

France

IHF FOCUS: legislation (security law involving the right to privacy, police powers and detainees' rights); freedom of expression; judicial system; torture, ill-treatment and police misconduct; prison conditions; religious intolerance; asylum seekers and immigrants; trafficking in human beings and prostitution.

The events of September 11, the fight against terrorism and the rise of the extreme right in France all made internal security a priority for the government. Immigration and the status of refugees were equally sensitive issues. The announcement of the closing of the refugee camp Sangatte in the department Pas-de-Calais, in northern France, sparked numerous debates.

New offenses, which effectively further abused victims were created in the field of trafficking in human beings, and questionable reforms of the asylum law and administrative detention were introduced. Other concerns from previous years continued, including double jeopardy and the malfunctioning of the prison system.

In June 2002, a new government was instated following the presidential elections. Very rapidly, Minister of the Interior Nicolas Sarkozy defined a program of action in the field of security for the next five years following the adoption of the August 29 law on the direction and planning of internal security.¹ This law prescribed the drafting of further legislation in those areas necessitating legislative provisions. In September, draft versions of an internal security law were discussed and despite strong criticism, adopted by parliament on February 13, 2003, with solely the votes of the majority. All of the opposition voted against it.

The year 2002 also saw a sharp rise in racial and anti-Semitic attacks, with a consequent debate over balancing freedom of expression with encouraging tolerance. The 2001 controversial sect law and France's attitude towards religious sects continued to be criticized.

Security Law

The Internal Security Law (LPSI)² centered on four pillars: reinforcing the overall efficiency of the activities undertaken by internal security forces by increasing the powers of and the means available to the police, notably in the fields of computerized personal data and DNA; the improvement of the fight against certain attacks on persons and goods by creating new offenses; the creation of stricter controls on the buying and possession of arms; and creating a framework for the exercise of activities of private security. Despite 400 amendments, the Internal Security law was considered a "threat to the republic" and an "attack on people's liberties" by several MPs and senators of the opposition.³

The bill was fiercely criticized by civil society groups, and there were numerous demonstrations against it while it underwent examination in the parliament. Several NGOs gathered to sign communiqués and open letters to the interior minister against the law. One

¹ Loi d'orientation et de programmation pour la sécurité intérieure (LOPSI)
Law No. 2002-1094, August 29, 2002.

² At www.assemblee-nat.fr/12/dossiers/securite-interieure.asp

³ *Le Monde*, "Sarkozy défend son projet au Palais Bourbon," January 14, 2003.

communiqué from October 21 signed by organizations, trade unions, and political parties⁴ condemned the project, saying it could transform France into “an authoritarian state.”⁵

In particular, the law was criticized for excessively expanding the powers of police, relaxing the requirements necessary for searches and for retaining information about suspects, eliminating the obligation to notify the suspect of their rights to remain silent and reducing the criteria necessary for taking DNA fingerprints. In addition, vulnerable social groups were unjustly targeted, with the introduction of punishments for vagabonds, squatters and beggars amounting to six months imprisonment and large fines.

On November 14, on its own initiative, the National Consultative Commission on Human Rights (CNCDDH) rendered its opinion on the LPSI project: the government had not officially asked for the CNCDDH’s opinion on the LPSI project. The commission emphasized that security was not in opposition with liberties and that action to fight against insecurity did not justify certain measures of repressing the moral order. The commission further directed the attention of the government to the risks “of needlessly increasing controls without security actually increasing and without, at least, giving individuals the guarantees they are due.”⁶

The Magistrates’ Union equally condemned the project, which it stressed “transforms democracy into arbitrary rule.” It argued that the text introduced “policies of ‘republican terror’, which aimed at reducing an entire section of the population to non-humans through harassment at all levels.”⁷

Freedom of Expression

The rights of freedom of speech and of the press were generally respected. However, despite criticism by the NGO Reporters without Borders and the European Court of Human Rights, an 1881 Law on the Freedom of the Press, which restricted freedom of expression, remained in force.

- On June 25, the European Court of Human Rights, unanimously held France in violation of article 10 of the European Convention on Human Rights (ECHR) for interfering in the freedom of expression of two journalists. Jean-Marie Colombani and Eric Incyan published an article in *Le Monde* on November 3, 1995, which questioned the Moroccan king’s avowed determination to fight drug trafficking. The Paris Court of Appeal convicted the applicants of insulting a foreign head of state and their appeal was dismissed on similar grounds by the Criminal Division of the Court of Cassation. The European Court of Human Rights argued that the prosecution was unjustified and criticized the law as outdated for affording immunity from criticism for heads of state

⁴ Association Internationales des Juristes Démocrates (AIJD), Les Amis du bus des Femmes, ATTAC, CADAC, CADTM France, GISTI, Droit au Logement, Ligue des Droits de l’Homme, Collectifs droits des femmes, Mouvements des jeunes socialistes, Homosexualité et Socialisme, Parti socialiste, Parti radical de gauche, MRAP, Les Verts, Syndicat des Avocats de France (SAF), Syndicat de la Magistrature (SM), UNEF.

⁵ Communiqué sur le projet de loi sur la sécurité intérieure, at www.ldh-france.org/docu_dossier.cfm

⁶ Commission Nationale Consultative des droits de l’Homme, *Avis portant sur le projet de loi pour la sécurité intérieure*, November 14, 2002.

⁷ Syndicat de la Magistrature, *Justice*, No. 173, November 2002, at www.syndicat-magistrature.org/article/299.html

solely because of their status and irrespective of whether the criticism was justified.⁸ The court awarded the applicants €4,096 for pecuniary damage and €21,852eur for costs and expenses.

- However, in July the Paris Court of Appeals dismissed a case brought by three African heads of state under the 1881 Law against the author and publisher of the book *Noir en silence*. In 2001 the case had been dismissed by a French court on the grounds that the 1881 law was incompatible with the ECHR.

The case of the novelist Houellebecq highlighted the authorities' continuing need to balance worries about the rise in racial violence and xenophobia with freedom of speech.

- In August four Muslim organizations launched an action to sue the novelist Michel Houellebecq for inciting racial hatred. Houellebecq had singled out Islam and declared it "the most stupid religion" during a magazine interview in September 2001. France's Human Rights League joined the plaintiffs as civil party in their criticism. On October 22, the case was dismissed by the court on the grounds that his comments could not be construed as general hatred for Muslims or a call to act against them. The decision was harshly criticized by the large Muslim community, who called for an appeal.

Judicial System

Double Jeopardy

At the initiative of Cimade (an NGO providing legal and administrative assistance to foreigners and asylum seekers), a large number of local and national organizations launched, at the end of 2001,⁹ a national campaign against double jeopardy. The campaign "one punishment point blank" had as its objective to abolish the discrepancy in punishments between French nationals and foreigners.

Double jeopardy was a complementary sanction foreseeing the expulsion of a delinquent foreigner already having served a term of imprisonment. In 2001, 17,000 additional punishments prohibiting future access to French territory were pronounced.¹⁰ The campaign carried out in 2002 denounced this "form of banishing" which sent persons who lived in France and had founded a family there back to their countries of origin. According to an action group of national and local NGOs,¹¹ on average six out of ten persons expelled had lived in France for more than ten years.¹² The punishment of prohibiting further access to French territory was contrary to the principle of respect for equality before the law, in particular in the field of the criminal treatment of delinquents.

⁸ Chamber judgment in the case of *Colombani and others v. France*, Application No. 51279/99, at www.echr.coe.int

⁹ Cimade, Emmaus, Gisti, Ligue des droits de l'Homme, Mouvement immigration banlieues, MRAP, Syndicat de la magistrature, Syndicat des avocats de France etc.

¹⁰ *Le Monde*, "Francois Bayrou se prononce contre la double peine pour les délits mineurs commis par des étrangers," July 13, 2002, at www.lemonde.fr

¹¹ Ligue des Droits de l'Homme, Cimade, Groupe d'Information et de Soutien des Immigrés, Emmaus, MRAP SOS racisme, OIP.

¹² *Le Monde*, "Le mouvement contre la double peine attend des actes de M. Sarkozy," October 29, 2002.

- On June 18, 32-year old Cherif Bouchelag, an Algerian father of six French children, was the subject of an arrest of expulsion, one week after his release from prison. This case was similar to many others except that this time MP Etienne Pinte (Yvelines region) stepped in against the arrest.¹³ Further, other MPs of the majority party backed Pinte and a campaign led by civil rights organizations forced the Minister of the Interior Sarkozy to repeal the order of expulsion. However, this hope of acknowledgement of the situation by politicians was short-lived. After announcing that he would repeal the order, the minister of interior went back on his decision on July 31, calling once more for deportation.¹⁴ Finally, on September 14 the regional Commission of Deportation declared itself against the deportation of Bouchelag, stating that he was no longer regarded as a danger to the French public order.

This case served to reopen the political debate on the abolition of double jeopardy. It brought about the creation of a working group within the ministry with a view to modifying the law.

Torture, Ill-Treatment and Police Misconduct

Isolated cases of ill-treatment by authorities and their subsequent impunity were reported throughout 2002.

- In February following alleged racial violence and physical assault by police officers, French national Karim Latifi lodged a complaint with the police inspectorate. Latifi was stopped by police at a roadblock where they were questioning a group of youths. On asking what was happening, Latifi was asked for his papers and allegedly called a “dirty Arab,” kicked and punched by 15 policemen who further hit him with truncheons and demanded he lick the wall. He was then handcuffed and taken to the police station during which time he continued to be subject to racial abuse. He was released after 15 minutes at the station. The public prosecutor opened a preliminary inquiry and human rights NGOs and activists called for a prompt, thorough and impartial police and judicial investigation into the assault. In February 2003, however, although the judicial investigation continued, the public prosecutor had set aside the complaint of racial violence and physical assault by police officers.
- The case of Ahmed Selmouni, who the European Court of Human Rights had found to be a victim of torture and excessively lengthy judicial proceedings, revealed the potential impunity of police. Despite the fact that those policemen involved were convicted for violent acts against Selmouni by the Versailles Appeal Court in 2000, a spokesman for the national police directorate reported in March 2002 that disciplinary proceedings were not necessary as the men were no longer members of the judiciary police but had been transferred to other police services.
- A police officer who was prosecuted and convicted of manslaughter after shooting dead a man in April 2000, was granted a reduced sentence at appeal. The Court of Appeal found the officer guilty of involuntary manslaughter and issued a suspended sentence of three months. Ryad Hamlaoui had been attempting to steal a car in Lille-Sud when he was killed.

¹³ *Le Monde*, “Des élus de la majorité sont intervenus pour éviter l’expulsion d’un père de famille algérien,” July 20, 2002.

¹⁴ *Le Monde*, “Nicolas Sarkozy revient sur sa décision de ne pas expulser un père de famille algérien,” September 12, 2002.

Prison Conditions

The debate on prison conditions, launched two years ago after the publication of the testimony *Chief Doctor at the Santé Prison* by Veronique Vasseur,¹⁵ the Santé prison doctor, and the two parliamentary reports¹⁶ on prisons did not suffice to improve the situation of detainees in France. On the contrary, their conditions seemed to deteriorate and malfunctions to continue.

Overpopulation was one root cause of the problem – on December 1, figures from the penitentiary administration showed a 14 % increase in prisoners over the year, with 55,471 prisoners for a total of 47,500 places.¹⁷ Attempts were made to redress the problem. In September, the parliament approved a prison reform bill, which provided for the replacement of old prisons and the building of space for 13,200 more prisoners. Construction began and the 30 new prisons are anticipated to be completed by 2006.

In January, the International Observatory of Prisons (OIP)¹⁸ drew attention once more to the gravity of the prison system by highlighting the case of Michel Lesage. Lesage was murdered by his cellmate Guislain Yakoro on March 15, 2001 in Gradignan prison. Yakoro suffered from severe psychiatric problems and had attacked a cellmate on a previous occasion. OIP criticized the absence of a one-cell one-prisoner policy and the lack of adequate care for mentally-ill patients.

On March 4, parliament adopted the Law on the Rights of Sick Persons.¹⁹ This allowed for the indefinite suspension of prison sentences, for those who were critically ill or suffering from a chronic condition incompatible with continued detention. Despite this, several cases were reported of prolonged detention of ill prisoners thereby leading to a deterioration of their health.

- On November 14, the European Court of Human Rights found France in violation of article 3 of the ECHR for failure to take special measures to rectify an ill prisoner's condition, which had become increasingly incompatible with his continued detention. A medical certificate had shown that Jean Mouisel, suffering from chronic lymphatic leukemia, had been subject to ill-treatment by being put in chains on his way to hospital and whilst undergoing chemotherapy treatment. He was also victim of aggressive behavior from the guards and as a result terminated his treatment in 2000. The court noted that "although there was no general obligation to release prisoners suffering from ill-health, Article 3 required States to protect the physical integrity of persons deprived of liberty, notably by providing them with necessary medical assistance and this should not subject the person to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention."²⁰

¹⁵ See IHF, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2002 (Events of 2001)*, at www.ihf-hr.org

¹⁶ See www.assemblee-nationale.fr/2/dossiers/prisons/2prisons.html

¹⁷ Figures from www.oip.org

¹⁸ OIP, *Dedans/Dehors*, No. 29, January 2002, at www.oip.org

¹⁹ Law 2002-303 of March 4, 2002 on the rights of sick persons and the quality of the health system (*Loi relative aux droits des maladies et a la qualité du système de santé*).

²⁰ Chamber judgment in the case of *Mouisel v. France*, Application NO. 67263/01, November 14, 2002

- On September 18, the Paris Court of Appeal granted 92-year-old Maurice Papon (former Vichy official convicted for complicity in crimes against humanity during World War II), release from his 10-year sentence on the grounds that his health was incompatible with his detention. There was much criticism amongst the government and human rights activists following the decision due to the nature of his crimes and the alleged lack of evidence of ill health. The French government immediately requested the public prosecutor lodge an appeal against the decision.
- In an open letter to the Minister of Justice in December, Amnesty International (AI) drew attention to the excessively prolonged provisional detention of Alain Solé, an alleged member of the Breton nationalist group Emgann, particularly in view of his ill health.²¹ Solé, a diabetic, was arrested in October 1999 and reportedly received inadequate medical care subsequent to his arrest. In October Solé was rushed to hospital with circulatory problems and reportedly needed surgery. As of the time of writing, a decision due on November 12 by the *chamber de l'instruction* regarding his request for release, had not been issued. In the same letter, AI also expressed concern about and asked for further information regarding the four Action Directe prisoners who had been held in isolated detention to which their continued deteriorating health had been attributed.

Other problems in the prison system were highlighted, including a large number of suicides, rape and generally bad management.

- On October 16, at the time of a trial on a case of rape in prison of a 28-year-old man by two co-detainees, the penitentiary administration recognized before the Seine-Maritime Court of Assizes its powerlessness against violence, drugs, suicide and the law of silence which dominated in the establishments.²²
- At the end of December, a female detainee was raped by two prison wardens.²³ Normally, only female wardens would be in direct contact and be alone with female prisoners. The men were charged with external surveillance.

While violence between detainees or towards the guards could be managed case by case, it seemed difficult to foresee and prevent suicides, the number of which had not stopped increasing for 20 years. The number rose from 39 cases in 1980 to 104 cases in 2001²⁴ and the NGO French Prison Suicide Observatory recorded 116 suicides and suspicious deaths during 2002.²⁵

For the first time, on December 5, 2001, the administrative tribunal in Rouen had found the state responsible for the death of a prisoner, since the suicidal tendencies of the inmate had been indicated by the chief doctor of the prison.²⁶ Yet, despite this positive development little seemed to be done to address this problem during 2002.

²¹ Amnesty international, EUR 21/002/2002, at <http://web.amnesty.org>

²² *Le Monde*, "Deux hommes accusés du viol en prison d'un codétenu comparissant aux assises," October 19, 2002.

²³ *Le Monde*, "Deux surveillants des Baumettes sont accusés de viol sur un détenu," February 17, 2003.

²⁴ *Le Monde*, "L'administration pénitentiaire préconise le dialogue entre le personnel soignant et surveillants," January 27, 2002.

²⁵ See www.prison.eu.org/rubrique.php3?id_rubrique=68

²⁶ *Ibid.*

OIP argued that suicides are on the increase, among others reasons, because of violence and the bullying between detainees, mistreatment and overpopulation, all problems that prisoners themselves had complained about but seemed not to be concerns of the state.²⁷

Véronique Vasseur explained in an interview with the daily *le Monde* that the French prison service was strictly hierarchical without any harmonization in the application of prison rules: everything depended on the character of the prison director, his compassion, his rigidity and the discipline that he imposed.²⁸

In addition, the right to vote of the detainees was not practiced efficiently because of the lack of information on their rights, and how to proceed. Some of the detainees were simply not aware that they still had the right to vote.²⁹

Religious Intolerance

Concern continued to be expressed amongst religious leaders and civil rights organizations about the controversial About-Piscard Sect law, which came into force in May 2001.³⁰ The law placed severe restrictions on the formation of associations, granting courts the power to dissolve a religious association if it or its representatives had been convicted of more than one criminal offence. Subsequent to protests against the law during 2001, the Council of Europe's Parliamentary Assembly (PACE) appointed a special rapporteur to investigate whether the law met European human rights standards. On November 18, the rapporteur presented his findings³¹ to the PACE, which subsequently adopted a resolution criticizing the law and calling on the French government to reconsider it and clarify definitions. The resolution further noted that it would be up to the European Court of Human Rights alone to determine whether this law was in violation of ECHR provisions.³²

In February 2003, the European Parliament of the EU released its Human Rights Report 2002, also criticizing the law as “damaging and discriminating” towards religious groups regarded as sects, in particular in comparison with the treatment of recognized religions.³³

In a positive move, the Interministerial Mission for the fight against Sects (MILS), a body set up in 1998 to coordinate the monitoring of sects by the government was dissolved following its president's resignation in June.³⁴ The body had been criticized for independently developing activities abroad often seen in violation of religious freedom and misusing funds. In November, the government publicly acknowledged the criticism and set up a new body, the Interministerial

²⁷ See www.oip.org

²⁸ *Le Monde*, “Entretien avec Véronique Vasseur, ancien médecin-chef de la maison d’arret de la Santé,” April 25, 2002.

²⁹ OPI, *Dedans/Dehors*, No. 32, July 2002, at www.oip.org

³⁰ For details, see IHF, op.cit.

³¹ Council of Europe, Rapporteur Cevdet Akcali, *Freedom of religion and religious minorities in France*, Doc. 9612, October 31, 2002, at <http://assembly.coe.int>

³² Council of Europe, “Freedom of religion and religious minorities in France,” Resolution No. 1309/2002, at <http://assembly.coe.int>

³³ European Union, *Report on the respect for Human Rights in the EU*, Re.2001/2014 INI, at www.europarl.eu.int

³⁴ Mission interministérielle de lutte contre les sects

Mission of Vigilance and Fight against Sectarian Deviances (MIVILUDES).³⁵ It is hoped that the new and less bureaucratic composition of the body and its stricter scope of permissible activity (activities must be initiated and directed within the Ministry of Foreign Affairs) will soften the government's approach towards religious minorities.

Further, two cases were decided in favor of Jehovah's Witnesses' right to create places of worship.

- On November 6, the Auch high court ordered the dissolution of an organization, which had been explicitly created so as to protect a site from being used by the Jehovah's Witnesses to build a place of worship. The court held that the grounds for dissolution were that the organization's goal was to "hinder the free exercise of religion."³⁶
- On October 17, the administrative court of Orléans annulled a municipal decree issued by the mayor of Sorel-Moussel. The decree gave the latter the right to a plot of land that had been bought by the Jehovah's Witnesses for building purposes.

Intolerance and Xenophobia

Anti –Semitism and Islamophobia

Despite the decrease in anti-Semitic attacks between 2000 and 2001 noted in the 2001 annual report of the National Consultative Commission on Human Rights (CNCDH), incidents and waves of both Anti-Semitism and Islamophobia were on the rise, particularly in early 2002. The French police recorded 395 anti-Semitic incidents between March 29 and April 17 and from the year's beginning until April, 34 "serious" attacks on Jewish persons and property, synagogues and cemeteries. Synagogues in several large cities (Strasbourg, Lyon, Paris, Marseilles) were vandalized and on March 31 one in Marseille was burned to the ground. In April in Paris, a crowd threw stones at a bus transporting Jewish school children, breaking the windows; on April 10 Jewish soccer players were attacked and robbed by youths with baseball bats in Bondy; in Toulouse in March there was a drive-by shooting of a *kosher* butcher's.³⁷

Authorities subsequently increased security for Jewish institutions assigning more than 1,000 mobile units to areas with large Jewish communities. Whilst incidents decreased after the presidential elections in May, they did not cease entirely. On December 5, a synagogue in Perigeux (Southwest France) was ransacked by vandals and books and artwork destroyed.³⁸

There were also several alarming incidents against Muslims, the country's second largest religious community (an estimated five million), including harassment and vandalism. On May 12, the daily *Le Monde* issued a front-page special report in which it condemned the growing phenomenon of Islamophobia in France. The report highlighted a number of attacks, including a

³⁵ Mission interministérielle de vigilance et de lutte contre les dérives sectaires, Decree No. 2002-1392 of November 28, 2002.

³⁶ Human Rights Without Frontiers, "Judicial dissolution of anti-Jehovah's Witnesses association," December, 11, 2002, at www.hrwf.net

³⁷ Amnesty International Concerns in Europe January-July 2002, at www.amnesty.org/library/index/ENGEUR010072002#FRA

³⁸ Various articles at www.hrw.org

package containing a bomb intended for a mosque in Perpignan.³⁹ It also noted that the public was often unaware of the regular occurrence of such attacks, as the media tended to report solely on anti-Semitic behavior.

A positive development was witnessed in the agreement signed on December 9 between French officials and Muslim leaders to create a French Council for the Muslim religion. This structure, which will officially represent the interests of the Muslims before the French authorities should partly rectify the lack of awareness about prejudice against Muslims and theoretically facilitate moves for greater protection. It should also facilitate coordination in large-scale building of mosques – the vast majority of Muslims in 2001 worshipped in small makeshift buildings. A similar body representing the Jewish community had been set up 200 years ago and there were also bodies for Catholics and Protestants.⁴⁰

Racist Attacks

There was an increase in the number of racist attacks in 2002, particularly against black African communities. Moreover, in its annual report, the CNCDH noted that the year 2002 had, compared to the last ten years, experienced an unprecedented increase in racist and anti-Semitic behavior.⁴¹ Figures quoted in the report noted 313 attacks committed against persons or objects, and 992 racial insults. The CNCDH particularly noted the large increase of racial attacks in schools. According to a survey on relations with and perceptions of foreigners conducted by the BVA (a market research company) between November 29 and December 6, those questioned placed the fight against racism seventh on their list of priorities behind unemployment and the fight against AIDS. However, the survey also showed that 88% believed that racism was fairly widespread and 59% found it necessary to actively combat the root causes.⁴²

In response to the growing racism subsequent to September 11 and the wave of attacks in France during March and April, the government launched the first ever anti-racism campaign in April 2002. Along with several civil rights organizations, the campaign included commercials – each ending with the words “France is stronger without racial discrimination.” The commercials also stressed that racial discrimination was a crime punishable by two years imprisonment and a €30,000 fine. Further, the free hotline for victims and witnesses of racial abuse, a joint project of the Ministry of Labor and the NGO Group for Study and Combat of Discrimination (GELD) launched in 2000, was heavily publicized.⁴³

On December 10, the French National Assembly unanimously adopted legislation increasing the penalties for racially motivated attacks: to commit acts of violence on the basis of race, religion or ethnic background became an “aggravated crime.” The law was approved by the Senate in January 2003.⁴⁴ In addition, the Haut Conseil à l’Intégration, a governmental body

³⁹ *Le Monde*, May 12, 2002, at www.lemonde.fr

⁴⁰ BBC News online, “France creates Muslim Council,” December 20, 2002, at www.bbcnews.co.uk

⁴¹ *Annual Report 2002*, at www.ladocumentationfrancaise.fr/BRP/034000129/000.pdf

⁴² Institut BVA “Xénophobie, antisémitisme et anti-racisme en France,” December 2002, at www.bva.fr/new/Antisemitisme_200212.pdf

⁴³ GELD, “La lutte contre la discrimination raciale: grande cause nationale 2002,” May 16, 2002, at www.le114.com/actualites/fiche.php?Id_Actualite=24

⁴⁴ Session of January 23, 2003, *Loi (n° 90, 2002 - 2003), adoptée par l'Assemblée nationale, visant à aggraver les peines punissant les infractions à caractère raciste, antisémite ou xénophobe.* [Rapport n° 139 (2002-2003).]

responsible for drafting proposals to the government on questions of integration of foreign residents, was reinstated on October 24 after a period of inactivity since November 2001.⁴⁵

Asylum Seekers and Immigrants⁴⁶

For the last two years the National Association of Border Assistance for Immigrants (ANAFE) has denounced the worsening of conditions in which immigrants have been kept if they are refused entry at the airport Roissy Charles de Gaulle.⁴⁷ On December 29, 2001, the court had recognized in an ordinance freeing a woman from the Republic of the Ivory Coast delivered by the court of appeal in Paris, that the conditions in which she had been kept violated human dignity. The court held that “the minister of interior could not seriously invoke *force majeure* to justify the perpetuation of a situation which would become permanent.”⁴⁸ According to the testimony collected by ANAFE, the premises of the airport were cramped, without ventilation, natural light, immediate access to toilets, and often without any real possibilities of communicating with the outside world. The conditions did not improve in the course of 2002.⁴⁹

Deaths during forced deportations also gave rise to concern.

- On December 30, 52-year old Argentinean Ricardo Barrientos, an undocumented migrant, died whilst being deported by plane back to Buenos Aires. He reportedly was handcuffed, placed at the back of the plane and firmly held down “bent in two” by police officers. He died following a brief struggle. The Air France trade Union CDFT criticized the police brutality involved and ANAFE expressed concern at the “increasingly widespread” nature of this behavior, calling on the prime minister to set up an investigation into alleged police brutality in forced deportations.⁵⁰

An audit report by several ministries, sent back to the prime minister in June 2002, denounced the inadequacies of the French asylum’s procedure. The report concluded that the actual system allowed for abusive demands, illegal work and the creation of secrecy in France.

In September, the government presented a plan of reform on the right to asylum. The objective was to shorten the delays in the asylum procedure and speed up the returns to countries of origin. The actual delays in considering the files were on average two years. The government intended to strengthen asylum policies and reduce procedures by two months.

After three years of existence, the refugee camp Sangatte, run by the Red Cross, was closed on December 30. It had served as a refuge for migrants wanting to enter Great Britain by

⁴⁵ GELD, “Installation du Haut Conseil a l’Intégration,” October 24, 2002, at www.le114.com/actualites/fiche.php?Id_Actualite=56

⁴⁶ See www.gisti.org/dossiers/sangatte/index.html

⁴⁷ *Rapport ANAFE – Zone d’attente en marge de l’Etat de droit*, 2001, at www.gisti.org/doc/publications/2001/zones-attente/rapport.pdf

⁴⁸ *Communiqué ANAFE*, January 9, 2002, at www.ldh-france.org/actu_print.cfm?idactu=427&type=nat&content=single

⁴⁹ See ANAFE, “Zones d’attente: 10 ans après, les difficultés persistent; visites quotidiennes a Roissy en mai 2002.”

⁵⁰ Statewatch news online, “Argentine migrant dies during forced deportation,” at www.statewatch.org; “ANAFE communiqué Mort de deux étrangers lors de leur éloignement a l’aéroport de Roissy,” January 23, 2003

all means and at whatever price. The camp in northern France came into being as a result of the conflict between two European conventions: the Schengen Agreement, which regulates people's free circulation, and the Dublin Agreement, which gives responsibility of the request for asylum to the first country entered by the refugee. More than 100,000 persons went to Sangatte in 2002.⁵¹

Since the announcement of the closure of the camp by interior ministers from France and the UK, the French Committee for the Right to Asylum (CFDA) made known their concerns relating to who would benefit from the provisional reception. Those refugees who were offered emergency humanitarian assistance would become refugees in an irregular situation. For some, orders to return to the border were made, with a view to placing them in a detention center and returning them to their country of origin. The Group for Information and Support for Immigrants (GISTI) denounced, in an open letter to the minister of interior, the grave problems in the legal treatment of foreigners by the Sangatte camp. Ultimately, the French minister asked the UK to take charge of refugees who were not on their territory. France would undertake to grant work permits for those who stayed on French territory whether because they were granted asylum or because they were granted an intermediate permit to stay.⁵²

Concern was also voiced about the condition of France's large number of undocumented immigrants, often resident in France for a long period of time. In September, several civil rights organizations, including the League of Human Rights, criticized the treatment of such persons and called on the minister of the interior to create an *ad hoc* committee to deal with the issue.⁵³

Trafficking in Human Beings and Prostitution

In 2002 the problems relating to trafficking in human beings and exploitation of prostitution highlighted by NGOs sparked lively political debates. Until the adoption of the Internal Security Law, trafficking in human beings was not a crime under French law.

After one year of lobbying by NGOs working in this field and in particular by the Committee Against Modern Slavery (CCEM),⁵⁴ a communal study into the diverse forms of modern slavery⁵⁵ was undertaken at the beginning of 2001. The report *Slavery in France Today*⁵⁶ was published on December 14, 2001. As a result of this report, French authorities came to better acknowledge the existence of slavery and trafficking in human beings. The report denounced the legal lacunae and deficiencies in providing victims with assistance and advocated for measures that the Committee for Modern Slavery had been advocating for years, in particular specific criminalization and status for the victims.

⁵¹ See www.gisti.org/dossiers/sangatte/index.html

⁵² *Le Monde*, "Comment Paris et Londres veulent en finir avec Sangatte," December 3, 2002.

⁵³ "Sans papiers: pour la creation d'une commission ad-hoc," at www.ldh-france.asso.fr

⁵⁴ Lobbying was carried out within the Daphne project of the CCEM, "Pour une action européenne contre l'esclavage." This led to the creation of a parliamentary information mission to investigate the various forms of modern slavery. The mission commenced its work on April 19, 2001, led by Christine Lazerges, vice-president of the National Assembly. The investigation started on April 25, 2001 along with that of CCEM. It was followed by similar investigations by other organizations. See

www.ccem-antislavery.org/FR/actu_evenements.html#missioninfo

⁵⁵ See www.assemblee-nat.fr/dossiers/esclavage_moderne.asp#mission

⁵⁶ See www.assemblee-nat.fr/rap-info/i3459.asp

The Socialist Party rapidly introduced a proposal for a law to reinforce the fight against different forms of slavery⁵⁷ and this was presented to the National Assembly. On January 24, 2002, the Assembly examined and unanimously adopted the proposition of the law on its first reading. Transferred to the Senate, the draft law on different forms of slavery was not examined. Only during examination of the draft Law on Internal Security were these issues addressed. The draft law LPSI was amended by the Senate to insert into the Penal Code an additional section relating to the fight against trafficking in human beings and proxenyism (pimping or procurement), with a view to criminalizing trafficking and reinforcing the existing provisions on proxenyism.

Under the LPSI law, several new provisions concerning trafficking were created. Under article 225(4.1), trafficking in human beings was integrated into the Penal Code. It defined the offense of trafficking in accordance with article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime. The definition was not included verbatim but adapted to the French national penal law.

Moreover, the LPSI law provides for authorization of provisional stay to those victims of trafficking and proxenyism who accept to file a complaint or act as a witness against the perpetrators. This permit of stay will bring with it the right to work. In cases where the alleged perpetrator is convicted, a permanent residency permit may be given to the victim.

It is, however, regrettable that the measures for assistance (shelter, access to healthcare, etc.) accompanying the status of stay were not detailed by this same law.

However, parallel to these two measures favorable to suppression and to the protection of victims,⁵⁸ the LPSI law may in fact prosecute these same victims by the creation of the crime of aggressive begging or by making prostitutes' passive soliciting for clients on the streets a criminal offense. For the former crime (article 225(12.5) of the Penal Code), in the absence of clarification, the interpretation of the term "aggressive" will depend on the application made by the police officers.

Since the new Penal Code in 1994, only active soliciting on the streets (making a sign or calling the client) was punishable by a fine. The LPSI law reinstated passive soliciting (without any action, the mere fact of being on the street is sufficient) and made it a crime punishable by two months imprisonment and a fine of €3,750. According to the rapporteur of the Senate, "the interest in creating a crime is to put prostitutes in police custody for 24 hours to obtain information."⁵⁹

The CNCDH and assistance groups for prostitutes fiercely criticized this offence, emphasizing that putting victims in prison does not protect them.⁶⁰ The CNCDH equally noted that "if the penal condemnation of prostitutes should have as an effect their restationing at the border, this would succeed in putting as many if not more of them in the hands of organized crime."⁶¹ This remark is just as true as the Sarkozy law introduced a new paragraph 12 to

⁵⁷ See www.assemblee-nat.fr/dossiers/esclavage_moderne.asp#mission

⁵⁸ Granting provisional stay was not sufficient to protect a victim of trafficking.

⁵⁹ *Le Monde*, "Prostitution: le Sénat veut compléter le projet Sarkozy," October 31, 2002.

⁶⁰ *Avis portant sur le projet de loi pour la sécurité intérieure, Commission Nationale Consultative des droits de l'Homme*, November 14, 2002.

⁶¹ *Ibid.*

Ordinance 45-2658 of November 2, 1945 relating to the conditions of entry and stay of immigrants in France. The temporary stay permit can be withdrawn from the immigrant liable to criminal proceedings. As a result, the victims of trafficking in human beings, with a legal stay, prosecuted for passive soliciting in the street can potentially have their permit to stay withdrawn and can be returned to the border.