arbitrary deprivation of the right to life of Naguib Toubache, who had been killed by French gendarmerie in 2008 but was denied justice and remedy in the French court system, which had determined his killing to have been lawful.

Naguib Toubache's family took the case to the European Court of Human Rights, which ruled in June 2018 that Toubache's death was a violation of Article 2 of the European Convention on Human Rights (ECHR).¹⁶

As noted by former UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, in her amicus curiae brief for the class action lawsuit:

*“Racial profiling is simultaneously a cause and a consequence of systemic racism. Such practices do not exist in a vacuum and their continued prevalence within France can be seen as reflective of the persistence of systemic societal racism. The continuation of racial profiling and racist systems which perpetuate it is in clear contravention of France's obligations under international human rights law to prohibit racial discrimination.”*¹⁷

¹⁴ France, Penal Code, «https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006117596/#LEGISCTA000006117596, Article 122-5

¹⁵ France, Internal Security Code, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000034107970, Article L. 435-1

¹⁶ European Court of Human Rights (ECtHR), Toubache v. France application no. 19510/15, 5th division, 7 June 2018, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-183374%22%7D>

¹⁷ Conseil D'Etat, Third-party intervention by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in action de groupe en cessation de manquement before Conseil D'etat, Section du Contentieux, UN Special Rapporteur on Contemporary Forms of Racism, Racial discrimination, Xenophobia and Related Intolerance, <https://www.ohchr.org/sites/default/files/documents/issues/racism/sr/amicus/2022-06-28/AmicusBrieftoFrance-Third%20party-intervention-SR-Achiume-EN.pdf>, January 2021, paras 83 – 85

The UN Special Rapporteur's emphasis that racial profiling practices do not exist in a vacuum is particularly pertinent in relation to long-standing denials by the French authorities of widespread excessive use of force and – as labelled by Amnesty International as long ago as 2005 – de facto impunity for law enforcement for human rights violations, including unlawful killings, unnecessary or excessive use of force, torture and other ill-treatment, with racist abuse reported in many cases and racist motivation appearing to be a factor in many more.¹⁸

3.1 RECOMMENDATIONS

- The Internal Security Code (article 435-1) must be amended to comply with international law and standards on policing to ensure that law enforcement officers are not authorized to use firearms except as a last resort in self-defense or to defend third parties against an imminent threat of death or serious injury"
- Overhaul the framework governing identity checks by modifying identity check powers to explicitly prohibit discrimination in identity checks, abolish preventive identity checks, and circumscribe police authority to ensure that all identity checks, including those based on a prosecutor's orders, are based on objective and individual grounds.
- Establish a system to record and evaluate data on identity checks and provide those stopped with a record of the stop, as well as an effective, independent complaints mechanism.

4. ANTI-ARAB AND ANTI-MUSLIM RACISM, GENDERED ISLAMOPHOBIA

4.1 COUNTER-TERRORISM AND THE RULE OF LAW

In France, like other European states, wave after wave of counterterrorism measures have eroded the rule of law, enhanced executive powers, peeled away judicial controls, restricted freedom of expression and exposed populations to government surveillance.¹⁹ Often, the measures have proved to be discriminatory on paper and in practice, and have had a disproportionate and profoundly negative impact, particularly on Muslims, foreign nationals or people perceived to be Muslim or foreign.²⁰

For example, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism observed the discriminatory impacts of counterterrorism measures in France in 2018: "One complex challenge in assessing the effects of counterterrorism laws on specific communities including racial profiling and disparate effects is the constraint on gathering national data concerning minorities or specified religious groups. Despite the formal barriers to data disaggregation, it is clear that the French Arab and/or Muslim communities have been primarily subject to exceptional measures both during the state of emergency and presently from the SILT law, in tandem with other counterterrorism measures."²¹

¹⁸ Amnesty International, France: Briefing to the UN Committee against Torture, 2010, (AI Index: EUR 21/002/2010) https://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_France44.pdf, See also: Amnesty International, France: Public outrage: Police officers above the law in France, (Index Number: EUR 21/003/2009), 2 April 2009, <https://www.amnesty.org/en/documents/eur21/003/2009/en/> Amnesty International, France: 'Our lives are left hanging': Families of victims of deaths in police custody wait for justice to be done, (Index Number: EUR 21/003/2011), 30 November 2011, <https://www.amnesty.org/en/documents/eur21/003/2011/en/> and Amnesty International, France: The search for justice: The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment, (Index Number: EUR 21/001/2005), 5 April 2005, <https://www.amnesty.org/en/documents/eur21/001/2005/en/>

¹⁹ Amnesty International, Europe: Dangerously disproportionate: The ever-expanding national security state in Europe (Index: EUR 01/5342/2017), p.6

²⁰ Amnesty International, France: Punished without trial – the use of administrative control measures in the context of counterterrorism in France (Index: EUR 21/9349/2018), November 2018, / pp.5-6

²¹ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, France: UN expert says new terrorism laws may undermine fundamental rights and freedoms, May 2018, p.7

Administrative control measures have long been used against foreign nationals, but such measures have only recently become a regular practice by France. At first available only as an exceptional measure under the 2015 state of emergency, counterterrorism control orders were brought into the ordinary legal system in October 2017.²²

The Minister of Interior may impose such orders “for the sole purpose of preventing the commission of terrorist acts”.²³ The measures themselves confine a person to a specific town, require them to report daily to the police and, in some cases, prevent them from contacting certain individuals or visiting certain locations. Should they violate any of these conditions, they risk prison. By concentrating power in the hands of the government, completely outside of the normal criminal justice system, administrative control measures are open to abuse and discriminatory application, including toward Muslims.

All of the individuals interviewed for Amnesty International’s 2018 *Punished Without Trial* report expressed the view that they were targeted for the application of administrative control orders because of their religious practice and identity. In each case, control orders were applied using “notes blanches” [secret evidence provided by intelligence services]. Justifications for imposing an administrative control order – among others – included those individuals’ religious practices or behaviours perceived by the authorities as linked to “radical Islam” or “jihadism”. Those practices included the fact that a person began growing a beard; “having religious documents” (undefined in the note blanche); possessing CDs of Quranic chants or recitals; a person’s style of dress; the expressed desire to live in a Muslim country; alleged links with individuals who have a “rigorous” practice of Islam and more generally, the “manifestation” of religious practice (that is Islam).²⁴

The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concerns that secret evidence in the form of “notes blanches” or “white notes” in France create “undue burdens on the presumption of innocence” and “lessen defence rights in court”.²⁵

“Notes blanches or “white notes” are documents provided by the intelligence services to the Ministry of Interior that allegedly contain information to justify the need for the application of an administrative control measure. These notes are typically unsigned, undated and include information about the targeted individual or their environment (for example, their mosque or religious school). They are often based on classified or secret information to which an affected person does not have access. Thus, there is no way to verify the accuracy of the alleged information – or to challenge it – as it is top secret.”²⁶

4.2 FREEDOM OF EXPRESSION; ASSOCIATION; THOUGHT, CONSCIENCE AND RELIGION

A derivative effect of undermining the human rights of Muslim people, and those perceived as Muslims, within the context of national security and counter-terrorism has been an extension of generic suspicion of Muslim peoples’ participation in civil society. This has resulted in arbitrary and discriminatory interference with Muslim people’s right to practice their faith, and to organize collectively to combat discrimination and illegitimate restrictions on freedom of speech, right to be free from discriminations, as well as participate in public life, amongst other rights. Muslim people, and those perceived as Muslim exercising their human rights to freedom of expression, association,

²² Amnesty International, France: [Punished without trial – the use of administrative control measures in the context of counterterrorism in France \(Index: EUR 21/9349/2018\)](#), November 2018,

²³ Articles L228-1 à 7 of the Code on internal security created by the article 2 of the Law n° 2017-1510 of October 30th https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/article_3

²⁴ Amnesty International, France: [Punished without trial – the use of administrative control measures in the context of counterterrorism in France \(Index: EUR 21/9349/2018\)](#), November 2018, p.29

²⁵ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, France: [UN expert says new terrorism laws may undermine fundamental rights and freedoms](#), May 2018,

²⁶ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, France: [UN expert says new terrorism laws may undermine fundamental rights and freedoms](#), May 2018,

thought, conscience and belief, are too frequently conflated with evidence of radicalization, with even the activities and expression of children being treated as suspect.

Since 2020, the French government has investigated thousands, and temporarily or permanently closed scores of Muslim institutions including places of worship, civil society groups, schools and businesses. Senior government officials routinely refer their “legislative arsenal”,³⁴ typically relying on a combination of Article 212-1 of the Law on National Security which provides for the dissolution of groups by decree, the 2017 SILT law which codified exceptional administrative powers from the state of emergency, and a new law on “reinforcing respect for republican values” introduced in August 2021 and anecdotally referred to as the “séparatisme” law.²⁷

The text of these laws does not explicitly refer to Muslim people or the religion of Islam, however the political context within which they were proposed, debated by legislators, and the government’s reporting on their implementation betrays an overt focus on combatting undefined, vague concepts such as “political Islam”, “radical Islam” and “Islamist separatism” often referred to interchangeably. Such broad and vague targets risk significant overreach and indirect discriminatory effects for Muslims and people perceived to be Muslims in France. Statements from senior government officials have demonstrated a pretext for targeting Muslim communities despite the SILT and “séparatisme” laws being prima facie neutral.²⁸

A failure to clearly distinguish between efforts to prevent and punish criminal acts and a wider campaign using the force of national security and counterterrorism legislation to combat vague ideological, religious, cultural and political concepts casts an excessively wide net of suspicion. This ideological campaign has been codified within the new crime of “separatism” carrying a prison sentence of up five years despite not being clearly defined beyond “protecting elected officials and public servants from threats and violence.”²⁹ From its inception, Amnesty International warned that many provisions in the “séparatisme” law were ill-defined, overly-broad and risked discriminatory application.³⁰

Amnesty International is concerned that France’s efforts to prevent and prosecute those responsible from violent attacks has been progressively conflated with restricting the freedom of expression and association for Muslim people and human rights defenders mobilizing against discrimination in France. We are also concerned that such a stance is being replicated at a regional level in light of France and the European Union registering dissent against the UN General Assembly’s adoption of an International Day to Combat Islamophobia.³¹

An emblematic case of overreach resulting in attacks on Muslim communities’ freedom of expression and association, was the shuttering of the Comité Contre l’Islamophobie en France (CCIF), an NGO which fought against anti-Muslim discrimination in France. The dissolution of an organization by decree is an extreme measure that can be justified only in very limited circumstances, such as if it poses a clear and imminent danger to national security or public order. The French authorities failed to provide any evidence of such a threat when justifying the dissolution of CCIF, raising concerns about a subsequent chilling effect for activists and NGOs fighting against discrimination in France.³²

²⁷ Décret n° 2021-1947 du 31 décembre 2021 pris pour l'application de l'article 10-1 de la loi n° 2000-321 du 12 avril 2000 et approuvant le contrat d'engagement républicain des associations et fondations bénéficiant de subventions publiques ou d'un agrément de l'Etat <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044806609#:~:text=Dans%20les%20r%C3%A9sum%C3%A9s-,D%C3%A9cret%20n%C2%B0%202021%2D1947%20du%2031%20d%C3%A9cembre%202021%20pris,un%20agr%C3%A9ment%20de%20l'Etat>

²⁸ La Voix Du Nord, Gérald Darmanin : « C’est une guerre culturelle que nous menons » contre l’islam radical, 31 October 2020

²⁹ “protéger les élus et agents publics contre les menaces ou violences pour obtenir une exemption ou une application différenciée des règles du service public” Loi du 24 août 2021 confortant le respect des principes de la République,

³⁰ Amnesty International, [France: Republican values laws risk discrimination](#), March 2021

³¹ Middle East Eye, [France, EU and India opposed creation of UN day to combat Islamophobia](#), 17 March 2022

³² Amnesty International, [France: shutting down anti-racist organisation risks freedoms](#), 20 November 2020,

4.3 RECOMMENDATIONS

- Promote and protect the right to freedom of expression and only restrict forms of expression if absolutely necessary and proportionate to the achievement of a legitimate objective, and on the basis of a clear and precise legal provision.
- Only subject forms of expression to criminal prosecution where it genuinely amounts to incitement, that is encouraging others to commit recognizable criminal acts with the intent to incite them to commit such acts and with a reasonable likelihood that they would commit such acts, with a clear and direct causative link between the statement/expression and the criminal act; vague offences such as “glorification” or “apology” of terrorism should be repealed.
- Refrain from the dissolution of any institution, including Muslim civil society organizations, unless demonstrably necessary and proportionate in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, and the result of a court-led process. Dissolution of civil society or religious organizations by decree is inconsistent with international law and should not be pursued.
- Repeal the following provisions of laws that provide for the imposition of administrative control measures that violate a person’s human rights and run afoul of France’s international human rights commitments: Articles L228-1 to 7 for assigned residence under the Law on Internal Security and Fight against Terrorism (SILT); Article L561-2 for assigned residence under the Code on Entry of Foreigners and Right to Asylum in the context of counter-terrorism.

4.4 GENDERED ISLAMOPHOBIA

Muslim people in Europe have been discriminated against on racial and ethnic grounds in intersection with religious grounds. Muslims are racialised in categories encompassing perceived race, ethnicity and/or nationality, irrespective of their religious practice and actual religion. In France specifically, the French Ombudsperson has noted a “trend that the term ‘Muslims’ is used to refer, de facto, to Arab immigrants or individuals perceived as such ... the religious marker tends to exacerbate the racial marker.” It is within this context that international human rights bodies have noted the [intersectionality](#) of racial and religious discrimination experienced by Muslims.

The wearing of headscarves by Muslim women has long been instrumentalized and negatively stereotyped to demonize Muslim women and girls and homogenize the diverse significance they may represent to those who wear them or would wish to wear them but fear to do so or are legally prevented from doing so in public. There is ample evidence from [academics](#) and non-governmental organizations that gendered Islamophobia has for years been a [reality](#) for [Muslim women](#) in [France](#). For the last twenty years, French authorities have embarked on a relentless, sustained campaign of harmful lawmaking and regulation of Muslim women’s and girls’ clothing, fuelled by prejudice against them, and anchoring gendered discrimination towards Muslim women and girls and those perceived as Muslim.

Notably, in 2004, France passed a law “governing, in application of the principle of secularism, the wearing of signs or dress expressing religious affiliation in public schools”, which, as Amnesty International has emphasized, discriminates against Muslim girls, and those perceived as Muslim, on grounds of race, religion and gender in their enjoyment to their rights to freedom of expression, religion or belief and in their access to education.

Amnesty International has observed a further troubling increase in the introduction of discriminatory laws, policies, practices and discourses by the French authorities purporting to implement aspects of the 2004 law, including in sports, such as for instance, the Minister of Sports and Olympic and Paralympic Games’ announcement that athletes representing France will not be allowed to compete if wearing a headscarf.

Since 2016, there have been several attempts by municipalities to enact full covering swimsuits on beaches and swimming pools. It is not known how many swimming pools in France, public or private, have regulations that address the wearing of swimwear such as full covering swimsuits, whether it is to prohibit or explicitly allow it.

This situation was particularly visible in the city of Grenoble. The City Council adopted a decree explicitly authorizing the wearing of full-body swimsuits in municipal swimming pools, as well as removing restrictions on other swimwear. In June 2022, the Conseil d'État upheld this ruling, concluding that Grenoble's proposed authorization of use of full coverage swimsuits would "undermine equal treatment" for other users of public services. It cited the 2021 law on "republican values" (already quoted in this submission).³³

In March 2024, a bill "aimed at ensuring respect for the principle of secularism in sport" was tabled in the French Senate. The bill proposes amendments to the French Code of Sports to ban the wearing of religious symbols in all affiliated federations and associations, as well as in swimming pools. At the time of this submission in September 2024, the bill has not proceeded through the legislative process.³⁴

On 31 August 2023, just before children in France were to restart school after the summer holidays, the official Bulletin of the French Ministry of Education published guidance addressed to school principals and inspectors introducing a ban on wearing abayas and qamis. The guidance also established that in cases where pupils did not comply with the ban, the school personnel should enter into a dialogue with the pupils and their families. If the dialogue were to fail, disciplinary proceedings should systematically be initiated by school principals (knowing that, according to the French Code of Education, disciplinary proceedings can lead to the child being expelled from school).³⁵

The harmful impacts of France's discriminatory laws and policies on a range of Muslim women's human rights, including their access to employment, both in the private and the public sectors, particularly for those who wear headscarves, are also well-documented. In 2000, France's highest administrative court, the Conseil d'État ruled that the principle of laïcité implied strict "neutrality", understood to mean not displaying one's personal religious beliefs, for public service employees,³⁶ effectively making all work in the public sector inaccessible to Muslim women wearing religious clothing for years to come. In 2016, the French government enacted the so-called El Khomri law, which, among other provisions, enabled private employers to apply such "neutrality" to their staff and potential staff as well.

4.5 RECOMMENDATIONS

- remove all provisions prohibiting the wearing of religious headgear and clothing from relevant laws and regulations;
- refrain from introducing rules and practices that directly or indirectly discriminate against Muslim women and girl players and athletes wearing religious headgear or other types of religious clothing and that violate their human rights;
- ensure that authorities on the regional, local and municipal levels, such as those responsible for public swimming pools, as well as non-state actors such as pool owners do not discriminate against Muslim women and girls through regulations that ban the wearing of swimming-appropriate full-body suits;

³³ Amnesty International, France: "We can't breathe anymore. Even sports, we can't do them anymore". *Violations of Muslim women's and girls' human rights through hijab bans in sports in France*, Index Number: EUR 21/8195/2024, 16 July 2024 pg. 20

³⁴ France, Senat, *Proposition de loi visant à assurer le respect du principe de laïcité dans le sport*, March 2024

³⁵ Amnesty International, France: *Authorities must repeal discriminatory ban on the wearing of abaya in public schools*, EUR 21/7280/2023, 3 October 2020,

³⁶ France, Conseil d'Etat, *Avis rendus par le Conseil d'Etat sur des questions de droit posées par un tribunal administratif ou une cour administrative d'appel (1)*, NOR : CETX0004174V, JORF n°144 du 23 juin 2000.

- meaningfully engage with women and girls who wear religious head coverings or wish to do so directly affected by such rules, laws, policies and practices. Meet with and listen to these rightsholders, take into account their concerns with regard to decisions impacting them and ensure their meaningful participation in any discussion about any such rules and proposals;
- ensure that independent research is conducted, in consultation with Muslim women and girls who wear religious head coverings to assess, monitor and address the human rights impacts of the bans on the wearing of religious head coverings in sport;
- ensure the gathering of detailed and disaggregated data on the experiences of Muslim women and girls who wear religious head coverings to inform actions to eliminate discrimination against them;
- refrain from discriminating against Muslim women, and end harmful stereotyping discourses that entrench and legitimise Islamophobia
 - Repeal the ban on the wearing of abaya and qamis in public schools
 - Respect, protect and fulfil the rights to freedom of expression, religion, belief and education of everyone, and with particular attention to Muslim girls, and those perceived as Muslims, to wear abaya and other religious or cultural symbols or dress without any discrimination
 - Refrain from weaponizing public discourse for political gain with harmful rhetoric and using statements which draw on negative stereotypical that stigmatize Muslims and those perceived to be Muslim, and instead promote the values of non-discrimination
 - Stop homogenizing the different significance abaya may represent to women and girls who wish to wear them, nor rely on or reinforce harmful stereotypes about religions, traditions or culture to restrict individuals' human rights; and instead promote gender equality and women and girls' bodily autonomy for all women and girls, including Muslim women and girls.

5. FREEDOM OF ASSEMBLY

In France, assemblies are frequently banned, moved and rerouted, often with vague reasoning related to “public order” or “public safety”. For example, the authorities often try to provide alternative locations away from the city centre or ‘wealthier’ neighbourhoods in the capital, Paris; thus interfering with the visibility of protests and the sight and sound principle.³⁷

The [Hijabeuses](#) are a [collective](#) of women hijab-wearing football players campaigning against the French Football Federation’s (FFF) discriminatory ban on sports hijabs in competitions and for better inclusion of Muslim women and girls in sports. The group, which came together in May 2020 with the support of the Alliance Citoyenne association, now counts 40 members.

Prior to the Hijabeuses’ legal challenge, the French authorities also infringed on the group’s human rights to freedom of expression and peaceful assembly.

In February 2022, the group planned to protest against the FFF’s ban, as well as a draft law before the Senate that would enshrine discriminatory prohibitions in national law and in all sports, the content of which has been introduced in a new draft law in June 2024 as mentioned in section 3.3.

Parliamentary sessions debating these proposals were stained with inflammatory rhetoric and discriminatory stereotyping that stigmatized Muslim women and girls. The Hijabeuses notified the police authorities of a protest they were planning to hold outside the Parliament where the draft law was to be debated. The evening before the protest was meant to take place, a Paris Préfecture of Police banned it, basing its justification on stigmatizing stereotypes about Muslim women and unfounded concerns that the mobilization would lead to “social disorder” and “violence.”

The Préfecture’s decision incorrectly and in a harmfully misleading way characterized their campaign as being part of a dispute between proponents of “political Islam” and “religious patriarchy” versus

³⁷ For example, Mediapart, ["Reply to the prefecture : a strange conception of the right to demonstrate"](#), 10 October 2020,

those who “respect the values of the French Republic”. An Administrative Tribunal determined the protest ban to be illegal and issued a fine of €1,000 to the Préfecture, however by that stage the Préfecture’s unlawful ban had effectively frustrated the women’s right to freedom of expression and peaceful assembly.

Similar deployment of discriminatory and stigmatising stereotypes can be observed in disproportionate and excessive attacks on protests and expressions of support for Palestinian human rights, which have been repeatedly banned or subjected to other excessive restrictions of the right to peaceful assembly and freedom of expression.³⁸

On 21st April 2023 thousands of anti-racist protesters march in Paris the Prefecture of police initially banning the protest. The police took issue with protesters wanting to 'bring attention to the children of Gaza' inferring that this would carry the risk of 'antisemitic slogans' and 'threats to public order.' An administrative tribunal overturned the prefecture of police's protest ban declaring it a 'serious and manifestly unlawful attack on the right to protest'. Despite this, the Interior Minister again tried to ban the protest. France’s highest administrative authority, the Conseil d 'Etat outrightly dismissed this renewed attempt to stop the protest.³⁹ The authority's determination & rationale for banning an anti-racism protest is illustrative of alarming attacks on the rights to peaceful assembly and freedom of expression in France, including provocative & stigmatizing public statements by the authorities.

On 18th April 2023, regional authorities in France banned a conference organized by student group 'Libre Palestine' which had already been relocated after the University of Lille withdrew from hosting it citing 'pressure placed on their academic freedom'.⁴⁰ The regional authority’s justification for the ban did not meet international standards and undermined the rights to freedoms of expression & assembly.⁴¹

On 31st May, despite explaining she was not taking part in any protest, a woman wearing a keffiyeh was fined in Lyon after an identity check, for 'participation in a banned protest.' Another woman observing the incident was also fined, footage shows the police confirming the reason for her fine was her wearing a 'distinctive symbol,' a watermelon pin – a symbol of Palestinian solidarity.⁴²

The display of flags, symbols or banners is a legitimate form of expression protected by the right to freedom of expression and that can only be restricted in limited and exceptional circumstances. Subjecting people to arbitrary identity checks & sanctioning them based on presumptions about their clothing, appearance or political opinions is discriminatory.

5.1 RECOMMENDATIONS

- Tackle and eradicate racism and any other form of discriminatory policing to ensure that everyone can enjoy the right of peaceful assembly without any restrictions based on the real or perceived identity of organizers and protesters
- Collect disaggregated data by race, ethnicity, religion, nationality and migration status regarding apprehensions, arrests, incidents of use of force of protesters involved in assemblies. These data should be made available and inform policies that address any discriminatory impact of police laws and practices on Black people, Arab people, Roma and people belonging to other racialized groups;
- Refrain from weaponizing public discourse for political gain with harmful rhetoric and stereotypical statements that stigmatize Muslims and those perceived to be Muslim, and instead promote the values of non-discrimination;

³⁸ Amnesty International, [Ban on protests supporting Palestinians is disproportionate attack on the right to protest in France](#), 16 October 2023

³⁹ Libération, [A Paris, une marche contre le racisme sans débordement : «C'est important pour dire qu'on ne se laisse pas faire»](#), 21 April 2024,

⁴⁰ Université de Lille, [Communiqué de presse, Conférence de Monsieur Mélenchon et de Madame Hassan du 18 avril 2024](#), 17 April 2024

⁴¹ Préfet du Nord, [Interdiction d'une conférence le jeudi 18 avril 2024](#), 17 November 2024

⁴² Libération, [Une femme a-t-elle été verbalisée à Lyon parce qu'elle portait un keffiyeh ?](#), 3 June 2024

- Ensure that any measures that restrict the rights to freedom of peaceful assembly and expression are only considered as a measure of last resort and are strictly necessary and proportionate for the protection of legitimate aim under international human rights law, avoid blanket bans on protests, symbols and expressions and assess whether restrictions may be necessary and proportionate to achieve a legitimate aim on a case-by-case basis.
- Always first seek to protect and facilitate the rights of freedom of expression and peaceful assembly for all, including those who seek to express solidarity with Palestinians.
- Repeal or substantially amend all criminal provisions that unduly restrict the right to freedom of peaceful assembly including organizing a public assembly without complying with the notification requirements, contempt of public officials and the prohibition on wearing face coverings in the context of a protest deemed “likely to threaten public order”.

6. MASS AND TARGETED SURVEILLANCE

Authorities have not taken sufficient action to investigate, stop and provide remedies for human rights violations stemming from the use of spyware against journalists and members of civil society revealed by the Pegasus Project⁴³ and the Predator Files.⁴⁴

On 23rd March 2023, the French National Assembly adopted new legislation relating to the hosting of the 2024 Paris Olympic Games that permitted the use of mass video surveillance technology powered by Artificial Intelligence.⁴⁵ There already exists many experiments and deployments of technologies that allow mass surveillance, including facial recognition technologies at local, regional and national levels across France, for example in train stations, concert halls, and sports events.⁴⁶

The legalization of algorithmic video surveillance in France raises new and worrying issues in terms of respect for the right to privacy and freedom of expression. The fact that algorithms are used to analyze in real time the behavior of individuals is based on the collection of personal data, which raises concerns in terms of respect for the right to privacy. Any surveillance in the public space is an interference in the right to privacy. To be legal, such interference must be necessary and proportionate.

This type of technology can have a real chilling effect on freedoms. The mere knowledge that they are being monitored can lead people to modify their behavior, to self-censor, and to refrain from exercising certain rights such as freedom of expression, freedom of association and the right to protest.

Algorithmic video surveillance also carries with it the risk of stigmatizing certain groups of people and running the risk of discrimination. Algorithms are trained and used to detect and report “abnormal” or “suspicious” situations. The data used to train the algorithms and the “abnormal” situations they will report on are decided by people and can carry out discriminatory biases.

Some people are more likely to suffer the effects of this technology than others. And there's a risk that situations identified as “potentially suspicious” will amplify and further entrench discrimination.⁴⁷

The legal oversight framework for facial recognition is vague with relevant texts depending on the purposes of deployment of such technology, which is not always clear and specific.⁴⁸

⁴³ Amnesty France, [Pegasus : révélations sur un système mondial de surveillance](#), 27 February 2022

⁴⁴ Amnesty International, [The Predator Files: Caught in the Net](#), Index Number: ACT 10/7245/2023, 9 October 2023

⁴⁵ Amnesty International, [France: Allowing mass surveillance at Olympics undermines EU efforts to regulate AI](#), 23 March 2023,

⁴⁶ Amnesty France, [Face à l'ampleur des technologies de surveillance en France](#), 23 May 2024 and Amnesty France, [JO 2024 : de la vidéosurveillance algorithmique à la reconnaissance faciale, il n'y a qu'un pas](#), 26 April 2024

⁴⁷ Amnesty France, [JO 2024 : Pourquoi la vidéosurveillance algorithmique pose problème](#), 15 April 2024,

⁴⁸ Amnesty France, [Reconnaissance faciale : neuf questions pour comprendre](#), 12 May 2024

6.1 RECOMMENDATIONS

- Pass new legislation banning facial recognition for identification purposes in the public space and spaces accessible to public, without exception.
- Adopt and implement domestic legislation that imposes safeguards against human rights violations and abuses resulting from unlawful digital surveillance.
- Impose a ban on highly invasive spyware, whose functionality cannot be limited to only those functions that are necessary and proportionate to a specific use and target, or whose use cannot be independently audited.
- Implement a human rights regulatory framework that governs surveillance and that is in line with international human rights standards. Until such a framework is implemented, a moratorium on the purchase, sale, transfer, and use of all other spyware should be enforced.

7. RIGHTS OF MIGRANTS & ASYLUM SEEKERS

In 2023 the French Parliament approved a discriminatory, xenophobic “immigration control” law, which the Defender of Rights and National Commission for Human Rights had called to be rejected on human rights grounds. It is the 22nd immigration law introduced over the past 20 years.

The law expanded administrative powers to detain and expel foreign nationals deemed a “threat to public order” or to have failed to “respect republican values”, regardless of residency status and without precise criteria. It also undermined the right to family life, housing and health and re-criminalized “irregular” residency, an offence previously abolished in 2012.

Barriers to residency renewal, regularization and appeal rights made the position of migrants more precarious, while diminishing judicial expertise at asylum courts reduced access to justice for asylum seekers. Priorly, asylum applications were typically examined by three judges with different areas of expertise, during a hearing at the Cour Nationale du Droit d'Asile (CNDA). These three judges, including a person appointed by the United Nations High Commissioner for Refugees would sit together: in accordance with the principle of collegiality to guarantee of impartiality.

This new framework is retrogressive and undermines the right of appeal for people seeking asylum in France. For example, the new law allows for a single judge to handle asylum cases before the CNDA, except in the case of particularly “complex” cases. A single judge, rather than three, is therefore responsible for deciding whether or not to accept an asylum application, and thus for deciding alone on the lives of many people. The presence of three judges made it possible to collate the points of view and avoid being guided by personal prejudices when judging the credibility and coherence of the claim.

The practice of administrative detention for children was retained in Mayotte until 2027 but stopped elsewhere in France. Despite the French Constitutional Council striking down many measures contained in the law on 25th January 2024, it remains the one of the most historically regressive legislative assaults on the rights of migrants and asylum seekers in France via a process which saw the government encourage demonizing, xenophobic rhetoric during extensive legislative debates over proposals which were foreseeably, manifestly unconstitutional.⁴⁹

France continues to issue expulsion orders to, and detained citizens from, countries where a forced return could amount to refoulement, including Syria, Iran, Sudan, Afghanistan and Haiti.

⁴⁹ Amnesty France, [Loi « asile et immigration » : le recul historique de la France](#), 26 January 2024,

7.1 RECOMMENDATIONS

- Widen and expedite safe and legal migration routes such as humanitarian visas, resettlement, student visas, work visas and family reunification.
- Ensure the right to seek asylum is respected and protected and refrain from illegal practices at its borders and illegal returns, including pushbacks, collective expulsions, detention without legal basis, and refusal to examine asylum claims without any formalities.
- Respect and protect the fundamental human rights of all migrants regardless of their immigration status
- End all detention of children throughout all of France.
- Provide unaccompanied children access to effective protection and refrain from detaining families with children or unaccompanied minors.
- Publicly support civil society initiatives to protect the rights of displaced people and refrain from prosecuting, harassing, or intimidating individuals and organizations for their actions in solidarity with asylum seekers and refugees.

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