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Geneva and Paris, 5 July 2012

Concerns of FIACAT and ACAT-FRANCE[1]

Presented to the Human Rights Council for the purpose of the Universal Periodic Review consideration of FRANCE
15th session – January/February 2013

With regard to the previous recommendations accepted by France at the time of its first review in May 2008, our organisations wish to bring to the Council's attention observations concerning ***the situation of asylum seekers, refugees and persons deprived of their liberty.*** We also wish to draw the attention of the Council to ***existing obstacles in the fight against impunity.***

During the presidential and legislative election campaigns in May and June 2012, the newly-formed French Government committed themselves several times to a different policy on asylum, to a greater respect of the human dignity of persons deprived of their liberty and to combat the impunity of perpetrators of serious human rights violations. It is now time to put those words into action.

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[1] ACAT France is an organisation for the defence of human rights founded in 1974 in order to fight torture and the death penalty across the world. Its mission is to protect victims by acting to defend the right to asylum and the respect of persons deprived of their liberty, particularly in France.
ACAT France is a member of FIACAT (International Federation of Action by Christians for the Abolition of Torture).

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I. The human rights situation of asylum seekers and refugees

1. The fundamental freedom to asylum, which is guaranteed by the Geneva Convention on 28 July 1951 relating to the Status of Refugees and by other international laws, entails the protection of people who have fled their country of origin because they risk persecution.

2. Since 2008, the French Government has frequently presented asylum seekers as distorting the right to receive international protection and as representing an undue burden. This has been shown in practice by a weakening of the right to asylum.

1. Access to the right to asylum

1.1 The European Programme on Immigration and Asylum

3. **In recommendation n° 31, Mexico** called for France to place human rights at the centre of the European Pact on Immigration and Asylum, which was adopted by the European Council in October 2008 under the French presidency. The aims of the Pact included establishing a Common European Asylum System (CEAS) in order to harmonise the reception systems of different European Union Member States, which are currently still too divergent.

4. In 2012, amendments were proposed to European Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in Member States (hereafter the "Reception" directive) and to Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status (hereafter the "Procedures" directive).

5. Establishing common standards risks a loss of national safeguards guaranteed to asylum seekers and refugees by creating a race to the bottom. Current negotiations over the "Reception" directive provide more possibility for placing asylum seekers into an administrative detention system, even though the use of detention is already strictly regulated[2]. There is a danger of trivializing the detention of people who are in need of international protection.

6. The planned recasting of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification also risks increasing the requirements for the exercise of this right, rather than facilitating it.

7. Rules already in force include European Council Regulation n°343/2003 of 18 February 2003, known as "Dublin II", which establishes that countries that are entry points to European territory, such as Greece or Malta, are responsible for examining asylum applications submitted by foreign nationals who have reached their border. This mechanism for determining the State responsible for processing the asylum application presupposes that all European States have the same ability to provide an effective asylum system with similar reception conditions, which is not the case.

8. Until 2011, France had refused to suspend returns of asylum seekers to Greece despite serious shortcomings in the Greek asylum system that had been unanimously identified. France did not consider applying the principle of solidarity with other European States. It was only after legal pressure from the European Court of Human Rights (ECHR) that France finally suspended these returns.

9. At the same time, access to European territory has become more difficult because of a European policy to outsource asylum to Mediterranean countries that do not respect international human rights standards. In 2011, France refused to help refugees from Libya to access asylum procedures in Europe and to receive refugees in the process of resettlement under the protection of the United Nations High Commissioner for Refugees (UNHCR).

[2] Conclusion n° 44 (XXXVII) of the Executive Committee of the United Nations High Commissioner for Refugees Programme on the detention of refugees and asylum seekers.

- France must ensure that Europe does not impede the right to asylum and must commit to providing fair and equitable reception to asylum seekers in European territory.
- France must refuse to outsource asylum to countries that do not respect international human rights standards.

1.2 Inadequate material reception conditions

10. In 2011, 45,654 people applied for asylum in France[3]. While France has usually emphasized its high number of asylum applications, some countries, such as Pakistan, the Democratic Republic of the Congo and Kenya received a greater number of asylum seekers in 2011, taking into account the size of their economies[4]. For the 2007-2011 period, France was ranked 14th out of 44 industrialized countries by UNHCR for the number of asylum seekers per 1,000 inhabitants[5].

11. Asylum seekers in France are often deprived of adequate material reception conditions even though these are provided for in the "Reception" Directive. In 2011, only 24.6% of asylum seekers looking to access accommodation specifically for asylum seekers were able to, as the system was completely saturated[6]. Asylum seekers who are not able to access an asylum reception centre (CADA), and who in principle are not allowed to work, receive financial assistance of around 330€ per month from the Government. This assistance is still nowhere near enough to live adequately in France[7].

12. To have to undergo the asylum process while living on the streets or in insecure and unsuitable accommodation undermines the possibility of receiving protection.

13. The initial reception system for asylum seekers, which is under the French Office for Immigration and Integration's (OFII) responsibility, provides assistance "in preparing the asylum application file" through the initial reception services for asylum seekers, which are called reception platforms (*plateformes d'accueil*). These reception platforms are usually the first point of contact for asylum seekers.

14. The list of initial reception services for asylum seekers[8] has been reduced. This limits the amount of assistance in preparing the asylum case file, and excludes assistance in preparing for the often decisive interview at the French Office for the Protection of Refugees and Stateless Persons (OFPRA) or in submitting an appeal if the application is refused by OFPRA. All that is offered is assistance in finding a lawyer. This publicly-funded legal representation to refer the asylum application refusal to the National Court on the Right of Asylum (CNDA) can sometimes be difficult to obtain, mainly because of a lack of willing lawyers and the low rate of pay offered to them. There is therefore a danger that people are unable in practice to exercise their right to appeal.

15. After refusal by OFPRA, the list of services excludes any assistance for asylum seekers whose application is processed under a so-called fast-track procedure (Cf. below in 2.1). This is also the case for asylum seekers awaiting a decision on their return to the country responsible for their asylum application in accordance with the "Dublin II" procedure.

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[3] Not including accompanying minors. 57,337 including accompanying minors, from the French Office for the Protection of Refugees and Stateless Persons (OFPRA) 2011 Activity Report (*rapport d'activité 2011 de l'Office français de protection des réfugiés et apatrides*).

[4] UNHCR Global Trends report 2011 (page 15).

[5] Asylum Levels and Trends in Industrialized Countries, UNHCR, 2011 (page 13).

[6] French Office for Immigration and Integration (OFII) Activity Report 2011 (*rapport d'activité de l'Office français de l'immigration et de l'intégration 2011*).

[7] See also the Notice on the Reception of Asylum Seekers in France (*l'Avis sur l'accueil des demandeurs d'asile en France*) by the National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l'homme, CNCDH*), of which ACAT-France is a member, 15 December 2011.

[8] List of initial reception services for asylum seekers (*Référentiel des prestations de premier accueil des demandeurs d'asile*), French Office for Immigration and Integration, December 2011.

- An increase in the number of places in asylum reception centres (CADA) is required while also allowing asylum seekers freedom to choose their accommodation and the opportunity to participate in professional activity.
- France must also provide real social and legal assistance to asylum seekers throughout the asylum procedure.

1.3 Limited access to the government service

16. To be able to request France's protection, any asylum seeker in French territory must first go to his or her local Prefecture to be granted a residence permit for asylum. This government service is currently often unavailable, forcing asylum seekers to go back on several occasions or risk arrest for illegal entry and stay. Prefectures give people little or no information about their rights and obligations, particularly if they do not speak French, and often demand them to present documents that are not required by law. Until now, their action has been guided more by the aim of controlling migration flows than by the aim of protecting asylum seekers.

17. ACAT-France, along with other organisations, has carried out observations on this illegal practice by Prefectures and in 2009 and 2011 took legal action in Île-de-France, which receives 45 % of asylum applications nationally.
In more than forty cases, the court decided that the impossibility of accessing the government service violated the right to asylum. Despite these calls to order, the overall situation remains a concern.

- France must review its reception system in the government service responsible for the asylum application.

2. Disregard for the principle of non-refoulement

2.1 Excessive use of the fast-track procedure

18. Since 2008, restrictions on residence permits for asylum seekers while their application is reviewed have increased, with an abuse of the so-called "fast-track" procedure.

19. Under Article L 741-4 of the Code on the Entry and Residence of Foreigners and on the Right of Asylum (CESEDA), this procedure is applied to:
- those leaving countries of origin deemed safe by a list decided by OFPRA and extended on three occasions in 2009 and 2011[9] despite disturbing human rights situations in some of the countries added;
- asylum applications considered improper or manipulated to cause the delay of a deportation or if submitted by a person representing a threat to public order. A new instance of an "improper" asylum application was added by the Law on Immigration, Integration and Nationality of 16 June 2011. It targets persons whose fingerprints could not be taken during their journey to the Prefecture, in application of the EU Dublin II Regulation.

20. In 2011, nearly 12,000 asylum seekers (26.1% of the total number) were placed in this "fast-track" procedure.

21. The asylum seekers examined in this procedure are not given a residence permit. They are merely "tolerated" on French territory and in practice do not enjoy economic or social rights. If their asylum application is refused by OFPRA, their appeal to the CNDA is non-suspensive. They may therefore be sent back to the country that they had fled before even a full and definitive review of their application for international protection.

[9] The list today includes: Armenia, Bangladesh, Benin, Bosnia-Herzegovina, Cape Verde, Croatia, Ghana, India, Mali (for men only), Macedonia, Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia, Tanzania and Ukraine.

22. The guarantee of effective remedy is of even greater importance given that OFPRA's acceptance rate in 2011 was only 11 %, but the total acceptance rate reached 25.3 % after decisions had been reviewed by the CNDA (fast-track and normal procedures combined).

23. In cases of suspensive appeal against deportation after refusal by OFPRA of the asylum application, an administrative court does not have as great an understanding of the risks involved as a specialist asylum court[10].

24. Despite unanimous recommendations from all Council of Europe and United Nations human rights bodies and from civil society, France has stubbornly resisted any reform of its "fast-track" asylum procedure.

25. In addition, the ECHR has sanctioned France for its lack of an effective, i.e. suspensive, appeals process in the "fast-track" asylum procedure (I.M v. France, Application n° 9152/09, 2 February 2012). In this case, a Sudanese man had been detained on arrival in France, criminally convicted for breaking the law on foreign nationals, then held in detention to await deportation. The asylum application that he had submitted while in detention had automatically been processed and refused under the "fast-track" procedure. He was in danger of being deported back to Sudan before his application had been definitively reviewed by the CNDA, despite the risk to his life.

26. **The illusion of the asylum application while in detention**
In 2011, 970 asylum applications placed in the fast-track procedure were submitted by foreign nationals detained in one of 28 administrative detention centres to await deportation. Preparing an asylum application in a place of imprisonment is extremely difficult, if not futile, because of the short time frame required of five days to submit an application, the requirement to write it in French without the right to an interpreter, and the impossibility, in such a short time frame, of gathering the necessary evidence. OFPRA must rule on the case within 96 hours, and in the case of refusal of the application, the appeal to the CNDA has no suspensive effect for deportation. Neither the lengthening of the detention period from 32 to 45 days from June 2011 nor the presence in detention centres of associations providing legal assistance to foreign nationals has ensured the right to apply for asylum to be exercised effectively, taking into account the time, language and preparation constraints.

27. **Recommendations n° 15 and 16 by the Czech Republic and the Netherlands** to turn the principle of non-refoulement into reality in all circumstances have still not been followed up. The fast-track procedure continues to expose asylum seekers to the risk of torture or ill-treatment if deported.

- As recommended to it by every United Nations human rights body, including the Human Rights Committee, in 2008, and the Committee Against Torture, in 2010, France must introduce suspensive appeal for all asylum applications.

2.2 Unaccompanied foreign minors

28. Every year, hundreds of migrant children arrive alone at France's borders. Instead of protecting them by immediately allowing them to enter the country, and giving precedence to the children's best interests, the authorities keep them in waiting areas, mainly at Roissy Charles de Gaulle airport. They are then either sent back, or are admitted into French territory, usually being granted asylum. The maximum length of time that a foreign national can be kept in a waiting area is 20 days, or 26 days if he or she wishes to claim asylum[11].

29. The National Association for Assisting Foreigners at Frontiers (ANAFE), of which ACAT-France is a member, has observed that several unaccompanied minors had often been deported to a different country

[10] In 2011, the European Court requested France on 116 occasions to refrain from deporting a foreign national, mainly because of the risks faced in the receiving country. The number of provisional measures ordered by the Court demonstrates the gaps in the French procedure that do not prevent deportations that put people in danger.
[11] CESEDA, Articles L 221-1 et seq.

from their country of nationality, without anyone knowing exactly how they had been taken care of on arrival.

- It is essential to put an end to the imprisonment of unaccompanied foreign minors.

3. Family reunification for refugees

30. All beneficiaries of international protection have the right to be reunited with their family within a family reunification procedure. French law provides for the issue of a ten-year residence permit to refugees' spouses and minor children. Foreign national beneficiaries of subsidiary protection are entitled to a one-year residence permit for reunited family members. These family members must apply to the French consular authorities for a visa in all cases.

31. **In recommendation n° 27, the Czech Republic** called for France to ensure the protection of refugees' family life by speeding up the family reunification procedure. However, no real reforms have been implemented to make this excessively long and complicated process clearer. Only the administrative part has been modified, with family members now required to go directly to the French consulate rather than waiting to be summoned.

32. Since 2011, ACAT-France has tracked nearly seventy family reunification files in which refugees have often waited over six years to be able to live with their family. Some refugees had often found it difficult to recognise their children when they arrived. The many obstacles to overcome to be able to live as a family have a greater impact on refugees' integration in their host country.

33. Refugees and their families continue to lack information on:

- the different stages of the procedure, involving many different actors: the Ministry of the Interior, the consulates, OFPRA, and often the authorities in the country of origin to be able to issue civil status documents;
- additional evidence of family ties (letters, photographs, testimony) that can be used in lieu of civil status documents, which are required in spite of difficulties that are often impossible to resolve (such as a child not registered at birth and born in exile in a third country, destroyed civil registry records, or civil status certificates containing errors);
- on-site inquiries ordered by the consular authorities;
- the progression of their application and the time taken for the verification process, which can take up to 8 months;
- the possible implicit decision to refuse the application.

34. If the visa application is refused, refugees are required to prepare a preliminary administrative appeal before applying to the administrative court. During the court hearing, their application is often accepted after being judged to be well-founded. The latest government report to the French Parliament on immigration and integration policy direction in December 2011 stated that 54 % of appeals were successful[12] (all family reunification procedures combined).

35. The French authorities also state that "*contentious appeals are increasingly ruled in favour of the claimant because of an increasing number of lawyers specializing in this area and legal precedents that have gained greater control over almost*

[12] This figure is for all visa applications (including for refugee families) and includes cancellations and cases where adjudication was not necessary. In 32.1 % of cases, the consulate issued a visa before the court hearing, and in 23.1 % of cases, the administrative court waived the visa refusal. The official figures do not include either the average length of time for the refugee family reunification procedure, or the total number of visa applications submitted by refugees and those placed under the protection of OFPRA who could be affected. Only the number of visas issued to refugee families is mentioned; in 2010, 1,515 visas were issued to spouses, and 2,952 to children, an increase of 13.9 % compared with 2009.

every contested decision". This can be explained "*by the appearance of* ***new, decisive evidence at the appeals stage*** […] ***and/or, in rarer cases, by an inadequate review of the initial visa application"***[13].

- Reform of the family reunification procedure for refugees must be introduced so as to give precedence to the right of refugees to live with their family.

II. The human rights situation of persons deprived of their liberty

1. Prevention of torture and cruel, inhuman or degrading treatment

36. In the course of 2008, France introduced a national mechanism for the prevention of torture, following the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It established a General Inspector of Places of Deprivation of Liberty (*Contrôleur général des lieux de privation de liberté*), an independent administrative authority with access to all detention centres and able to make public observations. This is an important advance, which addresses **recommendation n° 20 by Indonesia,** on condition that its principles are upheld in the future.

37. In March 2011, a Defender of Rights (*Défenseur des droits*) responsible for children's rights, security ethics, the fight against discrimination, and mediation with government services was also established. ACAT-France regrets that organisations for the defence of human rights cannot appeal directly to this authority about violence committed by security forces.

38. In its latest report in 2010, the National Commission on Security Ethics (CNDS), which has now been replaced by the Defender of Rights, recommended that France conduct investigations when law enforcement officers are the subject of allegations. The CNDS noted "the persistence and recurrence of practices aimed at limiting or impeding investigations or controls on the activity of persons engaged in security missions"[14].

- France must ensure that any violent or unethical act by security forces is investigated and sanctioned.

2. Imprisonment of detained foreign nationals

39. Foreign nationals who are the subject of a deportation order may be placed in administrative detention centres for a maximum of 45 days to await deportation. Immigration policy has led to the imprisonment of illegal foreign nationals becoming a common method of managing migration flows. The "industrialisation" of detention facilities places foreign nationals in an increasingly dehumanised environment that is ever closer to prison.

40. Children of foreign nationals may also be detained alongside their parents. Imprisoning children who may have been educated in France to await their deportation, regardless of their age, is a serious violation of their own and their family's dignity. In a ruling in January 2012, the ECHR condemned France, considering that the detention of children with their parents amounted to inhuman or degrading treatment and violated the right to respect for private and family life[15].

- France must renounce its targets on forced deportations and permanently cease its imprisonment of detained minors.

3. Detention conditions and ill-treatment

[13] Report to the French Parliament on immigration and integration policy direction *(« Les orientations de la politique de l'immigration et de l'intégration »)*, December 2011 (page 37) (our highlights).
[14] National Commission on Security Ethics, 2010 Report (*Commission nationale de déontologie de la sécurité*, *« Rapport 2010 »*) (page 27).
[15] Popov v. France, Applications n[os] 39472/07 and 39474/07, 19 January 2012.

3.1 Overcrowding and new prisons

41. **In recommendations n° 23 and 24, the Netherlands and Sweden** called for France to resolve its poor detention conditions, particularly the problem of overcrowding in its detention centres. In May 2012, 650 prison beds in France were mattresses laid on the floor. As of 1 June 2012, the prison population was over capacity by 12,530 people, with a total of 66,915 detainees[16].

42. Overcrowding in prisons leads to deteriorating detention conditions in unsuitable and outdated facilities, poor general hygiene, compromised and limited health care, and tensions between prison officers and prisoners and among prisoners. Prison staff also face an extremely difficult job.

43 To resolve the problem, the French Government has decided to build new prison facilities to increase capacity to 80,000 places by 2017, compared with around 57,000 in May 2012, after adopting a new planning law on 27 March 2012. This law, which commits public spending over several decades, represents a complete reform of the prisons policy, notably by increasing the population density of new prisons and creating facilities specifically for short sentences. It is the Government's third prison-building scheme since 2008.

44. The stated objective of this is to ensure sentences are effectively completed by reducing the number of pending sentences, to diversify the type of detention facilities, and to anticipate the evolving prison population. However, in February 2012 around thirty associations sent their objections to the authorities, arguing that creating "30,000 new places is a human, economic and legal nonsense"[17] as it would mean more incarcerations, particularly for shorter sentences, and undermine alternatives to imprisonment and adjusted sentences, which are effective in preventing reoffending. It is important to note that an adjusted sentence must still be considered a proper sentence.

45. While the Prisons Act of 24 November 2009 provided for the adjustment of sentences of less than two years' imprisonment, the planning law favours prison over electronic surveillance, day release or work release. The reinsertion of sentenced persons into society therefore appeared as less important.

46. The new prisons already in operation have built up serious failures that have been condemned by several different actors, including the General Inspector of Places of Deprivation of Liberty, the French Senate, prison officers and associations. They are too large, are often a great distance from urban areas, and favour security over human contact, particularly through video surveillance. The new prisons have seen a rise in prison incidents, and undermine the aims of a sentence, which are to reinsert prisoners into society and prevent them from reoffending, as all convicted prisoners are eventually expected to leave prison.

47. The decision to increase prison capacity saves on the cost of dealing comprehensively with overcrowding in the prison system, and is linked to swathes of increasingly repressive criminal legislation and inadequate funding for alternative punishments and adjusted sentences.

- France must begin a moratorium on new prison construction and subsequently evaluate past and present prison-building programmes, bringing together all relevant stakeholders.
- France must promote alternatives to imprisonment and increase its number of sentence adjustments in line with a dynamic reinsertion and probation policy.

[16] Monthly statistics on the population of committed and detained prisoners in France (*Statistique mensuelle de la population écrouée et détenue en France),* situation as of 1 May 2012, National Prison Administration (*Direction de l'administration pénitentiaire*) http://www.justice.gouv.fr

[17] See also the CNCDH Notice on the draft planning law on the completion of sentences (*Avis de la CNCDH sur le projet de loi de programmation relatif à l'exécution des peines*), 26 January 2012.

3.2 Individual cells

48. The principle of providing individual cells, **enshrined in law on 15 June 2000**[18], is still not respected, despite being an essential condition for the dignity of detained persons. These persons must be able to choose whether or not to live alone. Exemptions to providing individual cells may be given until 2014 in detention centres where the distribution of cells or the number of prisoners mean that the principle cannot be applied.

- Detained persons must be able to exercise their right to request an individual cell.

3.3 Ill-treatment and the use of tasers

49. Since 2008, France has been condemned by the ECHR on nine occasions for violating Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture and inhuman or degrading treatment or punishment. The European Courts sanctioned security measures imposed during medical extractions, the disproportionate use of force, full-body searches not justified by security requirements, unsanitary material conditions, the absence of adequate health care, and the incompatibility of detention with the mental health of the detained persons[19].

50. In its latest report published in April 2012, the European Committee for the Prevention of Torture, which had visited France at the end of 2010, expressed its alarm at security measures conducted during medical extractions, which were both disproportionate and medically unethical (handcuffs and shackles kept on during medical procedures) and systematically used for high-security prisoners[20].

51. These practices are guided by the notions of "dangers" and "risks", which are a basis for prison life, despite their inaccuracies and a lack of consensus on them.

- France must guarantee that persons deprived of their liberty are not subjected to acts of torture or cruel, inhuman or degrading treatment which violates their dignity.

52. In **recommendation n° 17, Côte d'Ivoire** called for France to stop using tasers on detained persons because of the acute pain that they caused, which could constitute a form of torture. The use of this weapon has not yet been prohibited in places of detention despite the fact that its widespread and common use could lead to fatalities.

53. The former National Commission on Security Ethics (CNDS) had also underlined the impossibility of controlling situations in which tasers were used because of the mediocre quality of CCTV footage[21].

- The use of tasers must be prohibited everywhere, particularly in places of detention.

III. The fight against impunity

54. France ratified the Statute of the International Criminal Court in 2000. Its legislation on war crimes, on crimes against humanity and on genocide did not allow courts in France to prosecute and pass sentence on these crimes. The Rome Statute provides that "their effective prosecution must be ensured by taking

[18] Law n° 2000-516 of 15 June 2000 strengthening the protection of the presumption of innocence and of the rights of victims.
[19] Cases against France: M.G (Application n° 27244/09) Judgment of 23.02.12; Plathey (Application n° 48337/09) 10.11.11; Alboreo (Application n° 51019/08) Judgment of 20.10.11; Duval (Application n° 19868/08) Judgment of 26/08/11; El Shennawy (Application n° 51246/08) Judgment of 20/04/11; Payet (Application n° 19606/08) Judgment of 20/04/11; Raffray Taddei (Application n° 36435/07) Judgment of 21/03/11; Khider (Application n° 39364/05) Judgment of 9/10/09; Renolde (Application n° 5608/05) Judgment of 16/10/08.
[20] Report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to France from 28 November to 10 December 2010, 19 April 2012 (§§ 99 and 100).
[21] CNDS Notice given on 14.12.09, Submissions n° 2008-25 and n° 2008-29.

measures at the national level" and that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes".

55. In August 2010, the law "relating to the adaptation of criminal law to the institution of the International Criminal Court (ICC)" was adopted by the French Parliament. The definition of crimes against humanity was amended, and war crimes were finally introduced into French legislation. However, the so-called principle of extraterritorial jurisdiction was rendered meaningless. Now, French courts may not prosecute alleged offenders while they are on French territory, even if the crimes were committed by a foreign national on a foreign victim. French courts have in other words been superseded by four restrictive and cumulative conditions which render it impossible to carry out prosecutions:

1. The French Code of Criminal Procedure states that France may only prosecute those suspected of international crimes if they are "habitually" resident in France. These perpetrators may therefore enjoy short or extended stays on French territory with complete impunity. This condition represents a serious limitation, and also a restriction on the national criminal procedure regarding the punishment of international crimes, which provides that persons suspected of carrying out torture or acts of terrorism may come under national jurisdiction as soon as they are "present" on French territory.

2. The monopoly of prosecution to the Public Prosecutor's Office effectively denies any civil party or physical or moral person the possibility of initiating legal action against crimes against humanity, war crimes or genocide.

3. A double criminality requirement means that prosecutions in France are superseded by the condition that the acts must be punishable both under French law and under the legislation of the State in which they were committed. This is not required by the Statute of the International Criminal Court, and weakens the desire to punish attacks on universal values. In addition, the condition of double criminality has been undermined by the European arrest warrant for the most serious offences (e.g. terrorism, arms or people trafficking) and is not provided for in cooperation agreements with the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

4. Prosecutions in France are also subject to the ICC expressly declining jurisdiction, which goes against the principle of complementarity provided in the Statute of the ICC, which gives precedence to national jurisdictions.

- France must abolish these four conditions that promote impunity and violate the right of victims to effective remedy. It must make the perpetrator's presence on French territory the only condition for prosecution, in line with international law and recommendations by treaty bodies such as the United Nations Committee Against Torture.

In the light of these observations, ACAT France and FIACAT set out the following recommendations:

The human rights situation of asylum seekers and refugees

1. France must ensure that Europe does not impede the right to asylum and must commit to providing fair and equitable reception to asylum seekers in European territory.

2. France must refuse to outsource asylum to countries that do not respect international human rights standards.

3. An increase in the number of places in asylum reception centres (CADA) is required while also allowing asylum seekers freedom to choose their accommodation and the opportunity to participate in professional activity.

4. France must provide real social and legal assistance to asylum seekers throughout the asylum procedure.

5. France must review its reception system in the government service responsible for the asylum application.

6. France must introduce suspensive appeal for all asylum applications.

7. France must put an end to the imprisonment of unaccompanied foreign minors.

8. Reform of the family reunification procedure for refugees must be introduced so as to give precedence to the right of refugees to live with their family.

The human rights situation of persons deprived of their liberty

9. France must ensure that any violent or unethical act by security forces is investigated and sanctioned.

10. France must renounce its targets on forced deportations and permanently cease its imprisonment of detained minors.

11. France must begin a moratorium on new prison construction and subsequently evaluate past and present prison-building programmes, bringing together all relevant stakeholders.

12. France must promote alternatives to imprisonment and increase its number of sentence adjustments in line with a dynamic reinsertion and probation policy.

13. Detained persons must be able to exercise their right to request an individual cell.

14. France must guarantee that persons deprived of their liberty are not subjected to acts of torture or cruel, inhuman or degrading treatment which violates their dignity.

15. The use of tasers must be prohibited everywhere, particularly in places of detention.

The fight against impunity

16. France must abolish the four conditions that promote impunity and must make the perpetrator's presence on French territory the only condition for prosecution, in line with international law and recommendations by treaty bodies such as the United Nations Committee Against Torture.