

France: The offence of solidarity

Stigmatisation, repression and intimidation
of migrants' rights defenders

June 2009



The Observatory for the Protection of Human Rights Defenders,
A joint FIDH-OMCT programme



Summary of findings of a mission of investigation*

| | |
|----|-----------------|
| 4 | Introduction |
| 6 | Methodology |
| 8 | Background |
| 11 | Conclusions |
| 15 | Recommendations |

* The full report is available in French “Délit de solidarité : stigmatisation, répression et intimidation des défenseurs des droits des migrants”, <http://www.fidh.org/Delit-de-solidarite-Stigmatisation> or http://www.omct.org/pdf/Observatory/2009/Rapport_de_mission_France_110609.pdf

~ Introduction ~

In investigating the situation of defenders of migrants' rights in France, a supposedly narrow theme, we did not expect to confront a myriad of issues concerning almost all of France's social, political and economic ills. Unintentionally, we found ourselves deeply concerned with one overarching question: immigration. Although sometimes subtly, immigration impregnates public life and implicates all France's national institutions: it permeates all echelons of society from the executive, the legislature, the judiciary, the administration, and the security forces down to the individual citizen.

This investigation reveals a general malaise prevalent at all levels of French society in relation to perceptions on immigration. Firstly, a malaise within public institutions that feel unable to manage the situation and that they must take preventive measures. Secondly, a malaise within the legislature, which produces a mountain of texts without arriving at an adequate solution to the problems identified. Thirdly, a malaise within the judiciary, which seeks to deal with the issues objectively but is subjected to government interference aimed at restricting their role as guardians of individual freedoms, a function enshrined in the Constitution.¹ Fourthly, a malaise within public services, in which individual officers have the impression that their mandates are manipulated (employment centres, work inspectors, etc.). Fifthly, a malaise among ordinary citizens, such as the Air France pilots who find themselves contributing to the execution of government deportation orders with which they may not agree. Finally, a malaise within the police force which, at the end of the chain, pays for the damages resulting from France's ever-changing migration policy, the motives behind which are not always understood, and which commits blunders, even though the majority of officers simply wish to carry out the job for which they were trained, maintaining public order.

Only the statistics are doing well. Numbers constantly rise to reach new records: record numbers of deportations; record numbers of bilateral agreements signed to restrict migration flows² etc. Increasingly information and communication technology is used to give a modern touch

1. The judiciary, guardian of individual freedoms, is charged with upholding this principle (Articles 66 of the Constitution of the Republic of France).

2. "Accords de gestion concertée des flux migratoires". These agreements implement a new partnership concept with countries of origin of migrants arriving in France. The Agreements constitute an important component of national policies that promote legal immigration and fight against irregular immigration. Agreements generally include a development assistance component. The French Government has set the following objectives for Agreements:

- 7 in 2009
 - 7 in 2010, making a total of 14 Agreements
 - Seven in 2011, equaling a total of 21 Agreements
- The objective in 2008 was to finalise 6 Agreements.

to reducing moral responsibility of those involved in the implementation of migration policy, for example through the use of video-conferences within the justice system or the installation of data bases within social services or at asylum centres.

The global financial crisis and its economic consequences have certainly exacerbated this malaise. Yet they are not responsible for it, the problems existed long before any economic crisis. The question of immigration has been placed at the top of France's political agenda and has been made a priority of all state structures, through the adoption of a series of decrees, regulations and instructions. The adoption of quantitative targets illustrates this immigration policy: 27,000 undocumented migrants to be deported and 5, 000 individuals providing assistance to migrants to be investigated in 2009. The politically convenient confusion of clandestine immigration, terrorism and organised crime facilitates the passing of the most excessive decisions.

In response, opposition has emerged in unlikely areas, from simple citizens without activist histories to within organised civil society (unions and associations). The Education Without Borders Network (Réseau éducation sans frontières - RESF) reveals the psychology behind the emergence of these forms of public mobilisation: the immigrant is seen as the father or the mother of a child's school playmate and not just another undocumented arrival. For these protesters, the issues at stake are not solely the precarious future of undocumented immigrants but the importance of societal vigilance in the face of a perceived "degradation of the values of the Republic". For certain people, the official approach to immigration has become "an obsession that may have little to do with the reality of maintaining public order".

Our objective in this study is not to judge the French migration policy. It is legitimate for a state to establish migration management mechanisms. Rather, we have sought to highlight the erosion of the protection of defenders of migrants' rights and to document the vulnerability of their status.

~ Methodology ~

Increases in arrests and detention of individuals opposed to the deportation conditions of undocumented immigrants in France were brought to the attention of the Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation against Torture (OMCT), by the French League for Human Rights (LDH), FIDH's member organisation in France. At the end of 2008, the Observatory mandated a consultant, Ms. Eva Ottavy, to conduct a preparatory study, compiling and analysing recent cases of obstacles to the protection of the rights of migrants and identifying and analysing the relevant legal framework in order to determine the need to conduct an international mission of investigation. Upon completion of the study, undertaken in close collaboration with LDH, the Observatory decided to conduct a mission to examine the situation of those who choose to defend the rights of migrants in France.

The delegation, composed of Ms. Sihem Bensedrine, journalist (Tunisia) and Mr. Marco Ziegler, lawyer (Switzerland), carried out their mission in France from 17 to 25 March 2009. The delegation was accompanied by Alexandra Pomeon, Program Officer at the Observatory and Isabelle Brachet, FIDH Director of Operations.

The mission's objective was to examine the conditions in which defenders of migrants' rights operate, in particular:

- To establish a picture of the principal actors in French civil society working on the protection of migrants' rights;
- To collect first-hand accounts of the situation of these defenders and the obstacles to their work (restrictions on freedom of expression and association, etc.);
- To enquire into the capacity and willingness (or, as the case may be, the incapacity and reluctance) of French national institutions to guarantee a working environment allowing such defenders to conduct their activities for the protection of migrants' rights;
- To formulate recommendations addressed to the French authorities and other relevant institutions.

The delegation also studied the positions and reactions of the various bodies involved in the practical application of the French immigration policy. During the mission, the delegation met with members of local civil society, in particular unionists, lawyers, and local non-governmental organisations (NGOs), activists, volunteer organisations and citizens who had been victims of police measures after having provided assistance to undocumented immigrants.

The delegation also interviewed representatives of the national authorities. The Observatory would like to thank the Department of Immigration,

Integration, National Identity and Solidarity Development as well as the border police at Roissy Charles de Gaulle Airport for having accepted to meet with the delegation. The Observatory regrets, however, that a number of institutions did not respond to its requests for meetings. The Department of Justice, Prosecutors from the Courts of Bobigny and Paris, the French Data Protection Authority (CNIL), the Calais local government and administration as well as the Police Union, with the exception of SGP-FO. The Observatory also regrets that it was unable to discuss official statistics with the relevant authorities.

The Observatory wishes to thank LDH for its support with the organisation of the mission and for providing access to its archives.

More generally, the Observatory thanks all individuals met by the delegation.

~ Background ~

For years, the issue of migration has been at the heart of political debate in France. As Patrick Stefanini, the former Secretary-General of the Department of Immigration³ notes, “the issues raised by the control of migration flows, the integration of legal migrants, access to citizenship and public recognition of the concept of national identity, were at the centre of the French President’s [Nicolas Sarkozy] campaign during the last election”.⁴

On May 18, 2007, a new Department of Immigration, Integration, National Identity and Co-development was created.⁵ One of the four chief objectives of the Government is to strengthen mobilisation of police and other law enforcement authorities in the fight against undocumented immigration.

According to Mr. Stefanini, “the results to-date are encouraging. For several years, the number of visas issued has remained largely the same. At the same time, the number of deportations and the number of successful arrests has significantly increased while applications for asylum have fallen”.⁶ He adds that “the return to a policy of strong management of immigration has enabled France, for the first time in 10 years, to reverse the trend, with 195,000 residency permits issued in 2005 compared to 201,500 in 2003.” This statement was made during the presentation of the annual performance plan in the framework of the adoption of the 2008 budget. It illustrates clearly the official aim of reducing the number of immigrants settled in France. Such a policy contributes to an environment of mistrust towards migrants, an environment that the current economic crisis will only exacerbate.

Since 2002, the laws governing the entry, the residence and the removal of immigrants have been modified more than five times. This situation is not unique to France. French immigration policy needs to be considered within the larger context of the ever-hardening European migration policy.⁷ This hardening at the European level can be illustrated by the

3. Mr. Stefanini ended his tenure at the Department of Immigration on 29 April 2009. He is now a Prefect in the Auvergne region.

4. Available at: <http://www.performancepublique.gouv.fr/farandole/2008/pap/html/DBGPGMPRESSSTRATPGM303.html>

5. The Department has since been re-named the Department of Immigration, Integration, National Identity and Solidarity Development.

6. According to the United Nations High Commissioner for Refugees (UNHCR), the number of asylum seekers increased in both 2007 and 2008 after having reached its lowest level in twenty years in 2006.

7. Nonetheless, France is the only country that finances the provision of legal and humanitarian assistance to individuals within holding and detention centres. Moreover, the maximum period of detention in France is 32 days while other European countries allow for detention of undocumented immigrants for up to 18 months.

adoption in June 2008 of the Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals, more commonly referred to as the “Returns Directive”. This Directive provides, *inter-alia*, for the extension of the duration of detention of illegal migrants for up to 18 months, detention of unaccompanied minors and the deportation of individuals, including unaccompanied children, back to transit countries. Such provisions are becoming the norm in the management of migration.⁸

To date, no Member State of the European Union has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the United Nations General Assembly on 18 December 1990, which entered into force on 1 July 2003.

Over time, as the rights of foreigners have been considerably reduced,⁹ the work of defenders of migrants’ rights has become more complex. Resistance has grown naturally among those who notice an increase in injustice and arbitrariness. Within the Education Without Borders Network (RESF), an apolitical organisation, resistance has emerged to ensure that the children of undocumented parents can continue to study in school. Individual action has also emerged spontaneously in airplanes during the deportation of foreigners, especially when deportations turn violent.

Can we speak of these people as human rights defenders? The former Special Representative of the United Nations Secretary General, Ms. Hina Jilani,¹⁰ adopted “a broad definition of human rights defenders, in conformity with the UN Declaration on Human Rights Defenders, which states that people who, individually or collectively, promote and fight for the realisation of human rights are human rights defenders”.

The Observatory adheres to this definition and believes that individual members of non-governmental organisations are not the only ones who fit within this definition. Rather, the term “human rights defenders” includes all citizens, whatever their profession or status.

Nonetheless, the question of definition is more complex than in other cases because the action of defenders of migrants’ rights is sometimes more a

8. For more information on the “Returns Directive”, see <http://www.fidh.org/Returns-Directive-Last-resort-the>

9. For example, the 27 November 2003 law on immigration control increased the length of detention from 12 to 32 days and strengthened the powers of local authorities to regulate accommodation centres. The 25 July 2006 law on immigration toughens the conditions of family reunification, abolishes the right to naturalisation after ten years residence in France and establishes quotas for deportations of undocumented immigrants. The 20 November 2007 law on immigration control introduces DNA tests for certain family reunification candidates.

10. Former United Nations Secretary-General’s Special Representative on the Situation of Human Rights Defenders from 2000 to 2008.

response to the Government's immigration policy than to the violations of individuals' fundamental rights. A number of associations and individuals thus knowingly defy laws that they believe to be unjust. As one member of a Calais-based organisation said, "there are laws that I knowingly break". This approach is also that adopted by RESF which call for actions which sometimes breach laws to demand the regularisation of undocumented school children and to oppose their deportation and that of their parents.¹¹

This study does not evaluate either French or European immigration policy. Rather, it seeks to examine to what extent those individuals who oppose the violation of the fundamental rights of "illegal" immigrants and who provide them with social, legal or humanitarian assistance, namely human rights defenders, have cause for concern because of what they do. The report will also examine whether public authorities guarantee an environment suitable for the defence of the migrants' rights in conformity with the United Nations 1998 Declaration on Human Rights Defenders. The issues are clearly linked to France's immigration policy, given that organisations and individuals who assist immigrants in one way or another represent an obstacle to the effective application of this policy, the core aim of which is to deport as many undocumented immigrants as possible.

The Observatory's mission of investigation identified the legal provisions and regulations used to impede the work of individuals and organisations that provide assistance to undocumented immigrants.

The mission examined the following areas:

- The pressure on individuals who defend the rights of migrants;
- The restrictions on organisations working in detention and holding centres;
- The pressure on public servants interacting with immigrants;
- The pressure on those responsible for the maintenance of public order and justice.

11. "We will not stand by idly and watch the destruction of these children's, adolescent's and their parent's lives. They are our students, friends of our students or our children. They study here, speak our language... Should they decide, or for the youngest, should their parents decide, to escape deportation, we will help them as we have helped Rachel and Jonathan in Sens, Samuel in Pau and Ming and Wei-Ying in Evreux. And we will help those who take them in. If they seek refuge, we will not close our doors. This, of course, violates current laws. But we cannot teach our pupils or our children to blindly submit to unjust rules. Everyone can remember times when, confronted with horrible injustices, it was necessary to choose. Avoiding these choices meant choosing to let the worst happen, and not only under the reign of dictators. Should Rosa Parks, who was imprisoned in Atlanta in 1955 for violating segregation laws, have obeyed such laws on the basis that they had been «democratically» decided? Should General Paris de la Bollardière, court-martialed after publicly denouncing the torture inflicted by the French army in Algeria, have respected military discretion because France is a democracy? We will not allow these infamies to be done in our name." National Petition: We Will Protect Them. Available at: <http://www.educationsansfrontieres.org/article320.html>.

~ Conclusions ~

The cases documented by the mission reveal the dangerous consequences of the enormous pressure exerted on state authorities, in particular through the creation of a result-oriented culture. This pressure is intensified by the focus on achieving quotas for questioning those assisting migrants and for deportations, which the authorities consider to be “an encouragement to action”.

According to official statistics, 29,000 people were expelled from France in 2008. By way of comparison, the number was 16,850 in 2004. Numbers have been constantly increasing since this time. The 2008 target was 26,000 expulsions. The 2010 figure is 28,000 individuals¹² from a population of undocumented immigrants estimated at between 200,000 and 400,000. In this context, the assistance provided to undocumented immigrants is but a small factor that inhibits the realisation of the government’s quantitative objectives.

The recent arrests, and even prosecutions, of individuals having assisted undocumented immigrants, be it within an organisation or as an individual, contribute to an environment hostile to the defence of migrants’ rights in France where the law is used as a weapon against active associations and individuals. A number of legal texts and regulations are used in such a way so as to inhibit the activities of these human rights defenders. An example is article L 622-4 of the law governing the entry and residence of foreigners and the right to asylum,¹³ which has received much public attention in recent months, which punishes assistance to the entry, travel or undocumented stay of a foreigner. The statutory exceptions to this infraction are excessively limited. As a consequence, the prospect of judicial prosecution looms large for all defenders of migrants’ rights. Assistance to undocumented immigrants will not give rise to criminal prosecution “when the act in question was, in light of a present or imminent danger, necessary to save the life or the physical integrity of the immigrant, except if there is disproportionality between the methods employed and the seriousness of the threat or if the assistance led to either direct or indirect remuneration.”

As regards the assistance to illegal stay, this provision does not exclude all non-profit activities, contrary to the 2002 European Directive, which the provision is supposed to implement. Moreover, this provision provides no specific protection for associations, professionals or volunteers who work in the field of assistance to persons in difficulty. Additionally, the limitative exception enshrined in L 622-4 of CESEDA is open to significant interpretation by the judiciary. As a consequence, it

12. Performance indicators are available at: <http://www.performance-publique.gouv.fr/farandole/2008/pap/html/DBGPGMOBJIN-DPGM303.htm>

13. *Code de l’Entrée et du Séjour des Étrangers et du Droit d’Asile (CESEDA)*.

is difficult to see how there can be said to be no criminalisation of solidarity, contrary to the assurances of the Minister for Immigration, Eric Besson. To restrict the right to this kind of civic assistance to others appears also to be contrary to France's regional and international obligations.

Other provisions have been used against airline passengers who protest against the deportation of undocumented immigrants or who oppose the conditions of their deportation (including offences of preventing the movement of an aircraft, public disorder and incitement to public disorder) or against individuals who criticise the conduct of police officers in their dealings with undocumented immigrants (including contempt and libel).

These defenders, individuals, local associations, NGOs, charities, etc, who defend the rights of undocumented immigrants are themselves victims of a schizophrenic policy. Public authorities recognise their utility and even subsidise their work and enter into agreements with them, including in the areas of housing, supporting unaccompanied minors, and providing information to immigrants held in detention and other holding centres. The activity of such defenders, be it individual or collective, is encouraged because it contributes to the maintenance of public order and provides a public service, notably in Calais. Feeding an undocumented immigrant reduces the likelihood he or she will steal; providing a shower, if only once a week, to an immigrant living at large in a forest can reduce health problems. Even members of the police force are known to take undocumented immigrants to the relevant organisations so they may be protected from the cold and given a shower or a hot meal.

This schizophrenia is especially prevalent in the policy regulating the work of organisations in detention and holding centres. The activities of such organisations are regulated by conventions or agreements with the State, which give support, including financial assistance, to these associations. However, particularly in holding centres, many requests from the organisations seeking improvements to the quality of service offered to undocumented immigrants have not yet been considered by authorities. While at Roissy Charles de Gaulle Airport, the NGO Anafe is able to operate in generally satisfactory conditions, this is not the case in other holding centres.

As for the availability of information on detainees' rights in detention centres, the Government's attacks on the "monopoly" of the NGO Cimade manifests a clear desire to weaken the voices defending migrants' rights and to reduce such organisations to the role of silent and subservient service providers. The quality of the service offered to migrants in such centres runs counter to the logic of the Government's policy of targets. The Observatory is concerned that the division of detention centres into several geographic subdivisions will lead to the elimination, or at least an erosion, of control and of eye-witness accounts from civil society of the reality of detention centres, considering the diversity of mandates of the organisations who will be involved.

The Observatory's enquiry also highlighted the obstacles faced by organisations providing accommodation to asylum seekers and other undocumented immigrants. A decree closely frames the activities of accommodation centres for asylum seekers and a database enables the movements of individuals whose asylum applications are rejected to be followed. Arrests in or around centers which are supposed to offer accommodation independently of the person's legal status give cause for concern. How can undocumented immigrants be provided with the accommodation to which they are entitled, if they risk arrest when they arrive at the place of supposed sanctuary? The same question may be posed with regard to hospitals and schools. All these institutions must continue to respect the rights of all to health and education and cannot be allowed to become places of arrest for undocumented stay.

The use of all means possible to limit immigration and to expel undocumented migrants - at the risk of making the provision of assistance to those in difficulty impossible and of violating migrants' rights - is also illustrated by the new obligations that the government has tried to impose on public servants such as Employment Inspectors and those working in unemployment agencies. To date, these new measures have not come into effect. If they do, however, they will have the effect of denying the social benefits to which an undocumented immigrant, who has been working and paying social taxes, has a right. For while the objective in deporting the greatest number of foreigners possible may be legitimate, it cannot result in pursuing people by all possible means who have lived in France, sometimes for years and have established families and social ties and in an erosion of citizens' check on Government policies.

LDH has shown that legislative initiatives, regulations and practices that violate the fundamental rights of foreigners are decreasingly monitored by France's national accountability bodies, including the Constitutional Council (*Conseil Constitutionnel*) and the State Council (*Conseil d'Etat*).¹⁴ Moreover, the independent administrative authorities (CNDS, CNIL, etc.) have seen their mandates weakened¹⁵ or sometimes their entire existence called into question. There are also numerous threats to the independence of the judiciary, including official instructions addressed to Prosecutors or pressure brought about upon magistrates. For the moment, however, there

14. See, for example, decisions of the Constitutional Council concerning public freedoms on the Perben II Law, organised crime, etc.

15. The CNIL is an independent French administrative authority with a mandate to protect the collection, storage and use of personal data. The Law of 6 August 2004 (for which current CNIL President and member of the Parliamentary majority was Senate Rapporteur) granted new powers to CNIL but at the same time withdrew its power to oppose the creation of files classified under national security. The assent of CNIL that was previously required for all files protected under national security classification was replaced by a more limited power to make non-binding recommendations. The Government has used this new power on numerous occasions already to bypass CNIL. The Law of 23 January concerning terrorism also reduced CNIL's powers in authorising the Government to withhold from CNIL information relating to national security, defence and public security. As a consequence, certain documents and files are not available to the public.

remain numerous court rulings protecting rights and freedoms. As LDH has underlined, the political powers in place for seven years now are using their powers of judicial nomination to reduce the diversity of opinions within France's national accountability mechanisms. This is nothing less than a worrying erosion of the rule of law.

In Calais, the only route to the United Kingdom for many immigrants, the Observatory notes that defenders of migrants' rights are subjected to permanent pressure that has led to a generalised state of exhaustion and tension which permeates the entirety of the work of the defenders. In Calais, members of non-profit organisations complain of overt police surveillance, telephone tapping in violation of their right to privacy, and frequent questioning by police involving body searches. These procedures have in some cases led to criminal prosecutions and convictions. Of course, criminal prosecutions are rare. Yet all the practices documented by the mission contribute to a climate of intimidation and prevent the extension of humanitarian assistance to other foreigners in need by disrupting for months or years the lives of these human rights defenders. Some of these individuals and associations have decided to make themselves heard, to bring to public attention the violations of the rights of undocumented immigrants or the violence to which they are subjected. As a consequence, they have been subjected to arrest, or even to criminal proceedings. Other activists have made the choice to work more discreetly and to work alongside the police forces that are often entirely aware of the work that they do.

As the National Consultative Commission on Human Rights (CNCDH) has noted many times, "It makes no sense to reduce an immigration policy to simple police enforcement when immigration is an ever-changing phenomenon in today's globalised world. The CNCDH is concerned by the mentality which readily acknowledges the freedom of commercial, financial and information flows but which demands people to not move outside their own countries of birth. The CNCDH recalls that neither the right to asylum nor the right to lead a private and family life can be limited by quantitative objectives."¹⁶

The measures and practices adopted by authorities with regard to defenders of immigrants' rights are highly dissuasive and seek to encourage civic passivity. This is in direct violation of the United Nations Declaration on Human Rights Defenders. The Observatory will take note of any progress by French authorities that follows from its recommendations. The Observatory will also transmit relevant information to the various mechanisms for the protection of human rights at the international and European levels.

16. Opinion of the CNCDH concerning the Law on Immigration and Integration, adopted by the Plenary Assembly on 1 June 2006, paragraphs 6 and 7. Available at: http://www.cncdh.fr/IMG/pdf/06.06.01_Avis_Immigration_Integrations.pdf

~ Recommendations ~

Recommendations to the French authorities

It is appropriate here to formulate a number of recommendations concerning France's immigration policy, even though this policy is not the subject of this study, because these questions are at the heart of the activities of defenders of migrants' rights.

Concerning the management of migratory flows and recognition of migrants' rights:

The Observatory calls on the Government to ensure that the implementation of legislation on immigration is carried out in full respect of the human rights of undocumented immigrants. Considering the dangerous consequences of the Government's emphasis on statistics, the Observatory invites the French authorities to abandon its policy of fixing targets for the numbers of undocumented migrants to be deported, a request previously made by the Human Rights Commissioner of the Council of Europe.

Member States of the European Union must ensure that the European framework on legal immigration, currently under development, is in strict conformity with international and European human rights law. The same goes for the "Returns Directive," which contains several articles which violate international human rights norms and which has been criticised by the various United Nations bodies as well as by the Human Rights Commissioner of the Council of Europe. The United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families must be ratified by all EU Member States.

Concerning deportations according to humane standards:

As suggested in 2001 by Mrs. Ruth-Gaby Vermont-Mangold, Rapporteur of the Council of Europe Parliamentary Assembly for the Committee of Migration, Refugees and Population, the French Government must:¹⁷

- allow the presence of independent observers or make video recordings of the moments leading up to departure, due to the possibility of threats or attacks to persuade the person to leave; the independent observers must be present on departure and arrival;
- inform the destination State of the measures taken to ensure the expelled persons are not considered criminals;
- set up a monitoring system in the destination country, managed by embassy personnel, with a view to ensuring that the expelled person

17. Available at: <http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc01/EDOC9196.htm>

is not subjected to human rights violations, considered as a criminal or threatened with blackmail or arbitrary detention;

- film every deportation in order to reduce the risk of disproportionate use of force and of false allegations of mistreatment, in accordance with the Interior Minister's 2005 undertaking.

In its 2006 recommendations concerning France, the United Nations Committee against Torture recommended "that France should 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."¹⁸

Concerning access to legal information and effective remedies in waiting zones and holding centres:

- Extend the application of the Agreement between the Department of Immigration and Anafe applicable to Roissy Charles de Gaulle Airport so that it applies to all air and sea waiting zones;
- Clearly display in every waiting zone the telephone numbers of organisations permitted to provide assistance and make telephone cards available to those detained;
- Inform Anafe of the presence of individuals in waiting zones so that it may provide appropriate legal assistance;
- Guarantee, as at Roissy Charles de Gaulle Airport, improved conditions for organisations working at Orly Airport, including fax and telephone facilities and offices in which to conduct interviews with asylum seekers;
- Allow Anafe access to hotels at Roissy Charles de Gaulle Airport where minors are detained.

The Observatory also recommends the establishment of a reception and orientation centre in Calais, in accordance with the requests of local organisations and calls on the authorities to allow asylum seekers to lodge their application in Calais and not be obliged to do so at Arras.

Guaranteeing an environment enabling human rights defenders to conduct their work:

The Observatory underlines several articles of the United Nations Declaration on Human Rights Defenders, which should guide the action of French authorities relating to the defence of migrants' rights:

Article 1: Everyone has the right, individually and in association with

18. CAT/C/FRA/CO/3, 3 April 2006, paragraph 11.

others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 6: Everyone has the right, individually and in association with others:

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 10: No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11: Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12(1): Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

Article 12(3): In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 17: In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and

freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Concerning national accountability mechanisms (independent administrative authorities):

- Properly implement the recommendations of the Human Rights Commissioner of the Council of Europe, in particular to “consult more widely with the national human rights protection agencies and guarantee that individuals involved with these bodies are not subject to intimidation”;
- Strengthen the mandate and the resources of the Government Ombudsman in detention centres (*contrôleur général des lieux privatifs de liberté*);
- Strengthen the mandate of the National Security Ethics Commission (CNDS) and ensure that the Commission has the power to issue binding recommendations and increased financial resources;
- Ensure that the CNCDH is always consulted on changes to immigration laws so that the Commission may best carry out its consultative function, in accordance with the French Government’s undertaking during the United Nations Universal Periodic Review in June 2008;¹⁹
- More generally, guarantee the continuing existence of the independent administrative authorities with the power to ensure accountability for respect of individual freedoms.

Concerning the judiciary:

- Reduce the influence of the Department of Justice in the appointment of judges;
- Allow the Senior Magistrates Council (*Conseil supérieur de la magistrature*) the power to give opinions on the nomination of Magistrates;
- Prohibit the possibility of the Attorney-General giving individual instructions to Prosecutors;
- More generally, adhere to the Commission of Venice’s Opinion on Judicial Appointments, No. 403/2006, adopted on 22 June 2007, which sets out the procedures for judicial appointments in conformity with judicial independence.

Concerning citizens and organisations providing assistance to immigrants:

- Modify Article L 622-4 of CESEDA in a way that explicitly exempts the actions of defenders of migrants’ rights. Voluntary assistance

19. A/HRC/8/47, 3 June 2008, paragraph 63.

should be clearly excluded from prosecution;

- Make public the instructions of police and other enforcement agencies in order to end enforcement action taking place in proximity of schools (excluding for cases of ordinary criminal offences); end enforcement action in hospitals, police stations (préfectures) and in accommodation centres in order to allow these institutions to fulfill their missions;

- Ensure that collective instructions are given to Prosecutors so that no passenger on board an airline during deportation may have action taken against them for having peacefully objected to forced deportation on a commercial flight, as per the recommendation of the Council of Europe's Human Rights Commissioner.

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