

Letter from the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

28 October 2022

Concerns: Request no. 454.836, in question of Amnesty international France and others c. Minister of the Interior, Minister of Justice, Prime Minister.

This below is submitted by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms. E. Tendayi Achiume. In the performance of her mandate, the Special Rapporteur is accorded certain privileges and immunities as expert on mission for the United Nations pursuant to the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946. This submission is provided on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations, to which France is a party since 18 August 1947. Authorization for the positions and views expressed by the Special Rapporteur, in full accordance with her independence, was neither sought nor given by the United Nations, including the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.

Distinguished Jurists,

I am writing to the Conseil d'Etat in my capacity as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance pursuant to Human Rights Council resolution A/HRC/RES/43/36.¹ The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They are non-paid and elected for 3-year mandates that can be reconducted for another three years. As of October 2021, there are 45 thematic and 13 country mandates. The Special Procedures are regarded as a central pillar of the United Nations human rights protection system.²

¹ Please see Human Rights Council resolution A/HRC/RES/43/36, as appended.

² Please see OHCHR, Special Procedures of the Human Rights Council, available here: <https://www.ohchr.org/en/special-procedures-human-rights-council>

The Special Procedures mandates are appointed by the Human Rights Council, the primary UN intergovernmental body responsible for human rights protection. France currently serves as a member of the Human Rights Council.³ In serving as a member of the Human Rights Council, France has committed itself to act as a custodian of human rights norms and principles, as well as to the letter and spirit of the human rights mechanisms that are established and renewed by the council itself.

I am writing to you to provide substantive input on my interest to intervene in Application No 454836, which I understand has been called into questions by the French Ministry of the Interior in the context of their first defence memorandum on 16 January 2022 and their supplementary memorandum on 22 April 2022.

I find this assertion to be unsubstantiated and against both the spirit and letter of the work of the Special Procedures. It also runs counter to France's responsibilities as a member of the Human Rights Council, by seeking to weaken the role that Special Procedures can play in advancing international human rights norms in national contexts. I am not aware of any Court rejecting the third-party intervention of a Special Procedures mandate holder and doing so would set a harmful precedent that undermines the human rights protection mechanisms established by the Human Rights Council.

To substantiate my position, I would firstly like to highlight that the material scope of my mandate covers the issues of racial profiling. Within the Human Rights Council resolutions establishing and renewing my mandate⁴, which are appended for your reference, I have been asked by the Human Rights Council to advance racial equality, ensuring equal opportunities for all, guaranteeing equality before the law and promoting social, economic and political inclusion without distinction based on race, age, sex, disability, descent, national or ethnic origin, religion or economic or other status. Moreover, the Human Rights Council has mandated me to contribute to the follow-up on the implementation of the Durban Declaration and Programme of Action, which contains a commitment made by the international community to “eliminate the phenomenon popularly known as “racial profiling” and comprising the practice of police and other law enforcement officers relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity.”⁵

I would also like to highlight that the working methods of the Special Procedures are broad and go far beyond collecting information. The Special Procedures mandate holders seek to advance human rights through a number of means, including assisting with legislative reform; improved

³ Please see OHCHR, Membership of the Human Rights Council for the 16th cycle, 1 January - 31 December 2022, available here: <https://www.ohchr.org/en/hr-bodies/hrc/current-members>

⁴ Please see Human Rights Council resolutions A/HRC/RES/43/36; A/HRC/RES/34/35; and 7/34, as appended.

⁵ Please see the Durban Declaration and Programme of Action, para.72.

access to mechanisms of redress; policy reform; human rights mainstreaming; contributing to government/judicial processes; contributing to human rights standard setting; raising human rights awareness; facilitating dialogue/coalition setting; and preventing/cessation of human rights violations.⁶ The practices of the special procedures have evolved to clearly include the submission of third party interventions in national and regional legal proceedings of relevance to their mandate. There are numerous examples of such interventions in national European jurisdictions and the European Court of Human Rights, to which France is a member. A non-exhaustive list of recent cases includes the third-party interventions of:

- The Special Rapporteur on contemporary forms of racism and the Special Rapporteur on the right to adequate housing in a case before the Eastern High Court of Denmark;⁷
- The Special Rapporteur on contemporary forms of racism in a case before Dutch Immigration and Naturalisation Service;⁸
- The Special Rapporteur on contemporary forms of racism and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in a case before the European Court of Human Rights;⁹
- The Special Rapporteur on counter-terrorism and human rights in several cases before the European Court of Human Rights;¹⁰
- The Special Rapporteur on counter-terrorism and human rights in a case before the Supreme Court of the United Kingdom;¹¹
- The Special Rapporteur on trafficking in persons, especially women and children in several cases before the European Court of Human Rights;¹²

⁶ Please see OHCHR, Special Procedures of the Human Rights Council, available here:

<https://www.ohchr.org/en/special-procedures-human-rights-council>

⁷ Please see OHCHR, Activities, Special Rapporteur on contemporary forms of racism, available here:

<https://www.ohchr.org/en/special-procedures/sr-racism/activities>

⁸ Ibid

⁹ Case of *Emin Huseynov v. Azerbaijan*, 2018; please see OHCHR, Activities, Special Rapporteur on contemporary forms of racism, available here: <https://www.ohchr.org/en/special-procedures/sr-racism/activities>.

¹⁰ Case of *Daoudi v. France*, 2022; case of *Domenjoud v. France*, 2022; case of *Mikolaj Pietrzak v. Poland*, 2020; case of *Dominika Bychawska-Siniarska et al. v. Poland*, 2020; case of *H.F. and M.F. v. France*, 2020; case of *Adeel Muhammad and Ramzan Muhammad v. Romania*, 2019; Please see OHCHR, Submission to courts, Special Rapporteur on counter-terrorism and human rights, available here: <https://www.ohchr.org/en/special-procedures/sr-terrorism/submissions-courts>.

¹¹ Case of *Shamima Begum V. Special Immigration Appeals Commission And Secretary Of State For The Home Department*, 2020; Please see OHCHR, Submission to courts, Special Rapporteur on counter-terrorism and human rights, available here: <https://www.ohchr.org/en/special-procedures/sr-terrorism/submissions-courts>.

¹² Case of *K.N. v. the United Kingdom*, 2022; case of *H.F. and M.F. v. France*, 2021; case of *J.D. and A.D. v. France*, 2021; Please see OHCHR, Submissions to courts and other bodies, Special Rapporteur on trafficking in person, available here: <https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons/submissions-courts-and-other-bodies>.

- The Special Rapporteur on trafficking in persons, especially women and children in a case before the Supreme Court of the United Kingdom;¹³
- The Special Rapporteur on the rights of persons with disabilities in several cases before the European Court of Human Rights;¹⁴
- The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in a case before the European Court of Human Rights;¹⁵
- The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in a case before the High Court of Ireland;¹⁶
- The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in several cases before the European Court of Human Rights;¹⁷
- The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in a case before the European Court of Human Rights;¹⁸
- The Special Rapporteur on the situation of human rights defenders in a case before the European Court of Human Rights;¹⁹

¹³ [case of *J.W. v. Mr. Khalid Basfar*](#), 2021; Please see OHCHR, [Submissions to courts and other bodies](#), Special Rapporteur on trafficking in person, available here: <https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons/submissions-courts-and-other-bodies>.

¹⁴ Case of *Strøbye and Rosenlind v. Denmark*, 2021; Case of *Stoian v. Romania*, 2017; please see OHCHR, Comments on legislation and policies, Special Rapporteur on disability, available here: <https://www.ohchr.org/en/special-procedures/sr-disability/comments-legislation-and-policies>.

¹⁵ Case of *Greenpeace Nordic and others v. Norway*, 2022; Please see OHCHR, activities, Special Rapporteur on the environment, available here: <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/2022-06-28/Boyd-Orellanos-Amicus-in-Greenpeace-and-Others-Norway.pdf>.

¹⁶ Case of [Friends of the Irish Environment CLG v. The Government of Ireland, Ireland and the Attorney General](#), 2018; available here: <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/FriendsIrishEnvironment25Oct2018.pdf>.

¹⁷ Case of *Privacy International v. The United Kingdom*, 2019; case of *Big Brother Watch and Others v. The United Kingdom*, 2019; case of *OOO Flavia v. Russia*, 2018; case of *Azerbaijan v. Khadija Rovshan Gizi Ismayilova*, 2016; Please see OHCHR, [Comments on legislation and policy](#), Special Rapporteur on freedom of opinion and expression, available here: <https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression/comments-legislation-and-policy>.

¹⁸ Case of [Mokgadi Caster Semenya v. Switzerland](#), 2021; Please see OHCHR, [Comments on legislation and policy](#), Special Rapporteur on health, available here: <https://www.ohchr.org/en/special-procedures/sr-health/comments-legislation-and-policy>.

¹⁹ Case of *Ecodefence and Others v. Russia*, 2017; Please see HUDOC, European Court of Human Rights, available here: [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22%22CASE%20OF%20ECODEFENCE%20AND%20OTHERS%20v.%20RUSSIA%22%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-217751%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22%22CASE%20OF%20ECODEFENCE%20AND%20OTHERS%20v.%20RUSSIA%22%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-217751%22]}).

- The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment²⁰
- The Working Group on discrimination against women and girls in several cases before the European Court of Human Rights;²¹
- The Working Group on discrimination against women and girls in a case before the Supreme Court of the United Kingdom;²²
- The Special Rapporteur on extreme poverty and human rights in a case before the District court of the Hague;²³
- The Independent Expert on the enjoyment of all human rights by older persons, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes in a case before the European Court of Human Rights.²⁴

Despite the plurality of the cases and jurisdictions in which my peers and I have intervened, I am not aware of a single case in which a court has deemed that a Special Procedures mandate holder is not mandated to offer their expert legal opinion and dismissed their intervention without consideration of its merits.

As I highlighted above, to accept the French Ministry of Interior's argument and exclude my intervention without consideration of its merits would be a harmful and unfortunate precedent that would undermine the systemic protections offered by the Special Procedures, as a central pillar of international human rights protection.

The Special Procedures regularly engage with and make recommendation to the judiciaries in UN Member States. I, as a Special Procedures mandate holder, see the role of an independent and principled judiciary as central to human rights protection, democracy and the rule of law across the world. It stands as an important safeguard against Government decisions that are manifestly incompatible with their obligations under international human rights law. I urge you within this vital role to consider the merits of my intervention and uphold the important

²⁰ Case of *Barbar Ahmad and Others v. The United Kingdom*, 2011; Please see OHCHR, Submissions to courts, Special Rapporteur on torture, available here: <https://www.ohchr.org/en/special-procedures/sr-torture/submissions-courts>.

²¹ Case of *K.B v. Poland, 2021; case of K.C v. Poland, 2021; case of A.L.-B. v. Poland*, 2021; Please see OHCHR, Submissions to courts, Working Group on women and girls, available here: <https://www.ohchr.org/en/special-procedures/wg-women-and-girls/submissions-courts>.

²² Ibid.

²³ Case of *NJCM c.s./De Staat der Nederlanden (SyRI)*, 2019; Please see OHCHR, Activities, Special Rapporteur on poverty, available here: <https://www.ohchr.org/en/special-procedures/sr-poverty/activities>.

²⁴ Case of *Verein KlimaSeniorinnen Schweiz et. al. v. Switzerland*, 2021; available here: <https://www.ohchr.org/sites/default/files/Documents/Issues/ToxicWaste/AmicusKlimmaECtHR.pdf>

function of the Special Procedures to intervene as third parties in cases of relevance to their mandates.

I remain at your disposal, if you have any further questions relating to this matter.

Please accept assurances of my highest consideration

Yours Sincerely



E. Tendayi. Achiume, UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance