



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

FRANCE

1. The Committee considered the third periodic report of France (CAT/C/34/Add.19) at its 681st and 684th meetings, held on 17 and 18 November 2005, and adopted the following conclusions and recommendations at its 692nd meeting, on 24 November 2005.

A. Introduction

2. The Committee welcomes the third periodic report of France, which broadly complies with the guidelines on the form and content of periodic reports, but regrets that it was submitted with a six-year delay. While noting that the same legal regime applies to the whole territory of the State party, the Committee notes that there is no information on the implementation of the Convention in overseas departments and territories. The Committee also notes that there is no information on the implementation of the Convention in territories outside the jurisdiction of the State party where its armed forces are deployed, notably in Côte d'Ivoire.

3. The Committee welcomes the participatory process aimed at involving the National Advisory Committee on Human Rights, with its many civil-society actors, in the preparation of the report. The Committee also takes note with satisfaction of France's written replies to the list of issues and the additional information provided orally during the consideration of the report. Lastly, the Committee appreciates the constructive dialogue that took place with the high-level delegation sent by the State party and thanks it for its candid and straightforward answers to the questions raised.

B. Positive aspects

4. The Committee takes note with satisfaction of the following points:

(a) The establishment on 6 June 2000 of the National Commission on Security Ethics (CNDS), which provides comprehensive reports on the behaviour of police officers;

(b) The establishment by the Act of 26 November 2003 of the National Commission for the Monitoring of Holding Centres and Facilities and Waiting Areas to ensure “respect for the rights of foreigners placed or held there” and “respect for the rules governing hygiene, sanitation, amenities and installations in such facilities”, a Commission which, as indicated by the State party during the consideration of the report, is due to start work soon;

(c) The involvement of the Ministry of Health, together with the Association for the Victims of Repression in Exile (AVRE), in the publication of a manual to help medical staff identify the sequelae of torture;

(d) The reform introduced by the Act of 10 December 2003, which grants subsidiary protection to “any person” who does not meet the conditions for recognition as a refugee set out in the Convention relating to the Status of Refugees of 28 July 1951 and who “establishes that he or she would be exposed in his or her country to one of the following serious risks: the death penalty, torture or inhuman or degrading treatment or punishment ...”;

(e) The State party’s consistent support since 1982 for the United Nations Voluntary Fund for Victims of Torture and the substantial increase in its contribution to the Fund;

(f) The mechanism that enables victims of terrorism to obtain compensation even in respect of acts that took place outside French territory;

(g) The State party’s signing of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 16 September 2005, and the steps being taken to ratify it;

(h) The ratification of the Rome Statute of the International Criminal Court on 9 June 2000, and the measures taken by the State party to incorporate the Statute into domestic law.

C. Subjects of concern and recommendations

Definition

5. While taking note of the State party’s efforts at the legislative level to provide for the prosecution and punishment of those responsible for acts of torture, the Committee remains concerned that the French Criminal Code does not contain a definition of torture that is in conformity with article 1 of the Convention, an omission that can lead to confusion and adversely affect the collection of relevant data, as is apparent from the statistics that accompanied the State party’s written replies (art. 1).

The Committee reiterates its recommendation (A/53/44, para. 144) that the State party should consider incorporating into its criminal law a definition of torture that is in strict conformity with article 1 of the Convention, so as to draw a distinction between acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity, and acts of violence in the broad sense committed by non-State actors; it also recommends that the State party should make torture an imprescriptible offence.

Non-refoulement

6. The Committee is concerned about the asylum procedures in place in the State party, as they do not at present distinguish between asylum applications based on article 3 of the Convention and other applications, thereby increasing the risk that some persons will be returned to a State where they might be tortured. The Committee is also concerned about the summary nature of the so-called priority procedure for consideration of applications filed in administrative holding centres or at borders, which does not enable the risks covered by article 3 of the Convention to be assessed (art. 3).

The Committee recommends that the State party should consider introducing a procedure that distinguishes between asylum applications based on article 3 of the Convention and other applications, with a view to ensuring absolute protection for anyone at risk of being tortured if he or she is returned to a third State. In this regard, the Committee also recommends that the situations covered by article 3 of the Convention should be the subject of a more thorough risk assessment in accordance with the provisions of article 3, including by systematically holding individual interviews to better assess the personal risk to the applicant, and by providing free interpretation services.

7. While noting that, following the entry into force of the Act of 30 June 2000, a decision on the refoulement of a person (refusal of admission) may be the subject of an interim suspension order or an interim injunction, the Committee is concerned that these procedures are non-suspensive, in that “the decision to refuse entry may be enforced ex officio by the administration” after the appeal has been filed but before the judge has taken a decision on the suspension of the removal order (art. 3).

The Committee reiterates its recommendation (A/53/44, para. 145) that a refoulement decision (refusal of admission) that entails a removal order should be open to a suspensive appeal that takes effect the moment the appeal is filed. The Committee also recommends that the State party should take the necessary measures to ensure that individuals subject to a removal order have access to all existing remedies, including referral of their case to the Committee against Torture under article 22 of the Convention.

8. The Committee is concerned that, since the entry into force of the Act of 26 November 2003, any person who has been returned (refused admission) is no longer automatically entitled to one clear day before the decision is enforced, but has to expressly request one, failing which he or she can be removed immediately (art. 3).

The Committee recommends that the State party should take the necessary measures to ensure that persons who have been returned (refused admission) are automatically entitled to a clear day and are informed of this right in a language they understand.

9. The Committee is also concerned about the new provisions in the Act of 10 December 2003 that introduce the concepts of “internal asylum” and “safe country of origin”, which do not guarantee a person absolute protection against the risk of being returned to a State where he or she might be tortured. The Committee wonders why the State party, in incorporating into its domestic legislation the Framework Decision of the Council of the European Union on the European arrest warrant and the surrender procedures between member States (No. 2002/584/JHA of 13 June 2002), failed to incorporate the thirteenth preambular paragraph, which stipulates that “[n]o person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment” (art. 3).

The Committee recommends that the State party should take appropriate measures to ensure that applications for asylum by persons from States to which the concepts of “internal asylum” or “safe country of origin” apply are examined with due consideration for the applicant’s personal situation and in full conformity with articles 3 and 22 of the Convention. The Committee also recommends that the State party should take the necessary legislative measures to incorporate in the Act of 9 March 2004, on adapting the justice system to developments in the field of crime, a provision stipulating that no person can be returned, expelled or extradited to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

10. While noting the restraint shown by the police during the wave of unrest in many French cities which necessitated police mobilization to control the riots, the Committee is deeply concerned about the statements by the Minister of the Interior calling on prefects to order the immediate expulsion of persons convicted during the riots, regardless of their administrative status. The Committee fears that action taken in response to this statement could have a discriminatory effect by the very fact that it would target not only foreign nationals without proper papers but also naturalized French citizens stripped of their nationality by a court decision and foreigners who had hitherto been lawfully resident in France. Moreover, the Committee is concerned that individuals thus convicted of an offence might be returned to States where they would be in danger of being subjected to torture (art. 3).

The Committee recommends that the State party should take all necessary measures to guarantee that no person is expelled who is in danger of being subjected to torture if returned to a third State. The Committee also recommends that the State party ensure that the persons concerned have the right to a fair trial where the measure taken is in conformity with the law. The Committee also emphasizes that expulsion should not be used as a punitive measure.

The Committee further recommends that the State party should provide it with information on allegations it has received concerning the collective arrest of persons with a view to placing them in administrative holding centres pending their return to a third State.

11. The Committee notes that, following the deaths of Mr. Ricardo Barrientos and Mr. Mariame Geto Hagos during their forcible removal in 2002, new instructions on the removal of foreigners lacking proper papers were issued on 17 June 2003, which ban any form of gagging, compression of the thorax, bending of the trunk and binding together of the limbs, and authorize only the professional techniques that are specified in the instructions and that comply with medical regulations (art. 3).

The Committee recommends that the State party should take the necessary measures to ensure the effective implementation of these instructions by the officers in charge of removal operations. The State party should also authorize the presence of human rights observers or independent doctors during all forcible removals by air. It should also systematically allow medical examinations to be conducted before such removals and after any failed removal attempt.

12. The Committee notes that, under rule 108 (1) of its rules of procedure, it requested the State party through its Rapporteur on new complaints and interim measures, in a letter dated 19 December 2001, to defer the expulsion of a complainant because there were substantial grounds for believing that he would be in danger of being subjected to torture if returned to his country of origin, and that the State party did not see fit to respond favourably to the Committee's recommendation. The Committee reminds the State party that in making its declaration under article 22, whereby it recognized the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation of the provisions of the Convention by the State party, the latter undertakes to act in good faith on the Committee's recommendations. The State party's failure to comply with the Committee's request for interim measures is a serious breach of its obligations under article 22 of the Convention, since it prevented the Committee from completing its examination of the complaint of a violation of the Convention, defeating the purpose of the Committee's action and rendering the expression of its Views futile. Moreover, the failure to comply with this provision, particularly by taking irreparable action such as expulsion, is an outright denial of protection of the rights enshrined in the Convention¹ (art. 3).

The Committee recommends that the State party should take all necessary measures to ensure that any request for interim measures addressed to it by the Committee under article 108 (1) of its rules of procedure is strictly complied with in the future.

Universal jurisdiction

13. The Committee is concerned that the draft bill on adapting French legislation to the Rome Statute of the International Criminal Court limits the scope of universal jurisdiction to nationals of States that are not parties to the Rome Statute, and makes prosecutions the sole preserve of the Public Prosecutor's Office of the State party (art. 5).

The Committee recommends that the State party should remain committed to prosecuting and trying alleged perpetrators of acts of torture who are present in any territory under its jurisdiction, regardless of their nationality. The Committee also recommends that the State party should effectively guarantee the right of victims to an effective remedy, particularly by means of their right to initiate a public prosecution by suing for damages in criminal proceedings and by any other means that would enable the State party to comply more effectively with its obligations under articles 5, 6, 7 and 13 of the Convention.

14. While welcoming the Nîmes Assize Court's decision of 1 July 2005 to sentence the Mauritanian captain Ely Ould Dah, in absentia, to 10 years' imprisonment for crimes of torture, the Committee remains concerned that although he was arrested in 1999 he was able to leave French territory in 2000, after the indictment division of the Montpellier Court of Appeal decided to release him under court supervision. The Committee regrets that the State party did not take the necessary steps to keep Mr. Ould Dah in its territory and ensure his presence at his trial, in conformity with its obligations under article 6 of the Convention (art. 6).

The Committee recommends that, where the State party has established its jurisdiction over acts of torture in a case in which the alleged perpetrator is present in any territory under its jurisdiction, it should take the necessary steps to have the person concerned taken into custody or to ensure his or her presence, in conformity with its obligations under article 6 of the Convention.

Training of police officers

15. The Committee takes note of the updating of the ethics manual for the national police and of the information provided by the State party on the steps being taken to extend and improve the training given to police officers on the subject of respect for the physical and mental integrity of arrested, detained or imprisoned persons. However, the Committee remains concerned about the number and seriousness of the allegations it has received regarding the ill-treatment by law enforcement officers of detainees and other persons with whom they come in contact (art. 10).

The Committee recommends that the State party should take the necessary measures to ensure that the current reform aimed at extending and improving the training of police officers is implemented quickly and extended to all law enforcement officers.

Provisions concerning the custody and treatment of arrested, detained and imprisoned persons

16. The Committee is concerned about the amendments to the Act of 9 March 2004 which, under the special procedure applicable in cases of organized crime and delinquency, delay access to a lawyer until the 72nd hour of police custody. These new provisions are likely to give rise to violations of article 11 of the Convention, since it is during the first few hours after an arrest, particularly when a person is held incommunicado, that the risk of torture is greatest. The Committee is also concerned about the frequent resort to pretrial detention and the duration of such detention (art. 11).

The Committee recommends that the State party should take appropriate legislative measures to guarantee access to a lawyer within the first few hours of police custody, with a view to avoiding any risk of torture, in accordance with article 11 of the Convention. In this connection, the Committee also recommends that the State party should extend to adults the practice of filming minors in police custody. The Committee further recommends that measures should be taken to reduce the length of pretrial detention and its use.

17. While noting the measures taken by the State party to address the crucial problem of prison overcrowding, including by building new prisons and considering alternatives to detention, the Committee remains concerned about the poor detention conditions in prisons, particularly in the Loos and Toulon short-stay prisons, and in administrative holding centres. The Committee is particularly concerned about the inadequacy of internal inspections, the unsuitability and dilapidation of the buildings, and the unsatisfactory hygiene conditions. It is also concerned about the increase in violence among detainees and in the number of suicides reported to it (arts. 11 and 16).

The Committee recommends that the State party should take the necessary steps to ratify the Optional Protocol to the Convention as soon as possible, and to set up a national mechanism to conduct periodic visits to places of detention in order to prevent torture and any other cruel, inhuman or degrading treatment.

18. The Committee notes the measures taken by the State party to improve living conditions in holding areas, particularly at Roissy-Charles de Gaulle airport, and to facilitate access to them by non-governmental organizations. However, it remains concerned about information it has received concerning incidents of police violence, including cruel, inhuman and degrading treatment, inside the holding areas, particularly against people of non-Western origin (arts. 11 and 16).

The Committee recommends that the State party should take the necessary measures to enable the National Commission for the Monitoring of Holding Centres and Facilities and Waiting Areas to begin its work soon and to ensure that these recommendations are effectively implemented.

19. While taking note of the draft decree on solitary confinement mentioned by the State party, the Committee is concerned that the draft does not set any time limit and that no special justification is needed until two years have been spent in solitary confinement. The Committee is worried that detainees can be held under this regime for many years despite its possible harmful effects on their physical and mental state (art. 16).

The Committee recommends that the State party should take the necessary measures to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international standards.

Impartial investigation

20. The Committee continues to be concerned about the system of discretionary prosecution, which gives State prosecutors the option of not prosecuting the perpetrators of acts of torture and ill-treatment in which police officers are implicated, or even of not ordering an investigation, which is clearly contrary to article 12 of the Convention (art. 12).

The Committee reiterates its recommendation (A/53/44, para. 147) that, in order to comply with article 12 of the Convention in letter and in spirit, the State party should consider abrogating the system of discretionary prosecution so as to remove all doubts regarding the obligation of the competent authorities to launch impartial inquiries systematically and on their own initiative in all cases where there are reasonable grounds for believing that an act of torture has been committed in any territory under its jurisdiction, in the spirit of the recommendation of the Human Rights Committee (CCPR/C/79/Add.80, para. 15), which calls on the State party to “take appropriate measures to fully guarantee that all investigations and prosecutions are undertaken in full compliance with the provisions of articles 2, paragraphs 3, 9 and 14 of the Covenant”.

21. The Committee is concerned that, despite the judgement against the State party by the European Court of Human Rights for a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the case of *Selmouni v. France*,² the Paris Court of Appeal imposed a light sentence on the police officers involved in the case (art. 12).

The Committee recommends that the State party should take the necessary measures to ensure that every public official, or any other person acting in an official capacity or at the instigation of or with the consent or acquiescence of a public official, who is guilty of acts of torture should be prosecuted and receive a penalty commensurate with the seriousness of the acts committed.

Right of complaint

22. While welcoming the establishment of the National Commission on Security Ethics (CNDS), the Committee is concerned that the Commission cannot accept cases referred to it directly by a person who has been subjected to torture or cruel, inhuman or degrading treatment, but only cases referred to it by a member of Parliament, the Prime Minister or the Children’s Ombudsman (art. 13).

The Committee recommends that the State party should take the necessary measures to allow the CNDS to accept cases referred to it directly by any person who claims to have been subjected to torture or cruel, inhuman or degrading treatment in any territory under its jurisdiction, in accordance with article 13 of the Convention.

23. The Committee recommends that the State party should include in its next report information on the implementation of the Convention in its overseas departments and territories, as well as on its implementation in territories that are not under its jurisdiction but where its armed forces are deployed.

24. The Committee also recommends that the State party should include in its next report data, disaggregated by age, sex and ethnicity, on:

- (a) The number of asylum applications registered;
- (b) The number of applications accepted;
- (c) The number of applicants whose application for asylum was accepted on the grounds that they had been tortured or might be tortured if returned to their country of origin;
- (d) The number of cases of refoulement or expulsion;
- (e) The number of recorded complaints containing allegations of torture or cruel, inhuman or degrading treatment.

25. The Committee recommends that the State party should disseminate the Committee's conclusions and recommendations widely throughout its territory in all appropriate languages, through official websites, the press and non-governmental organizations.

26. The Committee requests the State party to provide, within one year, information on its implementation of the Committee's recommendations contained in paragraphs 10, 15 and 18 above.

27. The State party is invited to submit its next periodic report, which will be considered as its combined fourth, fifth and sixth report, by 25 June 2008, the due date of its sixth periodic report.

Notes

¹ CAT/C/34/D/195/2002.

² Application No. 25803/94, judgement of the European Court of Human Rights, Strasbourg, 28 July 1999.
