



COMMISSION NATIONALE
CONSULTATIVE
DES DROITS DE L'HOMME

RÉPUBLIQUE FRANÇAISE

STATEMENT

Statement on the situation of Afghan people

*The statement on the situation in Afghanistan was adopted
at the Plenary Assembly on 30 September 2021 (adopted unanimously).*

1. Certain measures imposed by the Taliban regime since their seizure of power in Kabul already demonstrate and raise fears, for the future, of practices that violate fundamental rights, as well as violence and persecution against a significant part of the population in Afghanistan. Consequently, the Commission nationale consultative des droits de l'homme (CNC DH - French National Advisory Commission on Human Rights) considers it necessary and urgent to address the French authorities. In view of France's past commitment in this country, it has a duty to implement efficient policies to protect and welcome Afghan people looking to come to France or who are already there. In addition, it must take initiatives at European and UN level to respond to the challenges of protecting human rights as well as humanitarian issues.

2. On 16 August 2021, the President of the Republic spoke about the situation in Afghanistan, announcing his priority to ensure the safety of all Afghans who worked for France, noting that it was *"a matter of principle for France"* to help *"many Afghans, human rights defenders, artists, journalists, activists (...) threatened because of their commitment"*¹. Although the CNC DH welcomes the President of the Republic's commitment *"to do one's duty to protect those who are most at risk"*, it is disappointed in the link established with the notion of *"significant illegal migration flows"*, which is totally separate from the right to asylum guaranteed by international², European³ and constitutional⁴ law. It stresses the urgent need to avoid any confusion between the right to asylum and illegal immigration⁵. The CNC DH notes that the constitutional requirement for the effectiveness of the fundamental right to asylum does not permit its scope to be reduced⁶. According to the CNC DH,

this requirement also involves a duty to educate and raise awareness among citizens, especially in a climate of mistrust, or even rejection, maintained by some.

1. The protection of Afghan exiles

3. The CNC DH shares the serious concerns of the United Nations High Commissioner for Refugees (UNHCR) on the risks of violations of fundamental rights of *"in particular women and young girls as well as Afghan citizens considered by the Taliban to have or have had links with the Afghan Government, international forces in Afghanistan or international organisations in the country"*⁷.

4. In the new environment created by the seizure of power by the Taliban, the CNC DH calls on the French public authorities to implement a reinforced and efficient protection policy. At the beginning of August 2021, 41,000 Afghans benefited from international protection (refugee status or subsidiary protection) granted by OFPRA [French office for refugees and stateless persons] and the CNDA [the national court of asylum] in France. The number of Afghan asylum applications pending is currently estimated at 20,000, including 10,000 people subject to a procedure provided for by the Dublin regulation, which does not allow them to refer their applications to French bodies determining asylum.

5. The drastic change in the conditions of access to fundamental rights and freedoms in Afghanistan must lead the public authorities to recognise the protection needed for those who request it and to put an end to deportations to Afghanistan by virtue of the principle of non-refoulement. Depending on the different situations in which people find themselves when going into exile, there are various responses to be provided, but all are urgent.

6. Firstly, for those currently in France, often after journeys wandering and waiting, the CNC DH asks, like the Commissioner for Human Rights of the Council of Europe⁸, for a review of their situation due to the "change

1 President of the Republic, Speech on the situation in Afghanistan, 16 August 2021, available at: <https://www.elysee.fr/emmanuel-macron/2021/08/16/allocation-relative-a-la-situation-en-afghanistan>.

2 Geneva Convention on Refugees, 28 July 1951.

3 Charter of Fundamental Rights of the European Union, 7 December 2000, Article 18.

4 1946 Constitution, Preamble, 4th paragraph.

5 President of the Republic, Speech on the situation in Afghanistan, 16 August 2021, available at: <https://www.elysee.fr/emmanuel-macron/2021/08/16/allocation-relative-a-la-situation-en-afghanistan>; 2,600 people were evacuated by France between 15 August and 13 September. See France diplomacy, Welcoming people evacuated from Afghanistan to France - Evacuation flight on 13 September 2021, available at: <https://www.diplomatie.gouv.fr/fr/dossiers-pays/afghanistan/evenements/article/accueil-en-france-des-personnes-evacuees-d-afghanistan-vol-d-evacuation-du-13>

6 Cons. const., 13 August 1993, no. 93-325 DC; Cons. const., 22 April 1997, no.

97-389 DC: §81: *"as this concerns a fundamental right, recognition of which determines the exercise of the rights and freedoms by the persons concerned generally recognised by the Constitution to foreign persons residing in the territory, the legislation can only govern the conditions to make it more effective"*.

7 UNHCR, August 2021, UNHCR Position on Returns to Afghanistan.

8 Commissioner for Human Rights, 30 August 2021, Statement: In their response to Afghans seeking safety, Council of Europe member states should

in circumstances”: the initiation of procedures to re-examine asylum applications for those who have been rejected by OFPRA and the CNDA, and the suspension of transfer orders to other European countries in application of the procedure provided for by the Dublin III regulation⁹. Finally, the CNCDH calls for the systematic reintroduction of material reception conditions for any Afghan who is “Dublined”. The CNCDH stresses, like the UNHCR¹⁰, stopping repatriations to Afghanistan, whether directly, or indirectly through transfers to European states sending Afghans back to Afghanistan.

7. Secondly, the CNCDH notes that the protection granted by the Geneva convention takes priority over subsidiary protection and therefore asks the French authorities to interpret it in a manner consistent with the changing situation in Afghanistan.

8. Thirdly, for Afghans who want to or are forced to flee their country where their life is in danger, the priority must be to facilitate their emergency evacuation, the issue of visas (including digitally and by increasing the consular posts concerned and central services) and their dignified welcome to France. The CNCDH calls for the extension of the French consulates’ remit in countries bordering Afghanistan so that they can, like the French consular services in Tehran and New Delhi, issue visas to Afghan nationals. To this end, these services should be reinforced with additional staff allowing a greater number of cases to be investigated with a simplification of the civil status documents to be produced¹¹. In addition, the CNCDH notes the interest of the temporary protection provided for by Directive 2001/55/EC¹².

9. Fourthly, for Afghan families protected by France (currently 41,000 refugees), the right to family reunification must be made fully effective as required by national legislation¹³. However, some 3,500 applications for family reunification visas have been awaiting registration or consideration for several years. Hundreds of others have just been filed with the crisis centre of the Ministry for Europe and Foreign Affairs without, for the moment, any follow-up. In an environment where the Taliban threatens these families due to their links with exiles, the CNCDH urges the public authorities to urgently catch up with the backlog of registering and processing visa applications submitted under family reunification, a backlog exacerbated by the closure

not undermine human rights protections, available at : https://www.coe.int/fr/web/commissioner/-/in-their-response-to-afghans-seeking-safety-council-of-europe-member-states-should-not-undermine-human-rights-protections#105536730_888376_True.

9 European Union Regulation No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person, the Dublin III Regulation, lays down the principle that only one State is responsible for examining an asylum application if the applicant travels or moves from one State to another. To do this, the CNCDH is calling for the activation of the discretionary clause of the Dublin III regulation allowing France to process asylum applications from people who have passed through other European countries, given the change in circumstances in Afghanistan.

10 UNHCR, August 2021, UNHCR Position on Returns to Afghanistan.

11 The CNCDH points out the interest of the continuously updated note published by GISTI: “Information for Afghans seeking protection in France”, available at: <https://www.gisti.org/spip.php?article6645>.

12 The objective of which is “to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons”.

13 Articles L561-2 et seq. and Articles R411-1 et seq. of the Code of entry and residence of foreigners and right of asylum.

of consular posts in Kabul and then Islamabad¹⁴. Regarding families who already have their family reunification visas, the CNCDH recommends that the authorities take all possible measures so that these families can get to France without delay. With regard to families whose application for family reunification is being examined, the CNCDH is asking the authorities to simplify the requirements in terms of required documents, in particular concerning civil status documents, and the urgent issue of visas. Finally, for families who have not yet submitted an application, an emergency procedure expanding the usual criteria should be put in place due to their vulnerability and dependence on the refugees they wish to join, to allow their identification, protection and evacuation as soon as possible.

10. Lastly, the CNCDH recommends that access to the national reception system, in particular accommodation, is actually provided. As this system is structurally undersized, it calls for the creation of additional accommodation places.

11. It is also asking the French government to expand its resettlement programme from neighbouring states where thousands of Afghan refugees already live, which cannot make the effort alone to welcome Afghans seeking protection.

12. Finally, human rights defenders, as well as all Afghans exposed to the risk of persecution by the Taliban regime and who wish to seek asylum in France, must be able to benefit from protection. It underlines the extremely worrying situation of trade unionists¹⁵. It calls for special attention to be given to members of the Afghan Independent Human Rights Commission¹⁶, expressly targeted by the Taliban because of their undertakings¹⁷. The French government had assured in August that an “exceptional effort” was under way to welcome these people to France¹⁸. The CNCDH calls for this effort to continue.

2. The French diplomatic and humanitarian response

13. At European level, the CNCDH recommends that, during its rotating Presidency of the Council of the European Union, France take initiatives aimed, firstly, at encouraging Member States to share the responsibilities of welcoming and protecting Afghans arriving on European soil and, secondly, at obtaining a commitment from States in accordance with these States’ international obligations¹⁹,

14 Council of State, Order of 8 September 2021, no. 455751, §7: “It follows from the investigation and discussions at the hearing that suspending the activity of consular posts in Kabul and then in Islamabad for security reasons, combined with the disruptions related to the health crisis, led to a considerable delay, concerning more than 3,500 files, in registering and processing the visa applications submitted, some for several years, by family members of Afghan nationals who may benefit from family reunification”.

15 The main Afghan trade union organisation, the National Union of Afghanistan Workers and Employees (NUAWE) has 160,000 members, 23,000 of whom are women. Established in 1967, it was banned between 1996 and 2001 when the Taliban were in power in the country.

16 CNCDH, Press release of 17 August 2021.

17 Amnesty International, Afghanistan : comment les talibans s'attaquent aux droits humains [Afghanistan: how the Taliban attacks human rights], 22 September 2021, available at: <https://www.amnesty.fr/liberte-d-expression/actualites/afghanistan-comment-les-talibans-attaquent-droits-humains>.

18 Mediapart, Afghanistan: la France promet « un effort exceptionnel » pour accueillir des défenseurs des droits humains [Afghanistan: France promises «an exceptional effort» to welcome human rights defenders], 13 August 2021, available at: <https://www.mediapart.fr/journal/fil-dactualites/130821/afghanistan-la-france-promet-un-effort-exceptionnel-pour-accueillir-des-defenseurs-des-droits-hum?onglet=full>.

19 See, in particular, the 1951 Geneva Convention, Article 33; United Nations

to suspend the repatriation of Afghans to their country, where their lives are now at risk, or they risk torture as well as cruel, inhumane or degrading treatment.

14. In addition, the CNCDH asks that everything be done to implement the proposal for a regulation of the European Parliament establishing a European humanitarian visa²⁰ and ensure the establishment of humanitarian corridors allowing Afghans wishing to seek asylum to reach Europe in complete safety.

15. At the UN level, the Security Council²¹, Secretary General²², High Commissioner for Human Rights²³ or several special procedures²⁴ strongly condemned the human rights abuses in Afghanistan. The Human Rights Council, meeting urgently on 24 August 2021, adopted a resolution in which it expressed concern about the violations of human rights and international humanitarian law²⁵. In addition, it called on all parties to respect international law, including “*the right to freedom of movement and the right to leave any country*”²⁶.

16. The CNCDH considers that this resolution falls far short of expectations given the gravity of the situation. It therefore recommends that France, as a member state of the Human Rights Council, conduct the necessary consultations with a view to urgently establishing an independent commission responsible for investigating violations of human rights and international humanitarian law, and establishing accountability for the crimes committed.

17. Furthermore, the CNCDH remains extremely concerned by the increased difficulties for humanitarian action encountered in particular by non-governmental organisations in Afghanistan. In this regard, it sets out again several of its recommendations. In view of the effects that sanctions (such as the freezing of assets) adopted by the United Nations Security Council can have on humanitarian action, it reiterates its recommendation to faithfully implement and support the safeguard clauses of international humanitarian law and sectoral humanitarian “exemptions” in all international sanctions and counter-terrorism regimes²⁷.

18. The CNCDH notes that humanitarian aid is based

Convention against Torture, Article 3.

²⁰ European Union, Parliament resolution with recommendations to the Commission on Humanitarian Visas, 2018/2271, 11 December 2018.

²¹ Resolution 2593 (2021) adopted on 30 August 2021, S/RES/2593 (2021), The situation in Afghanistan, § 5.

²² See UN News, “Afghanistan: António Guterres urges Taliban to halt offensive immediately”, 13 August 2021, available at: <https://news.un.org/en/story/2021/08/1101712>.

²³ See UN News, “Afghanistan: ‘a fundamental red line will be the Taliban’s treatment of women and girls’ - Michelle Bachelet”, 24 August 2021, available at: <https://news.un.org/en/story/2021/08/1102312>.

²⁴ See for example OHCHR Media centre, “Afghanistan: UN experts urge swift global action to protect human rights and prevent ‘civilian slaughter’ », 16 August 2021, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27384&LangID=E>

²⁵ Council resolution S-31/1 adopted on 24 August 2021, A/HRC/RES/S-31/1, Strengthening the promotion and protection of human rights in Afghanistan, §1.

²⁶ Council resolution S-31/1 adopted on 24 August 2021, A/HRC/RES/S-31/1, Strengthening the promotion and protection of human rights in Afghanistan, §3.

²⁷ CNCDH, *Avis sur le respect et la protection du personnel humanitaire* [Recommendation on the respect and protection of humanitarian staff] (A – 2020 – 17), Recommendation no. 7, published in JORF [Official Gazette] of 20 December 2020, text no. 86; CNCDH, *Avis sur l’incidence de la législation relative à la lutte contre le terrorisme sur l’action humanitaire* [Recommendation on the impact of counter-terrorism legislation on humanitarian action] of 2 October 2018, published in JORF no. 0238 of 14 October 2018, text no. 97, p. 18-20.

on needs, but also on rights, and should be delivered in a neutral and impartial manner, in accordance with humanitarian principles²⁸. It next encourages France, directly or through its participation in the competent international and multilateral bodies, to pursue continued financial support from the international community for the Afghan population through a humanitarian response²⁹.

19. The CNCDH calls on France, through its direct or indirect diplomatic relations with the new Afghan authorities and a certain number of States, to do everything possible to facilitate access to goods and fundamental rights for people on Afghan soil, in accordance with international humanitarian law. In addition, the ongoing discussions on the conditions of international aid for Afghanistan and neighbouring countries must be conducted outside any political agenda so that the decisions taken do not hinder civilian populations’ access to basic services and their economic and social rights. Under no circumstances can humanitarian aid be used as a means to an end.

20. The CNCDH will closely monitor the development of the points raised in this statement.

²⁸ CNCDH, *Avis sur le respect et la protection du personnel humanitaire* [Recommendation on the respect and protection of humanitarian staff] (A – 2020 – 17), §5.

²⁹ United Nations, Ministerial Meeting on the future of Afghan women and their access to education, Speech by Jean-Yves Le Drian, Minister for Europe and Foreign Affairs, New York, 21 September 2021, available at: <https://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/la-france-et-les-nations-unies/evenements-et-actualites-lies-aux-nations-unies/actualites/article/nations-unies-reunion-ministerielle-sur-le-futur-des-femmes-afghanes-et-leur>

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