

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



WOMEN'S INTERNATIONAL LEAGUE FOR
PEACE & FREEDOM



France's extraterritorial obligations under the International Covenant on Civil and Political Rights



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1. This joint submission by the **Women’s International League for Peace (WILPF)** and the **European Center for Constitutional and Human Rights (ECCHR)** focuses on France’s extraterritorial obligations under the International Covenant on Civil and Political Rights (hereafter the “*ICCPR*”). This issue is addressed primarily through France’s obligation to respect the rights recognized under the ICCPR of all individuals within its territory and subject to its jurisdiction .
2. This submission also emphasises serious concerns about the respect by France of its positive obligation under the ICCPR to protect civil and political rights, in particular by ensuring that French private actors – including business actors such as arms companies – do not impede their exercise through their activities abroad. This positive obligation is enhanced by the substantial shareholder control of the French State in several major French arms companies whose activities impede the respect of civil and political rights abroad.
3. This submission first highlights the impacts on civil and political rights, including gendered impacts, of France’s arms transfers to countries with poor human rights records. The submission focuses in particular on France’s arms transfers to Saudi Arabia and the United Arab Emirates (the “*UAE*”), in light of the fact that a coalition of States led by these two countries (the “*Coalition*”) has been involved in the Yemen conflict and has committed serious violations of international law and international human rights law in this context since March 2015.¹
4. Secondly, this submission highlights concerns with France’s respect of its obligations under the ICCPR concerning the transfer of surveillance and biometric technology and other dual use products to China and Egypt, as such technologies can be weaponised to carry out mass surveillance, to discriminate against individuals, to control free speech and to crush dissent.
6. About the submitting organizations:

WILPF : the Women’s International League for Peace and Freedom (WILPF) is an international non-governmental organisation with National Sections covering every continent, an International Secretariat based in Geneva, and a New York office focused on the work of the United Nations. Since our establishment in 1915, we have brought together women from around the world who are united in working for peace by non-violent means and promoting political, economic and social justice for all. We use existing international legal and political frameworks to achieve fundamental change in the way states conceptualise and address issues of gender, militarism, peace and security.

ECCHR : the ECCHR is an independent non-profit human rights organisation, registered in Berlin (Germany) since 2007. ECCHR uses legal means to protect groups and individuals

¹In March 2015, Saudi Arabia formed a coalition with Bahrain, Egypt, Jordan, Kuwait, Morocco, Senegal, Sudan and the United Arab Emirates. Qatar was a member of the coalition until June 2017.

against systematic human rights violations, and hold state and non-state actors accountable for these acts. For the purpose of this submission, ECCHR has mobilized in the context European arms transfers and the conflict in Yemen. Together with the Yemeni-based organization Mwatana for Human Rights and several partners in Europe, the ECCHR filed a 350 pages Communication before the Office of the Prosecutor of the International Criminal Court in December 2019. The Communication² contains extensive field research in Yemen, as well as corporate and legal analysis. Based on 26 airstrikes on civilians and civilian infrastructures, the organizations argue that despite the vast knowledge of the serious violations committed by the Saudi/UAE-led coalition in Yemen since March 2015, France and other European countries continue to transfer arms to the coalition, thereby substantially supporting its air fleet capacities and facilitating the commission of war crimes.

Note: Unless otherwise indicated, all translations of French quotes and names in this submission are unofficial.

I. ARMS TRANSFERS AND THEIR IMPACTS ON CIVIL AND POLITICAL RIGHTS

A. The human rights impacts of arms transfers

7. Arms transfers to countries involved in conflicts and experiencing armed violence seriously affect the enjoyment of a wide range of internationally protected human rights. Arms can be used to commit or facilitate violations to the right to life, the right to liberty and security of the person, the right to be free from slavery and from torture and other cruel, inhuman or degrading treatment or punishment. According to the OHCHR report on the impact of arms transfers on the enjoyment of human rights, “The use or threat of use of arms may also undermine the realization of the rights to freedom of expression, association and peaceful assembly”.³
8. Since March 2015, the Saudi-led Coalition, including the UAE, has been involved in the Yemen conflict,⁴ conducting airstrikes and a de facto naval and aerial blockade that have had an unprecedented impact on civilians and civilian infrastructure in Yemen, including

²ECCHR, Made in Europe, bombed in Yemen: ICC must investigate European responsibility in alleged war crimes in Yemen (Case report, February 2019) <<https://www.ecchr.eu/en/case/made-in-europe-bombed-in-yemen/>>.

³HRC Thirty-fifth session 6-23 June 2017 ‘Report of the Office of the United Nations High Commissioner for Human Rights: Impact of arms transfers on the enjoyment of human rights’ (3 May 2017) UN Doc A/HRC/35/8, para 9.

⁴In March 2015, Saudi Arabia formed a coalition with Bahrain, Egypt, Jordan, Kuwait, Morocco, Senegal, Sudan and the United Arab Emirates. Qatar was a member of the coalition until June 2017.

schools,⁵ medical facilities,⁶ markets, homes, water and sanitation facilities, transportation routes including roads, bridges, and ports, and religious or cultural places.

9. In September 2015, the UN High Commissioner for Human Rights reported that: “at least 310 civilian infrastructures were partially or completely destroyed by coalition airstrikes and by ground fighters throughout the country, from 26 March to 30 June 2015. This figure includes 160 private homes and 150 civilian public infrastructures that were partially or completely destroyed by the armed conflict”.⁷ Similarly, in 2016, the High Commissioner stated that it “has good reason to believe that the Saudi Arabia-led coalition has violated international humanitarian law on at least ten occasions through airstrikes targeting homes, markets, factories and a hospital”.⁸
10. In September 2020, the Human Rights Council (the “HRC”)’s Group of Experts (the “GEE”) on Yemen reported that “Airstrikes continue to be carried out by coalition forces without appropriate regard to international law principles of distinction, proportionality and/or precaution. Persistently high civilian casualties from airstrikes on markets and farms, for instance, indicate the coalition may be failing to take all legally necessary measures to protect civilians and civilian objects. Some airstrikes may amount to disproportionate attacks. The Houthis as well as coalition forces are continuing to deploy indirect fire weapons, such as mortars and rockets, including in heavily populated areas. These indiscriminate attacks are killing and wounding civilians and damaging critical infrastructure, such as health facilities. The legacy of landmines unlawfully planted during previous years, is disturbingly apparent, in the deaths and injuries of civilians, e.g. children playing in fields, and in the diminished access to arable lands and fishing areas.”⁹
11. Information from the Yemen Data Project¹⁰ indicates that as of December 2020, the total number of airstrikes recorded since the beginning of the air campaign by this organisation

⁵In its field report “War of Ignorance” dated of January 2021, the Yemeni-based organization describes the impacts of the war on the education system in Yemen, in particular the destroying of educational facilities, as well as the displacement of students and teachers by the conflict: Mwatana for Human Rights, War of Ignorance Field study on the impact of the armed conflict on access to education in Yemen (January 2021).

⁶All warring parties in Yemen, including members of the Coalition, have destroyed health care facilities, wounded and killed medical workers, and gravely exacerbated the humanitarian crisis in the country. While only half the country’s health facilities are functional, the violation of civil, political, social, economic and cultural rights by the Coalition contributed to making the country increasingly vulnerable to health shocks like that posed by COVID-19. See for example, Mwatana for Human Rights, ‘Yemen: Urgent Measures Needed to Protect Civilians from COVID-19’ (Press release, 28 April 2020) <<https://mwatana.org/en/protect-civilians-from-covid19/>> and UNHRC Human Rights Council Forty-fifth session 14 September–2 October 2020 ‘Report of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (28 September 2020) UN Doc A/HRC/45/6, para 22.

⁷UNHRC Thirtieth session ‘Report of the United Nations High Commissioner for Human Rights: Situation of Human Rights in Yemen’ (7 September 2015) UN Doc A/HRC/30/31.

⁸UNSC ‘Final report of the Panel of Experts on Yemen’ (31 January 2017) UN Doc S/2017/8, page 3.

⁹UNHRC Forty-fifth session 14 September–2 October 2020 ‘Detailed findings of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (29 September 2020) UN Doc A/HRC/45/CRP.7 page 2.

¹⁰The Yemen Data Project is an independent data collection project aimed at collecting and disseminating data on the conduct of the war in Yemen, with the purpose of increasing transparency and promoting accountability of the actors involved. In the absence of official military records from any of the parties to the conflict, the

amounted to approximately 22,360, of which 7,365 on military objects and 6,591 on non-military objects.¹¹ It is unknown whether there was a legitimate military target present for 8,404 airstrikes.

12. The letter dated 27 January 2020 from the Panel of Experts on Yemen addressed to the President of the Security Council examined a series of air strikes in 2019, through which it appears that the Coalition violated international humanitarian law and international human rights law.¹² The Panel of Experts on Yemen estimated that 146 people were killed, and 133 others injured in the eight attacks it documented, including numerous children.¹³

13. The military operations of the Saudi-led Coalition constitute not only serious violations of international humanitarian law, but also violate a wide range of civil and political rights of the Yemeni people. These include the right to life,¹⁴ the right to liberty and security including freedom from arbitrary detention,¹⁵ the right to freedom of expression, association and peaceful assembly,¹⁶ freedom from torture or cruel, inhuman or degrading treatment or punishment.¹⁷ Several of these rights under the ICCPR are explicitly non-derogable.¹⁸

B. Gendered human rights impacts of arms transfers

14. In such a context, women and girls often suffer gravely and disproportionately due to forced displacement, sexual violence, trafficking, lack of access to health care (including sexual and reproductive health) and to victim and survivor assistance.¹⁹ The 2019 report of the GEE on Yemen as well as a joint report by WILPF and partners offer in-depth analyses how the armed conflict has exacerbated already deeply rooted gender inequalities.²⁰ Hospitals,

Yemen Data Project was founded in 2016 with the overall goal of contributing independent and neutral data to increase transparency over the conduct of the war and to inform humanitarian response, human rights advocacy and policy discussion. available at: <<https://yemendataproject.org/>>.

¹¹The Yemen Data Project lists target category based on the original use of the target, “e.g. a school hit by an airstrike is referred to as a school building, with no further assessment on its use at the time of the airstrike or the circumstances that led to the airstrike” : <<https://yemendataproject.org/index.html>>

¹² UNSC ‘Final report of the Panel of Experts on Yemen’ (27 January 2020) UN Doc S/2020/70, para.93.

¹³ Ibid.

¹⁴ ICCPR, Article 6(1).

¹⁵ ICCPR, Article 9.

¹⁶ ICCPR, Articles 21 and 22.

¹⁷ ICCPR, Article 7.

¹⁸ ICCPR, Article 4(2).

¹⁹UN Committee on the Elimination of Discrimination against Women ‘General Recommendation 30 on women in conflict prevention, conflict, and post conflict situations’ (18 October 2013) UN Doc CEDAW/C/GC/30, paras 34-81.

²⁰UNHRC Forty-second session 9–27 September 2019 ‘Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (3 September 2019) UN Doc A/HRC/42/CRP.1, para 616-664; Peace Track Initiative and Women’s International League for peace and Freedom, *Review of Yemen, Joint submission to the UN CEDAW Committee, Pre-sessional working group, 77th session (March 2020)*, available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fIC>

schools, markets, and houses have been damaged, and destroyed by explosive weapons. The large destructive radius of such weapons means that even the striking of military targets within a populated area has caused the destruction or damaging of civilian infrastructure, such as health and education facilities and houses.²¹ The United Nations Office for the Coordination of Humanitarian Affairs has reported that “conflict and displacement have increased the risks of gender-based violence, especially sexual violence, domestic violence, and early marriage. Reports indicate an upward trend in violence against women and girls with 70 per cent more incidents reported today against those reported prior to March 2015. Gender-based violence disproportionately impacts women in Yemen, including those already facing elevated protection risks, such as internally displaced persons and other vulnerable groups”.²²

15. In its latest review of France in 2016, the Committee on the Elimination of Discrimination against Women (the “CEDAW Committee”) expressed concern about the potentially negative impact on women’s rights of arms transfers to sensitive countries marked by armed conflict or at risk of such conflict.²³ The Committee recommended that France integrate a gender dimension into its strategic dialogues with countries purchasing French arms and continue to conduct rigorous, transparent and gender-sensitive risk assessments, in accordance with the Arms Trade Treaty.²⁴
16. Weapons are used to hinder freedom of expression and of assembly, both through their actual use and as a tool of intimidation. Situations of deep insecurity, as described in reference to Libya or Yemen, often means that women are no longer able to move around freely or express their opinions in a public political platform. WILPF’s report on the topic notes that “In both Yemen and Libya, a significant decrease in their mobility has made women invisible once more, favouring conservative interpretations of women as bearers of their family honour, in need of men’s ‘protection’ disguised as control.”²⁵

O%2fYEM%2f41380&Lang=en>; WILPF, *Changes ahead: Yemeni Women Map the Road to Peace* (December 2018), available at: <https://www.wilpf.org/wp-content/uploads/2019/04/WILPF_Yemen-Publication2018.pdf>

²¹Saudi-led coalition forces in Yemen are thought to be making extensive use of JDAM and Paveway guided aircraft bombs, which weigh between 500lbs and 2000lbs. The largest of these bombs is believed to have a lethal radius of up to 360m, and can cause injury and damage as far as 800m from the point of detonation. See Action on Armed Violence, *Wide Area Impact: investigating the wide-area effect of explosive weapons* (February 2016) page 3-8, available at: <https://aoav.org.uk/wp-content/uploads/2016/03/Wide-Area-Impact-explosive-weapons-in-populated-areas.pdf>

²²OCHA ‘Humanitarian Bulletin on Yemen’ (14 December 2016) 2, available at : <http://reliefweb.int/sites/reliefweb.int/files/resources/november_hb-_issue_18.pdf>.

²³UN Committee on the Elimination of Discrimination against Women ‘Concluding observations on the combined seventh and eighth periodic reports of France’ (25 July 2016) UN Doc CEDAW/C/FRA/CO/7-8, para 22.

²⁴UN Committee on the Elimination of Discrimination against Women ‘Concluding observations on the combined seventh and eighth periodic reports of France’ (25 July 2016) UN Doc CEDAW/C/FRA/CO/7-8, para 23.

²⁵V. Farr and S. Boukhary, *Feminism at the frontline: Addressing women’s multidimensional insecurity in Yemen and Libya* (WILPF, May 2017) 16. available at: <<https://www.wilpf.org/wp-content/uploads/2017/08/LIBYA-YEMEN-WEB.pdf>>

17. It is important to underscore that the presence of weapons, both illicit and legal, have multifaceted impacts and often go beyond the immediate use of a weapon in an act of physical or sexual violence. Widespread possession and use of weapons tend to prevent women from fully participating in public and political life, elaborated in more detail below. For instance, women and girls may face “secondary victimisation”, predominantly in their role as caregivers to weapon survivors with disabilities, or those who are seriously injured, which in turn limits their opportunities to access public and political life.²⁶
18. The proliferation of conventional weapons correlates with an increase in gendered inequality and a generalised culture of violence. The possession of weapons by any stakeholder symbolises power, stemming from a particular and dominant understanding and performance of masculinity. This performance is based upon gender norms in which ideas like strength, courage, and protection are equated with violence.²⁷ The proliferation and possession of weapons, regardless of whether they are acquired through the regulated or unregulated arms trade, therefore reinforce patriarchal gender norms and gender inequality.²⁸
19. The GEE on Yemen notes “Disruption to education, poverty, mass unemployment, and increased mental health issues including depression have affected men and boys also. Coupled with the reinstatement of discriminatory customs, the exacerbation of toxic masculinity and impunity, and the obstruction of awareness raising and behavioural change programs for men and boys, has increased the risk of men using domestic violence to maintain control within families to compensate for their economic disempowerment and changing gender roles. Together, these factors increase the long-term risk of a future generation of men and boys predisposed to perpetuate gender-based violence and wider discrimination against women and girls.”²⁹

²⁶WILPF, *Submission from WILPF to the UN Office of the High Commissioner for Human Rights: Impact of the diversion of arms and unregulated or illicit arms transfers on the human rights of women and girls* (April 2020) available at: <https://www.wilpf.org/wilpf_statements/submission-to-the-un-office-of-the-high-commissioner-for-human-rights-on-the-impact-of-the-diversion-of-arms-and-unregulated-or-illicit-arms-transfers-on-the-human-rights-of-women-and-girls/>.

²⁷R. Acheson, *Presentation on gender norms and gun violence* (Reaching Critical Will of WILPF, June 2018, available at: <<http://www.reachingcriticalwill.org/news/latest-news/12587-presentation-on-gender-norms-and-gun-violence>>.

²⁸UNHRC Forty-second session 9–27 September 2019 ‘Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (3 September 2019) UN Doc A/HRC/42/CRP.1, para 624-633.

²⁹UNHRC Forty-second session 9–27 September 2019 ‘Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (3 September 2019) UN Doc A/HRC/42/CRP.1, para 631.

II. RECENT DEVELOPMENTS AT EUROPEAN AND INTERNATIONAL LEVEL REGARDING THE ROLE OF ARMS TRANSFERS IN THE CONFLICT IN YEMEN

20. In light of unabated arms transfers fuelling the armed conflict in Yemen, the European Parliament, in a resolution of 25 February 2016, reiterated in 2017,³⁰ 2018³¹ and in February 2021,³² called for an embargo on arms sales to Saudi Arabia from all European Union Member States.
21. On 11 February 2021, in a joint motion,³³ the EU Parliament called on EU Member States to ban exports of weapons to members of the Coalition, declaring that: “EU-based arms exporters that fuel the conflict in Yemen are non-compliant with several criteria of the legally binding Council Common Position 2008/944/CFSP on arms exports; reiterates its call, in this respect, for an EU-wide ban on the export, sale, update and maintenance of any form of security equipment to members of the coalition, including Saudi Arabia and the UAE, given the serious breaches of international humanitarian and human rights law committed in Yemen.”³⁴
22. The joint motion also recalls that in recent months, several EU Member States have issued arms exports bans: “whereas some Member States have imposed bans on arms exports to members of the Saudi-led coalition, including Germany’s ban on arms exports to Saudi Arabia and Italy’s ban on arms exports to Saudi Arabia and the UAE, and whereas others are considering doing so; whereas some Member States continue to export arms to Saudi Arabia and the UAE which may be used in Yemen, in violation of the legally binding Council Common Position 2008/944/CFSP on arms exports”.³⁵ In early February 2021, President Biden also announced the temporary suspension of US support to Saudi Arabia’s “offensive operations” in Yemen,³⁶ including ceasing relevant arms sales.³⁷

³⁰European Parliament Resolution (RSP) 2016/2515 on the humanitarian situation in Yemen [2016], available at: <https://www.europarl.europa.eu/doceo/document/TA-8-2016-0066_FR.html>. See also European Parliament Resolution (RSP) 2017/2849 on the situation in Yemen [2017].

³¹European Parliament Resolution (RSP) 2018/2853 on the situation in Yemen [2018], available at <https://www.europarl.europa.eu/doceo/document/TA-8-2018-0383_EN.html>.

³²European Parliament Resolution (RSP) 2021/2539 on the humanitarian and political situation in Yemen [2021], available at: <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0053_EN.html>.

³³European Parliament Resolution (RSP) 2021/2539 on the humanitarian and political situation in Yemen [2021], available at: <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0053_EN.html>.

³⁴Ibid., paragraph 12, emphasis added.

³⁵Ibid., paragraph Q.

³⁶‘Biden ends support for Saudi’s Yemen war in foreign policy shift’ (*Aljazeera*, 4 February 2021) <<https://www.aljazeera.com/news/2021/2/4/biden-to-announce-a-special-envoy-for-yemen>>

³⁷‘Remarks by President Biden on America’s Place in the World’ (*White House*, 4 February 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/04/remarks-by-president-biden-on-america-s-place-in-the-world/>> ; ‘US ending aid to Saudi-led forces in Yemen, but questions persist’ (*Aljazeera*, 4 February 2021) <<https://www.aljazeera.com/news/2021/2/7/us-ending-support-to-saudi-led-war-in-yemen-questions-persist/>>; Warren B. Strobel ‘Biden Re-Examining U.S. Arms Sales to Saudi Arabia, U.A.E.’ (*The Wall*

23. It is regrettable that France is among the countries which have not taken a decision to ban exports to members of the Saudi-led coalition, and instead continues to supply Saudi Arabia's and the UAE's air and ground fleets in a substantial manner (see hereafter, paragraphs 45 to 56). It is similarly regrettable that the entire delegation of 23 French Members of the European Parliament from Renew Europe Group,³⁸ except for one, abstained from voting for the European Parliament resolution.³⁹
24. In September 2020, the GEE on Yemen in its report to the HRC reiterated its call “for third States to stop transferring arms to parties to the conflict given the role of such transfers in perpetuating the conflict and potentially contributing to violations”, adding that “No State can now claim to be unaware of the scale of violations occurring in Yemen.”⁴⁰ The GEE called on States to prohibit the authorization of transfers of, and refrain from providing arms that could be used in the conflict and specifically referred to France and other States in this regard.⁴¹ Furthermore, the GEE considered that “such support may amount to aiding and assisting internationally wrongful acts in contravention of international law.”⁴² In September 2020, the HRC adopted a resolution on Yemen co-sponsored by France⁴³ which: “Urges all States to refrain from transferring arms to any party to the conflict when they assess an overriding risk that those arms could be used to commit or facilitate a serious violation of human rights law or international humanitarian law; such risk assessments should be done thoroughly and in accordance with applicable national procedures and international obligations and standards.”⁴⁴
25. Shortly before the end of 2020, the International Criminal Court announced⁴⁵ that in 2021, it would decide whether to open a preliminary investigation into European arms companies

Street Journal, 27 January 2021) <<https://www.wsj.com/articles/biden-freezes-u-s-arms-sales-to-saudi-arabia-uae-11611773191>>.

³⁸<<https://reneweuropegroup.eu/en/about-us/our-meps/>>.

³⁹Nikolaj Nielsen ‘French liberal MEPs silent on EU weapons in Yemen’ *EU Observer* (Brussels, 12 February 2021) <<https://euobserver.com/foreign/150908>>.

⁴⁰UNHRC Forty-fifth session 14 September–2 October 2020 ‘Detailed findings of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (29 September 2020) UN Doc A/HRC/45/CRP.7, page 3. Similarly, in 2019 the GEE stated: “Considering the prevailing risk that arms provided to parties to the conflict in Yemen may be used to commit or facilitate serious violations of international humanitarian law and international human rights law, States should prohibit the authorization of transfers of, and refrain from providing, arms that could be used in the conflict to such parties”; UNHRC Forty-second session 9–27 September 2019 ‘Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (3 September 2019) UN Doc A/HRC/42/CRP. para 933.

⁴¹UNHRC Forty-fifth session 14 September–2 October 2020 ‘Detailed findings of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (29 September 2020) UN Doc A/HRC/45/CRP.7, para 61 and para 422 (5) (b).

⁴²UNHRC Forty-fifth session 14 September–2 October 2020 ‘Report of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (28 September 2020) UN Doc A/HRC/45/6, para 102.

⁴³Human Rights Council Res 45/15 (2020) UN Doc A/HRC/RES/45/15

⁴⁴Human Rights Council Res 45/15 (2020) UN Doc A/HRC/RES/45/15, para. 10.

⁴⁵ICC-OTP ‘Report on Preliminary Examination Activities 2020’ (14 December 2020) para. 35, available at: <<https://www.icc-cpi.int/Pages/item.aspx?name=2020-otp-rep-PE>>.

and the French, German, Italian, British and Spanish governments.⁴⁶ This followed a communication⁴⁷ submitted to the Court by ECCHR, the Yemeni organized Mwatana for Human Rights and European partner organizations in 2019. In this communication the organizations argue that arms companies' executives and government officials who authorized arms exports to Saudi Arabia and the UAE since March 2015 share legal responsibility for war crimes in Yemen.

26. At the domestic level, several courts have ordered the suspension of export licenses to Saudi Arabia and the UAE. For instance, the “Conseil d’État”⁴⁸ (Council of State) in Belgium in several decisions over the last four years ordered the suspension of a number of licenses delivered by the Walloon region to Saudi Arabia and the UAE.⁴⁹ In the UK, in a ruling of June 2019 the Court of Appeals ordered the suspension of export licenses to Saudi Arabia, considering that the Government has acted unlawfully when it licensed the sale of UK-made arms to Saudi forces for use in Yemen.⁵⁰

III. FRANCE’S INTERNATIONAL AND DOMESTIC OBLIGATIONS WITH REGARD TO ARMS TRANSFERS

27. The French State bears obligations to respect, protect and fulfil the rights enshrined in the ICCPR. It must also comply with ratified treaties and applicable regulations on the arms trade meant to ensure that arms exports licenses are not linked to an “overriding”⁵¹ or “clear”⁵² risk of contributing to serious violations of international humanitarian law or international human rights law. The French government should also ensure policy coherence with the UN Guiding Principles on Business and Human Rights in relation to the arms industry as this framework applies to all companies.

⁴⁶ECCHR, *Made in Europe, bombed in Yemen: ICC must investigate European responsibility in alleged war crimes in Yemen* (Case report, February 2019) <<https://www.ecchr.eu/en/case/made-in-europe-bombed-in-yemen/>>

⁴⁷Pursuant to Article 15 of the Rome Statute, any individual, group, or organization can send information on alleged or potential ICC crimes to the Office of the Prosecutor (OTP) of the ICC. Before an OTP investigation can open, the ICC prosecutor is responsible for determining whether a situation meets the legal criteria laid out by the Rome Statute.

⁴⁸The Conseil d’Etat is the highest administrative court in Belgium and is situated in Brussels.

⁴⁹The most recent decision of March 5, 2021 is available on the Council of State’s website : <<http://www.raadvst-consetat.be/arr.php?nr=249991>>. The ruling of March, 9, 2020 is available on the Council of State’s website : <<http://www.raadvanstate.be/arr.php?nr=247259>>.. The rulings of June 14, 2019 are available on the Council of State’s website : <<http://www.raadvst-consetat.be/?page=news&lang=fr&newsitem=541>> (in French).

⁵⁰Court of Appeal finds Government broke law over Saudi Arabia arms sales’ (*Leighday*, 20 June 2019), available at <<https://www.leighday.co.uk/latest-updates/news/2019-news/court-of-appeal-finds-government-broke-law-over-saudi-arabia-arms-sales/>>.

⁵¹Arms Trade Treaty (adopted 2 April 2013) UNGA Res 67/234B, art 7(3).

⁵²As per the language of Criterion Two if the EU Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

A. Obligations under the ICCPR

28. The Human Rights Committee's General Comment 31 on the nature of the general legal obligation imposed on States Parties to the Covenant clarifies the positive obligations of States associated with the duty to protect, including the obligation to act with due diligence. According to the Committee's General Comment 31, this means "that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."⁵³
29. In relation to the right to life, which is directly impacted by France's arms transfers to parties to the conflict in Yemen, the Human Rights Committee has clearly stated that States parties must take appropriate measures to protect individuals against deprivation of life by other States and foreign corporations operating within their territory or subject to their jurisdiction.⁵⁴ This obligation entails taking: "appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities undertaken by corporate entities based in their territory or subject to their jurisdiction, are consistent with article 6, taking due account of related international standards of corporate responsibility and of the right of victims to obtain an effective remedy."⁵⁵ The Committee has also clarified that: "States parties engaged in the deployment, use, sale or purchase of existing weapons and in the study, development, acquisition or adoption of weapons, and means or methods of warfare, must always consider their impact on the right to life."⁵⁶
30. In its concluding observations, the Human Rights Committee has increasingly addressed the obligation of States to ensure that businesses under their territory or their jurisdiction respect human rights standards including when operating abroad.⁵⁷ In relation to States' arms transfers to third countries, States' extraterritorial obligations to protect have also been reaffirmed by other UN human rights treaty bodies, including by the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the CEDAW Committee.⁵⁸ In the context of the Universal Periodic Review (UPR), States have

⁵³UNHRC eightieth session 'General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13, para 10.

⁵⁴UNHRC 'General Comment No. 36 Article 6: right to life' (3 September 2019) UN Doc CCPR/C/GC/36, para. 22.

⁵⁵ Ibid.

⁵⁶UNHRC 'General Comment No. 36 Article 6: right to life' (3 September 2019) UN Doc CCPR/C/GC/36, para. 65.

⁵⁷UNHRC 'Concluding observations on the sixth periodic report of Canada' (13 August 2015) UN Doc CCPR/C/CAN/CO/6, para. 6; UNHRC 'Concluding observations on the fourth periodic report of the Republic of Korea' (3 December 2015) Un Doc CCPR/C/KOR/CO/4, paras 10 and 11; UNHRC 'Concluding observations on the sixth periodic report of Germany, adopted by the Committee at its 106th session 15 October - 2 November 2012' (12 November 2012) UN Doc CCPR/C/DEU/CO/6, para. 16.

⁵⁸Committee on the Rights of the Child 'Concluding observations on the fifth periodic report of Sweden' (6 March 2015) UN Doc CRC/C/SWE/CO/5, para 54; Committee on the Rights of the Child 'Concluding observations on the report submitted by the Netherlands under article 8 (1) of the Optional Protocol to the

received and accepted several recommendations related to the human rights impacts of arms transfers including France with a recommendation to: “In the context of the defence of the right to life, carefully assess the transfer of arms to those countries where they are likely to be used for human rights abuses and violations.”⁵⁹

B. International arms transfers regime

1) The Arms Trade Treaty

31. France is a party to the Arms Trade Treaty (the “ATT”) which is an international legally binding instrument that regulates the transfer of conventional arms by States. The ATT incorporates human rights and international humanitarian law as a standard to assess the legality and responsibility of arms transfers. The preamble of the treaty also acknowledges “the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms.”⁶⁰
32. **Article 6(3) of the ATT** prohibits authorising arms exports if the State has knowledge at the time of the authorisation that the arms will be used in the commission of war crimes or crimes against humanity among other grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.⁶¹

Convention on the Rights of the Child on the involvement of children in armed conflict’ (8 July 2015) UN Doc CRC/C/OPAC/NLD/CO/1, para 24; *ibid* for Brazil (28 October 2015) UN Doc CRC/C/OPAC/BRA/CO/1, para 34; *ibid* for Turkmenistan (20 February 2015) UN Doc CRC/C/OPAC/TKM/CO/1, para 24; *ibid* for China (29 October 2013) UN Doc CRC/C/OPAC/CHN/CO/1, para 34; *ibid* for Ukraine (11 April 2011) UN Doc CRC/C/OPAC/UKR/CO/1, para 26; *ibid* for Republic of Moldova (20 February 2009) UN Doc CRC/C/OPAC/MDA/CO/1, para 15; *ibid* for Tunisia (6 February 2009) UN Doc CRC/C/OPAC/TUN/CO/1, para 18; *ibid* for United Kingdom (17 October 2008) CRC/C/OPAC/GBR/CO/1, para 33; *ibid* for USA (25 June 2008) UN Doc CRC/C/OPAC/USA/CO/1, para 34; *ibid* for France (15 October 2007) UN Doc CRC/C/OPAC/FRA/CO/1; Committee on Economic, Social and Cultural Rights ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’ (14 July 2016) UN Doc E/C.12/GBR/CO/6, para 12; Committee on the Rights of the Child ‘Concluding observations on the combined third and fourth periodic reports of Germany’ UN Doc CRC/C/DEU/CO/3-4, para 77; Committee on the Rights of the Child ‘Consideration of reports submitted by states parties under article 44 of the convention’ (21 October 2010) UN Doc CRC/C/OPAC/MNE/CO/1, para 25

⁵⁹See for France, A/HRC/38/4, recommendation 145.31 (Peru): “Refrain from transferring conventional weapons when these can be used to violate human rights or international humanitarian law, in line with its obligations under the Arms Trade Treaty and target 16.4 of the Sustainable Development Goals (Panama)”. See for other countries, A/HRC/36/9, recommendation 132.134: “In the context of the defence of the right to life, carefully assess the transfer of arms to those countries where they are likely to be used for human rights abuses and violations (Peru)”; A/HRC/39/9, recommendation 155.14: “Harmonize arms export control legislation in line with provisions of the Arms Trade Treaty and the Council of the European Union Common Position, and ensure that, before export licenses are granted, comprehensive and transparent assessments are conducted of the impact that the misuse of small arms and light weapons would have on women, including those living in conflict zones (Albania)”.

⁶⁰Arms Trade Treaty (adopted 2 April 2013) UNGA Res 67/234B (Preamble) page 3.

⁶¹Arms Trade Treaty (adopted 2 April 2013) UNGA Res 67/234B, art 6(3).

33. In case an export does not fall within the prohibition of Article 6, **Article 7** of the ATT stipulates that the exporting State must still assess prior to authorisation the “potential” that the arms:
- (a) would contribute to or undermine peace and security;
 - (b) could be used to:
 - (i) commit or facilitate a serious violation of international humanitarian law;
 - (ii) commit or facilitate a serious violation of international human rights law; (...)
34. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences stipulated in **article 7(1)** of the ATT, the exporting State Party shall not authorise the export.⁶² **Article 7(4)** of the ATT also requires the exporting State Party to take into account the risk of the conventional arms being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.⁶³

2) The European Union Council Common Position

35. France is further bound by the European Union Council Common Position 2008/944/CFSP of 8 December 2008, which defines the common rules governing the control of exports of military technology and equipment (EU Common Position). The EU Common Position is a legally binding instrument. In order to assist member states for its implementation, a User’s Guide is published and regularly updated.⁶⁴ It is also important to note that the EU Common Position applies to a wider range of military equipment than the ATT and thus regulates the export of 22 categories of military equipment, with the category ML22 “Technology”, also covering the export of services such as technical assistance, including training and maintenance in operational condition.
36. In particular, the EU Common Position provides for eight decision-making criteria, which Member States must consider when examining applications for export authorisations submitted to it for equipment on the Common Military List of the European Union⁶⁵. It sets high common standards, which should be regarded as the minimum for the restraint and management of transfers of military technology and equipment. In particular, criterion two deals with the consideration of “respect for human rights in the country of final destination as well as respect by that country of international humanitarian law”. It provides that having

⁶²Arms Trade Treaty (adopted 2 April 2013) UNGA Res 67/234B, art 7(3).

⁶³Arms Trade Treaty (adopted 2 April 2013) UNGA Res 67/234B, art 7(4).

⁶⁴Council of the European Union Note 9241/09 ‘User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment’ [2009] available at <<https://data.consilium.europa.eu/doc/document/ST-9241-2009-INIT/en/pdf>>.

⁶⁵Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008E0944>>.

assessed “the recipient country’s attitude towards relevant principles established by international human rights instruments, Member States shall:

- (a) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression;
- (b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe; and
- (c) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.” (...)

37. Criterion five also mentions that consideration of defence and security interests “cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability”.

38. Authorisation practices by respective EU Member States and in particular by France over the past years, especially in relation to arms exports to members of the Saudi-led coalition involved in the conflict in Yemen, show a worrying divergence of the ‘high common standards’ by the EU Common Position and illustrate a lack of implementation (see paragraph 22 above).

C. Arms export controls under French domestic law

39. France regulates arms transfers in several provisions of the “Code de la défense” (French Defence Code).⁶⁶ A French company wishing to export military equipment must send a request to the “Direction générale de l’armement” (General Directorate of Armament) - French Defence Procurement Agency (Ministry of the Armed Forces). Licences are granted by the Prime Minister on the advice of the “Commission Interministérielle pour l’Etude des Exportations de Matériels de Guerre” or “CIEEMG” (Interministerial Commission for the Study of War Materials Exports) and then notified by the minister in charge of customs.

40. According to Article L2335-4 of the Defence Code⁶⁷ the Government can at any time suspend, modify, repeal or withdraw a granted license for reasons of international obligations, national security, public order or non-respect for the requirements of the

⁶⁶French Defence Code [2004] art. L2335-I to L2335-18 and art. R2335-I to R2335-40-1.

⁶⁷French Defence Code [2004] art. L2335-4, available at:
<https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000032920496/>.

license. In addition, Article R2335-15 of the Defence Code⁶⁸ specifies that the decision to suspend or abrogate a license is taken by the Prime Minister after obtaining the advisory opinion of the CIEEMG. Furthermore, the company concerned has to be heard before taking the decision. In urgent cases, the Prime Minister alone may decide to suspend the license.

D. The United Nations Guiding Principles on Business and Human Rights

41. The United Nations Guiding Principles for Business and Human Rights (the “*UNGPs*”) ⁶⁹ provide that States have the obligation to protect against human rights abuses within their territory and/or jurisdiction by business enterprises, and should clearly set out the expectation that enterprises respect human rights throughout their operations.⁷⁰ The UNGPs require corporations to avoid causing or contributing to adverse human rights impacts and seek to prevent or mitigate human rights impacts that are directly linked to their operations, products or services by virtue of their business relationships, even if they have not contributed to those impacts directly.⁷¹
42. It is important to underline that States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies, as is often the case with companies in the arms industry.⁷² Indeed, the French State owns shares – partly or fully, directly or indirectly – in some of the major arms traders in France, such as the Naval Group, Nexter S.A.⁷³, or Thalès.⁷⁴ In some instances, these companies receive substantial support from the government in the conclusion of contracts, or via loans.⁷⁵

⁶⁸French Defence Code [2004] art. R2335-15, available at:

<https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000033189132/>.

⁶⁹UNHRC seventh session ‘Guiding Principles on Business and Human Rights: Implementing the United Nations, Protect, Respect and Remedy Framework, Final Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises’ (21 March 2011) UN Doc A/HRC/17/31, available at:

<https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>.

⁷⁰UNHRC seventh session ‘Guiding Principles on Business and Human Rights: Implementing the United Nations, Protect, Respect and Remedy Framework, Final Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises’ (21 March 2011) UN Doc A/HRC/17/31, principles 1 & 2.

⁷¹Ibid., See Guiding Principle 13.

⁷²Ibid., See Guiding Principle 4.

⁷³Nexter is a public limited company (« société anonyme ») since 1 July 1990, its capital remains 100% owned by the State, except for one share held by the French President.

⁷⁴The French State owns 25,68% of the capital of Thalès; 62.3% of the capital of Naval Group; 1 share in the capital of Dassault. See: Ministère de l'Économie, des Finances et de la Relance ‘Rapport d’activité 2019-2020 de l’Agence des Participations de l’État’ (Septembre 2020), available at: <<https://www.vie-publique.fr/sites/default/files/rapport/pdf/276950.pdf>>.

⁷⁵Ballet-Blu Françoise & Thiérot Jean-Louis ‘Report of the ad hoc mission on the financing of the defence industry’ (17 February 2021), available at: <<https://www2.assemblee-nationale.fr/static/15/commissions/Defense/Rapport-BITD-170221.pdf>>.

43. Given the specific risks of human rights abuses posed by the arms industry, States have a specific obligation to ensure that business enterprises operating in conflict-affected areas are not involved in such abuses.⁷⁶ According to the UNGPs, States: “should review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business. Where they identify gaps, States should take appropriate steps to address them.”⁷⁷
44. Under Guiding Principle 8, States are also to ensure policy coherence between their human rights obligations and the laws and policies they put in place that shape business practices.⁷⁸ States parties should hence duly identify the conflicts that may exist between their arms export control policies, their role in supporting commercial negotiations for arms companies and their international human rights obligations.
45. Despite being the third largest arms exporter⁷⁹ in the world and increasing outcry by civil society, public opinion and even domestic litigation regarding French arms sales and exports of surveillance technologies, France’s National Action Plan (the “NAP”) on Business and Human Rights makes no mention of the arms or surveillance industry.⁸⁰ While certain sectors like the extractive and textile industries are highlighted as sectors of concern the arms and surveillance industries remain a glaring gap in France’s approach to business and human rights, even though NAP mentions that : “The French Ministry of Foreign Affairs and International Development issues advice for businesses operating in conflict zones and/or high-risk areas.”⁸¹

E. The Duty of Vigilance Law

46. Building on the UNGPs and other *soft law* mechanisms such as the OECD Guidelines for Multinational Enterprises, France adopted a “Loi sur le devoir de vigilance” (duty of vigilance law) in 2017. This law imposes human rights due diligence obligations on large French companies and their supply and production chains.⁸² The duty of vigilance law

⁷⁶UNHRC seventh session ‘Guiding Principles on Business and Human Rights: Implementing the United Nations, Protect, Respect and Remedy Framework, Final Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises’ (21 March 2011) UN Doc A/HRC/17/31, principle 7.

⁷⁷Ibid.

⁷⁸Ibid.

⁷⁹Pieter d. Wezeman and others, *Trends in international arms transfers*, (SIPRI, 2021) available at: <https://www.sipri.org/sites/default/files/2021-03/fs_2103_at_2020_v2.pdf>.

⁸⁰Ministry of Europe and Foreign Affairs ‘National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights’ (17 April 2017) available at: <https://www.diplomatie.gouv.fr/IMG/pdf/pnadh_version_finale_en_cle8ffacb.pdf>.

⁸¹Ibid.

⁸²The law imposes a duty of care (“*devoir de vigilance*”) applying to companies incorporated or registered in France employing at least 5,000 people through their own operations and their French subsidiaries or at least 10,000 people inclusive of their subsidiaries located abroad ; Loi n°2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre, JORF n°0074 du 28 mars 2017, LOI n°

imposes to companies in its scope of application to establish and publish annually a “Vigilance Plan”. In their Vigilance Plan, companies must identify the risks of severe impacts on human rights and fundamental freedoms, health and safety of persons and on the environment resulting from their activities, those of their controlled subsidiaries, subcontractors and suppliers. Secondly, they must include adequate measures to mitigate these risks, implement these measures, and report on their effectiveness.⁸³

IV. FRANCE’S ARMS SALES TO MEMBERS OF THE COALITION IN YEMEN RAISING SERIOUS HUMAN RIGHTS CONCERNS

47. According to the Stockholm International Peace Research Institute, between 2013-2017 as well as between 2016-2020, France was the world’s third largest exporter of arms after the U.S. and Russia.⁸⁴ According to the report of the Ministry of Armed Forces to the Parliament on France’s arms exports for the year 2019, Saudi Arabia was among the top three countries that imported the most French arms and the UAE has ordered a record number of French arms that year.⁸⁵ The report mentions 939-export licences issued by the French authorities for Saudi Arabia since 2015, 938 for the UAE and 391 for Egypt.⁸⁶ The report also indicates that in 2019, France’s arms exports to Saudi Arabia amounted to 1,379 billion euros and to 287.2 million euros for the UAE.

48. It appears that despite the vastness of information on the serious impacts of the Coalition’s operations on civilians and on essential civilian’s infrastructures in Yemen and repeated concerns expressed by international human rights bodies, French arms transfers remain until today quintessential to the air and ground operations of Saudi Arabia and the UAE.⁸⁷

2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, available at:

<<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>>.

⁸³Ibid., Loi n°2017-399, art. L. 225-102-4.-I.

⁸⁴Pieter d. Wezeman and others, *Trends in international arms transfers*, (SIPRI, 2017) available at:

<https://www.sipri.org/sites/default/files/2018-03/fssipri_at2017_0.pdf>; Pieter d. Wezeman and others, *Trends in international arms transfers*, (SIPRI, 2021), available at: <https://www.sipri.org/sites/default/files/2021-03/fs_2103_at_2020_v2.pdf>.

⁸⁵Ministry of the Armed Forces, *Rapport annuel au Parlement 2020 sur les exportations d'armement de la France* (2020) page 3, available at: <<https://www.defense.gouv.fr/actualites/articles/exportations-d-armement-le-rapport-au-parlement-2020>>. In 2019, France delivered 1.319 billion euros of war materiel to Saudi Arabia and 287.2 million Euros of war materiel to the United Arab Emirates: Amnesty International, *French arms sales: an important step forward* (4 June 2020) available at: <www.amnesty.fr/controle-des-armes/actualites/ventes-darmes-francaises-une-avancee-importante>.

⁸⁶Ministry of the Armes Forces, *Rapport annuel au Parlement 2020 sur les exportations d'armement de la France* (2020) page 3, available at: <<https://www.defense.gouv.fr/actualites/articles/exportations-d-armement-le-rapport-au-parlement-2020>>.

⁸⁷A leaked French government document provides an overview of the type of aircrafts employed by the Coalition and its respective operational basis, with a focus on Saudi and UAE air forces : Direction du Renseignement Militaire, *Yémen - situation sécuritaire: Note à destination des hautes autorités dans le cadre du conseil restreint du 3 Octobre 2018* (25 September 2018) Annexe III at 12, (hereinafter Yemen Papers 2018) available at: <<https://made-in-france.disclose.ngo/en/documents>> ; Pieter d. wezeman and others, *Trends in*

49. For instance, the French made Mirage 2000-9 produced by Dassault equips the UAE Air Force, which uses it in Yemen.⁸⁸ The UAE operates 59 Dassault Mirage 2000 jets out of 124 of the total number of attack capable aircrafts in its fleet.⁸⁹ Moreover, the UAE's continuous use of the Mirage 2000 in the conflict in Yemen would not be possible without the supply of spare parts and maintenance services provided by Dassault.⁹⁰
50. Furthermore, the Damoclès and Talios targeting Pods are produced by Thales France and exported to Saudi Arabia and the UAE. These devices allow for the actual deployment of the bombs used in airstrikes carried out by the Coalition in Yemen, including by their integration on the Mirage 2000-9s;⁹¹ as well as on the Typhoon and the Tornado fleet of the Royal Saudi Air Force.⁹² Moreover, Thalès offers maintenance and technical support on the Damocles Pods to Saudi-Arabia and the UAE. Between 2009-2017, 60 Damocles pods were delivered to Saudi Arabia and used by the Coalition in Yemen.⁹³ Despite a freedom of information request filed by ECCHR and Amnesty International France, at the time of writing this report, information on the exports of these pods has not been communicated by the French customs yet.
51. Moreover, storm Shadow missiles⁹⁴ are produced jointly by MBDA France and MBDA United Kingdom, with final destination to Egypt, the UAE and Saudi Arabia. Both missiles are of high relevance for aerial warfare in Yemen: nearly all the fighter jets used by the Coalition can operate the Storm Shadow/SCALP.⁹⁵ Remnants of the Storm Shadow missiles were found in Yemen and in particular in Sa'adah City⁹⁶, which according to the UN Panel

international arms transfers, (SIPRI, 2021) available at: <https://www.sipri.org/sites/default/files/2021-03/fs_2103_at_2020_v2.pdf>.

⁸⁸See Jon Lake, 'Yemen on the Edge' (*Airforces Monthly*, June 2015) 36-40, 40, in which Defense News sources have highlighted from the beginning of the operation "Decisive Storm" that the UAE may deploy its fighter jets Mirage 2000. See also Disclose, *Yemen Papers* (15 April 2019) available at: <<https://made-in-france.disclose.ngo/en/chapter/yemen-papers/>>.

⁸⁹IISS, *Military Balance 2019* (Routledge, 2019) 374, available at: <<https://www.iiss.org/publications/the-military-balance/the-military-balance-2019>>.

⁹⁰As state by the CEO of Dassault: Guillaume Lecompte-Boinet and Chris Pocock, 'Dassault Boss Describes Rafale Sales Prospects' (*AIN online*, 9 March 2017) available at: <<https://www.ainonline.com/aviation-news/defense/2017-03-09/dassault-boss-describes-rafale-sales-prospects>>.

⁹¹See <<https://www.thalesgroup.com/en/worldwide/defence-0>>, See also Thales group, 'DAMOCLES: 3rd Generation Multi-function Targeting pod' Datasheet available at <https://www.thalesgroup.com/sites/default/files/database/d7/asset/document/DAMOCLES_AIR_UK_NC.pdf>.

⁹²Ibid.

⁹³Facing Finance Report, *Out of Control: irresponsible weapons transfer and future weapons systems* (May 2019) page 68, available at : <https://www.facing-finance.org/files/2019/05/ff_dp7_ONLINE_v02.pdf>.

⁹⁴Also called SCALPs - Système de Croisière Autonome à Longue Portée.

⁹⁵Including the Typhoon, Tornado, and Mirage 2000; See MBDA Missile Systems, 'Storm Shadow/Scalp Conventionally armed Long Range Deep Strike Weapon' (2019, Technical Datasheet) available at: <<https://www.mbda-systems.com/wp-content/uploads/2019/02/2019-STORM-SHADOW-datasheet.pdf>>.

⁹⁶In a Sky-News-video from December 2016 the reporter says she opens the nose cone of a Storm Shadow-missile. The article says it was found in Sa'adah City, video available at:

<<https://web.archive.org/web/20190730125100/https://news.sky.com/story/yemens-rebel-pm-accuses-uk-of-war-crimes-with-saudi-arms-sales-10693334>>.

of Experts on Yemen, has been treated by the Coalition as a military target and subject to several airstrikes targeting civilians.⁹⁷

52. Finally, the GEE on Yemen reported that “Leaked classified French Defence ministry documents indicate the use of French-made weapons in Yemen such as CAESAR howitzer, Leclerc battle tanks, the targeting system used aboard Saudi fighter-bombers, and Mirage 2000-9 used by the UAE.”⁹⁸ The CAESAR⁹⁹ long-range firing canons are produced by Nexter Systems S.A.¹⁰⁰

53. In a leaked French report written by members of France’s military intelligence agency and the “Direction du Renseignement Militaire” (Directorate of Military Intelligence) dated of 2018, a map¹⁰¹ entitled “Population under the threat of bombs” specifies that the perimeter of the CAESAR howitzers (cannons), located at the Saudi-Arabia-Yemeni border covers the territory of Yemen. The map further states: “Population concerned by possible artillery strikes: 436, 370 people”. According to the investigative media Disclose which published this map, the “concerned area is dotted with villages, farms, towns and peasant hamlets.”¹⁰²

54. The investigative media Disclose concludes that “We have studied data from the NGO Armed Conflict Location & Event Data Project (ACLED)¹⁰³ on the numbers of civilian deaths from artillery fire that were within firing range of CAESAR howitzers employed in the Yemen conflict. This showed that between March 2016 and December 2018, a total of 35 civilians were killed in 52 bombardments localised within the range of the CAESARs.”

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55. According to the GEE on Yemen, the usage of CAESAR howitzers both inside and in close vicinity to populated areas “gives rise to the likelihood of significant civilian casualties and damage to civilian buildings in excess of any anticipated military advantage, and increases

⁹⁷UNSC ‘Final report of the Panel of Experts on Yemen’ (27 January 2020) UN Doc S/2020/70, page 40.

⁹⁸HRC Forty-fifth session 14 September–2 October 2020 ‘Detailed findings of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (29 September 2020) UN Doc A/HRC/45/CRP.7, para 61.

⁹⁹The CAESAR (in French: Truck equipped with an artillery system) is a 155 mm/52-calibre gun-howitzer installed on a 6X6 truck chassis. It is a long-range, indirect-fire weapon system that has a wide-area impact and can fire six shells per minute onto a target up to 42 kilometres away.

¹⁰⁰Nexter S.A. is a French government owned weapons manufacturer based in Roanne, France. See <<https://www.nexter-group.fr/en>>.

¹⁰¹Direction du Renseignement Militaire, Confidential note, *Annexe III à la note confidentielle du 25 septembre 2018: Principaux matériels des forces Yéménites, Emiriennes et Saoudiennes* ((25 September 2018) page 13, available at: <<https://fr.calameo.com/read/005893118a67c18db94fe?page=1>>.

¹⁰²Disclose, *Yemen Papers* (15 April 2019) available at: <<https://made-in-france.disclose.ngo/en/chapter/yemen-papers/>>

¹⁰³US based conflict analysis organization ACLED – who have been cross-referencing information from the Yemeni press and websites reporting bombings and focus on the repercussion of the conflict on civilians reports.

¹⁰⁴Disclose, *Yemen Papers* (15 April 2019) available at: <<https://made-in-france.disclose.ngo/en/chapter/yemen-papers/>>

the risks of misdirected attacks”.¹⁰⁵ Furthermore, according to another leaked document entitled “Delivery Plan”, it appears that the company Nexter S.A. has scheduled to deliver over 100 “CAESAR” cannons until 2024.¹⁰⁶

56. Moreover, the investigative media Lighthouse Reports¹⁰⁷ found that at least between 2016 and 2017 the French majority state-owned company Defence Conseil International has provided extensive military training to the Saudi Arabian National Guard on these CAESAR canons.¹⁰⁸ According to the news report EU Observer, Defence Conseil International describes itself as “the French Ministry of Armed forces operator for the transfer of the French armed forces know-how”.¹⁰⁹ It is unclear whether this training has continued beyond 2017.
57. On May 3 2021, the investigative media Disclose revealed that a sale between France and Egypt is in its final stage. According to the disclosed documents, this sale concerns a first contract for the purchase from Dassault Aviation of 30 Rafale fighter jets (for a total of 3.75 billion euros) and two more contracts with the France-based missile manufacturing consortium MBDA and avionics firm Safran Electronics & Defense (together worth 200 million euros).¹¹⁰
58. France’s continued licensing for exports of weapons and spare parts to Saudi Arabia and the UAE, but also to other countries with poor human rights records such as Egypt, raises serious concerns as to France’s fulfilment of its extraterritorial obligations to respect and protect civil and political rights under the ICCPR. The continuous export of weapons to Saudi Arabia and the UAE from French arms traders also casts major doubts on the compliance by France with its positive obligation to ensure that French private actors – including businesses – do not violate human rights through their activities abroad. This positive obligation is reinforced by the substantial shareholder control of the French State in some major French arms companies, as described above in paragraph 40.

¹⁰⁵HRC Forty-fifth session 14 September–2 October 2020 ‘Detailed findings of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014’ (29 September 2020) UN Doc A/HRC/45/CRP.7, para 75.

¹⁰⁶Disclose, *The itinerary of a secret shipment* (15 April 2019) available at: <<https://made-in-france.disclose.ngo/fr/chapter/the-route-of-a-secret-shipment/>>. It appears that 10 canons CAESAR were shipped to Jeddah (Saudi-Arabia) in September 2018 from the harbour of Le Havre, France. See the video investigation and written findings available at: <<https://made-in-france.disclose.ngo/fr/chapter/the-route-of-a-secret-shipment/>>.

¹⁰⁷Stefano Trevisan, *Case 3: DCI’s military training of Saudi Arabia’s armed forces (Eu arms exports, Lighthouse Reports)*, available at: <<https://euarms.com/landing/4sAXz43g4jt12Fl59mB73V>>.

¹⁰⁸In March 2018, the DCI Groupe 2018 put online a video where they are seen deploying a Caesar self-propelled howitzer. However, to this day, it is not known whether this training is still ongoing. See : Nikolaj Nielsen ‘Exposed: French complicity in Yemen and Libya’ *EU Observer* (Brussels, 18 November 2021), available at: <<https://euobserver.com/investigations/150097>>.

¹⁰⁹Nikolaj Nielsen ‘Exposed: French complicity in Yemen and Libya’ *EU Observer* (Brussels, 18 November 2021). The article specifies about DCI that « The company uses French army personnel, assets and facilities to train SANG personne ».

¹¹⁰ Disclose, *Revealed: France and Egypt secretly sign major new deal for Rafale fighter jets* (3 May 2021), available at: <<https://disclose.ngo/en/article/revealed-france-and-egypt-secretly-sign-major-new-deal-for-rafale-fighter-jets/>>.

V. GAPS IN FRANCE'S ARMS EXPORT CONTROL SYSTEM

A. Lack of transparency

59. Given that the decisions to export war material are considered a matter of national security and under the exercise of foreign relations by the State, arms export control in France is inherently opaque. The lack of access to information on France's exports to Saudi Arabia and the UAE obstructs any meaningful control of France's respect of its obligations stemming from domestic and international arms regulations, as well as those under the ICCPR.
60. The legislative control of French arms exports is essentially based on the annual report to the Parliament on arms exports concerning arms deliveries in the previous calendar year, which is produced and published annually by the Ministry of the Armed Forces. Since 2020,¹¹¹ this annual report contains data provided by France in its annual report required by Article 13.3 of the ATT. Nevertheless, French civil society and the French Parliament have denounced that the annual report on arms exports still lacks precise information on the type, number and quantity of equipment delivered, as well as information on the final recipients of the weapons and their declared end-use. Moreover, the report does not provide information related to the assessment and verifications carried out by the French authorities in deciding whether to revoke or grant an export license for war material, including by reference to the EU Common Position and the ATT, nor does it communicate the number of revoked licenses.
61. In November 2020, a report of the fact-finding mission on arms export control established by the Foreign Affairs Committee of the French National Assembly in December 2018 called for more information to the Parliament on French arms exports and made recommendations to enable meaningful legislative oversight. The fact-finding mission noted that the Government's annual report to Parliament "does not provide Parliament with real information beyond a statistical approach and the general information it contains. It therefore needs to be improved in a number of ways, even if it means better defining the scope of national defence secrecy, which is sometimes interpreted in an unnecessarily broad manner".¹¹² It further noted that the information provided by the Government "does not allow Parliament to form a reliable opinion with regard to the export contexts that are currently the subject of public debate."¹¹³
62. As noted earlier, ECCHR and Amnesty International France have submitted to the "Direction Générale des Douanes et Droits Indirects" or "DGDDI" (French customs)

¹¹¹Ministry of the Armed Forces, *Rapport annuel au Parlement 2020 sur les exportations d'armement de la France* (2020), available at: <<https://www.defense.gouv.fr/actualites/articles/exportations-d-armement-le-rapport-au-parlement-2020>>.

¹¹² Ibid., page 108

¹¹³ Ibid., page 21

freedom of access to information requests on exports of specific weapons and export licenses from France to Saudi Arabia and the UAE. To this date, the customs have not replied to this request. According to French law, this silence equals an “implicit refusal”, which triggers the right for ECCHR and Amnesty International France to request the opinion of the French Commission for Access to Administrative Documents on the matter.¹¹⁴ ECCHR and Amnesty International France have filed such a request, which is currently pending before the Commission.

63. Moreover, the high number of written and oral parliamentary questions¹¹⁵ put to the Government about French arms exports and the humanitarian situation in Yemen since 2018 reflects the clear lack of information provided to the Parliament and shows repeated concerns over democratic oversight.
64. At the judiciary level, the content of the licenses as well as the risk assessment conducted by the French authorities cannot be subject to any judicial review. Indeed, following a legal challenge brought by the French NGO Action Sécurité Éthique Républicaine (ASER), the French Administrative Court of Appeal of 26 September 2019 considered that “(...) the intrinsically political assessment, then made by the French governmental authorities as to their diplomatic expediency, confers on these decisions, indissociable in these conditions from the conduct of France’s foreign relations, the character of an act of government; that it is not for any judge to hear these acts by which sovereign power is exercised (...)”.¹¹⁶ Similarly, following a second legal challenge brought by the NGO ASER, on 7 February 2020, a ruling by an administrative French judge on a request for cancellation of customs exports authorizations for the transit of war material from the port of Cherbourg to Saudi Arabia, considered “that a link exists between such authorizations and the suffering of the Yemeni population”.¹¹⁷ Nevertheless, the judge declared the legal challenge unfounded for the granting of an urgent order on the cancellation of the export.

B. Loopholes in the decision-making process for granting export licenses

65. Several declarations emanating from the Ministry of Defence indicate that the French government considers that risks related to the use by an end-user of weapons subject to a license and the monitoring over time of the use of a license, in compliance with international humanitarian law and international human rights are out of the scope of their assessment

¹¹⁴French Code on relations between the public and the administration [2015] art. R343-1 and art. R*311-12, available at: <https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000031370507/>.

¹¹⁵Oral and written Parliamentary questions are searchable on the National Assembly website at the following address : <<https://questions.assemblee-nationale.fr/recherche/questions/default>>.

¹¹⁶CAA Paris, 3ème chambre, 26/07/2019, 19PA02929. The petitioning organizations appealed before the Council of State; the case is pending. A summary of the legal argumentation is available at : <https://aser-asso.org/wp-content/uploads/2019/11/Requ%C3%AAte-sommaire_Conseil-dEtat-ASER19-novembre-2019.pdf>.

¹¹⁷CAA Paris, 7/02/2020, 2002311/9.

process.¹¹⁸ This puts into question whether France’s decision-making process respects Article 7(7) of the ATT which states that “if, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State”.

66. Secondly, a legitimate ground for questioning the reliability of the decision-making process of French authorities to authorize arms exports to Saudi Arabia and the UAE is a wrongful interpretation of the ATT. In her statement¹¹⁹ before the French National Assembly in 2020, the Minister of Defence declared that the list of criteria established by Article 7 of the ATT¹²⁰ must be taken into account as part of the risk evaluation, but does not require public authorities to refuse the granting of a license. This interpretation is in blatant contradiction with Article 7(3), which explicitly states that “If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.”¹²¹

¹¹⁸Assemblée Nationale, ‘Compte rendu de la Commission de la défense et des forces armées’ (7 May 2019) available at: <https://www.assemblee-nationale.fr/dyn/15/comptes-rendus/cion_def/115cion_def1819032_compte-rendu> : “(...) However, the question you are asking is of a different nature: whether we can control the customer himself. This is obviously very complicated. On the one hand, because it is very difficult to put a control agent behind every piece of equipment we sell. On the other hand, what would be the probability that the sovereign country that bought the equipment would accept such a control? Selling military equipment with an upfront acceptance of a limitation on its use would be a rather complicated transaction to negotiate, and I am not aware of any states that accept such a limitation of sovereignty. On the other hand, let us assume that we were trying to put in place a conditionality. Do you think competitors would do the same?”

¹¹⁹ Ibid., “You have just referred to the ATT. Under this text, we are obliged to prohibit exports when we know, at the time of authorisation, that the weapons could be used to commit "genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks against civilians or civilian objects protected as such, or other war crimes". The other criteria set out in the treaty are assessment criteria. These include, for example, the "predominant" risk, mentioned earlier, that the weapons will be used to commit a serious violation of humanitarian law or human rights. In this case, the State must consider risk mitigation measures, which may go as far as prohibition. (...)”

¹²⁰Arms Trade Treaty (adopted 2 April 2013) UNGA Res 67/234B, art 7(1)(b): Namely the overriding risk that the arms considered for license could contribute to could be used to: 1. commit or facilitate a serious violation of international humanitarian law; 2. commit or facilitate a serious violation of international human rights law; 3. commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or 4. commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.

¹²¹Arms Trade Treaty (adopted 2 April 2013) UNGA Res 67/234B, art 7(3) reads in French “3. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party **shall not authorize the export.**” Emphasis added.

VI. FRANCE'S EXPORTS OF SURVEILLANCE TECHNOLOGIES RAISING HUMAN RIGHTS CONCERNS

67. France is one of the top five countries with the highest number of registered surveillance companies.¹²² There are 45 French companies featured in the Surveillance Industry Index (SII) of Privacy International.¹²³ France's exports of surveillance technology to authoritarian governments with poor human rights records such as Egypt and China raise serious concerns. The examples provided below demonstrate the gaps in the French export control regime of surveillance technologies including dual-use products¹²⁴, as well as regarding the responsibility of companies in the sector.

A. Exports to Egypt

68. Egypt is France's second importer of arms after India and represented 18% of France's total global exports of arms between 2016-2020.¹²⁵ France was Egypt's main supplier of arms between 2013 and 2017.¹²⁶ Civil society organisations have raised alarm at transfers of arms and military equipment including armoured vehicles, which have been used to violently repress peaceful protests.¹²⁷ There are also credible reports of use of French arms in crimes committed in the context of counter-terrorism operations in Sinai, including extrajudicial killings, enforced disappearances and arbitrary arrests.¹²⁸

69. In the context of the UPR, France has recommended to Egypt to "guarantee freedom of expression and the press, as well as the right to peaceful demonstration, in accordance with Egypt's constitutional provisions and international commitments."¹²⁹ Yet, France has also

¹²²Privacy International, *The Global Surveillance Industry* (July 2016), available at: <https://www.privacyinternational.org/sites/default/files/2017-12/global_surveillance_0.pdf>.

¹²³Privacy International, *The Global Surveillance Industry* (July 2016) page 19, available at: <https://www.privacyinternational.org/sites/default/files/2017-12/global_surveillance_0.pdf>.

¹²⁴ Dual-use products are goods, software and technology that can be used for both civilian and military applications

¹²⁵Pieter d. Wezeman and others, *Trends in international arms transfers*, (SIPRI, 2021) available at: <https://www.sipri.org/sites/default/files/2021-03/fs_2103_at_2020_v2.pdf>. France is Egypt's second main arms provider after Russia representing 28% of Egypt's imports between 2016-2020.

¹²⁶ Ibid.

¹²⁷Amnesty International, *Egypt: How French arms were used to crush dissent* (EUR 21/9038/2018, 2018), available at: <<https://www.amnesty.org/en/documents/eur21/9038/2018/en/>>; FIDH & others, *Egypt: A Repression Made in France: exports of weapons and surveillance technologies* (n°716a, June 2018), available at: <https://www.fidh.org/IMG/pdf/382873255-egypt-a-repression-made-in-france.pdf>; See also: Houry Nadim & Jeannerod Bénédicte, *How French weapons enable Egypt's abuses* (Human Rights Watch, 29 January 2019), available at: <<https://www.hrw.org/news/2019/01/28/how-french-weapons-enable-egypts-abuses>>.

¹²⁸FIDH & others, *Egypt: A Repression Made in France: exports of weapons and surveillance technologies* (n°716a, June 2018) page 18 and 19, available at: <<https://www.fidh.org/IMG/pdf/382873255-egypt-a-repression-made-in-france.pdf>>.

¹²⁹UNHRC Forty-third session 'Report of the Working Group on the Universal Periodic Review on Egypt' (27 December 2019) UN Doc A/HRC/43/16, para 31 recommendation 31.189.

provided surveillance technologies and security systems to Egyptian authorities without adequate human rights risk assessments, transparency and monitoring of the end use of these products.¹³⁰ In the hands of the Egyptian security services, these technologies are dangerous weapons enabling them to carry out mass surveillance of the population and repression of civil society. Exports included the sale in 2014 by Nexa Technologies of a cyber surveillance system called CEREBRO, which enables large-scale interception of communications and real-time surveillance.¹³¹ Despite the critical risks posed by this type of technology, this product was not classified as a dual-use product at the time of sale and thus not subject to the required export control by the French competent authorities.¹³²

70. France has also exported so-called “crowd control technologies”, including patroller drones and satellite technologies, which provide precise details to spot the beginnings of a crowd including in urban settings, thus potentially preventing the formation of peaceful protests and social movements.¹³³ In addition to CEREBRO, another even more intrusive surveillance system was supplied in 2014 to the Egyptian intelligence services by the French company Ercom through its subsidiary Suneris, this time as a dual-use product and with authorisation of the competent French authorities.¹³⁴ The system enables voice interception of telephone conversations and offers spatial geolocation of targets in real-time, using the IP address of the mobile phone.¹³⁵ Following a request by several NGOs, an investigation by the Crimes Against Humanity Division of the Paris Prosecutor’s office was opened in December 2017 into the sale of surveillance equipment by Nexa Technologies to Egypt.¹³⁶

¹³⁰FIDH & others, *Egypt: A Repression Made in France: exports of weapons and surveillance technologies* (n°716a, June 2018), available at: <<https://www.fidh.org/IMG/pdf/382873255-egypt-a-repression-made-in-france.pdf>>.

¹³¹Olivier Tesquet ‘Amesys: Egyptian trials and tribulations of a French digital arms dealer’ (*Telerama*, 7 August 2020) available at: <<https://www.telerama.fr/monde/amesys-egyptian-trials-and-tribulations-of-a-french-digital-arms-dealer,160452.php>>.

¹³²Assemblée Nationale, Rapport d’information, déposé en application de l’article 145 du Règlement par la Commission des Affaires étrangères, en conclusion des travaux d’une mission d’information constituée le 31 octobre 2018 sur le contrôle des exportations d’armement et présenté par M. Jacques Maire et Mme Michèle Tabarot’ page 80, available at : <https://www.assemblee-nationale.fr/dyn/15/rapports/cion_afetr/115b3581_rapport-information>. See also: Ministry of Europe and Foreign Affairs, ‘Trade, transport and export of arms and sensitive material’ (*France Diplomacy*, December 2019) available at: <<https://www.diplomatie.gouv.fr/en/french-foreign-policy/security-disarmament-and-non-proliferation/disarmament-and-non-proliferation/trade-transport-and-export-of-arms-and-sensitive-material/>>.

¹³³FIDH & others, *Egypt: A Repression Made in France: exports of weapons and surveillance technologies* (n°716a, June 2018) page 35 and 36, available at: <<https://www.fidh.org/IMG/pdf/382873255-egypt-a-repression-made-in-france.pdf>>.

¹³⁴Olivier Tesquet ‘On a encore trouvé une société française qui vend du matériel de surveillance électronique à l’Egypte’ (*Telerama*, 26 March 2018) available at: <<https://www.telerama.fr/monde/on-a-encore-trouve-une-societe-francaise-qui-vend-du-materiel-de-surveillance-electronique-a-legypte,n5533721.php>>.

¹³⁵FIDH & others, *Egypt: A Repression Made in France: exports of weapons and surveillance technologies* (n°716a, June 2018) page 38, available at: <<https://www.fidh.org/IMG/pdf/382873255-egypt-a-repression-made-in-france.pdf>>.

¹³⁶FIDH ‘Sale of surveillance equipment to Egypt: Paris prosecutor opens a judicial investigation’ (Press release, 22 December 2017) available at: <<https://www.fidh.org/en/region/north-africa-middle-east/egypt/sale-of-surveillance-equipment-to-egypt-paris-prosecutor-opens-a>>.

71. Civil society organisations have also raised concerns over the sale by Idemia, a French multinational company specialized in security and identity solutions, including facial recognition systems and other biometric identification products, of an extensive biometric database permitting the aggregation of various personal data, as well as identity and biometric terminal solutions, which could potentially be weaponised for surveillance purposes by Egyptian authorities.¹³⁷
72. In light of the deteriorating human rights situation in Egypt since the military coup by General Al Sisi in 2013 until now, it is unconscionable that France has continued to be one of Egypt's top suppliers of arms and of surveillance equipment during that time. Egypt's human rights record continues to be dismal and characterized by violations of the right to freedom of association, expression and assembly, the right to access to information and the right to privacy.¹³⁸ The Egyptian regime's rhetoric of the "war on terrorism" is in fact extensively used to justify human rights abuses against any opposition labelled as "terrorists".¹³⁹ France supported a joint statement on Egypt delivered by Iceland at the March 2021 UN Human Rights Council session, which raised these very concerns.¹⁴⁰
73. In December 2020, President Macron justified his continued support to President al-Sisi by saying it is a partner in the regional fight against terrorism and said: "I will not condition matters of defence and economic cooperation on these disagreements [over human rights]".¹⁴¹ A few days later, the European Parliament adopted a resolution calling on EU Member States: "to halt all exports of arms, surveillance technology and other security equipment to Egypt that can facilitate attacks on human rights defenders and civil society activists, including on social media, as well as any other kind of internal repression; calls for the EU to implement in full its export controls vis-à-vis Egypt with regard to goods that could be used for repression, torture or capital punishment."¹⁴² President Macron's statement runs counter to France's obligations under the ICCPR and other human rights treaties, as well as under the ATT.

¹³⁷FIDH & others, *Egypt: A Repression Made in France: exports of weapons and surveillance technologies* (n°716a, June 2018) page 39 to 42, available at: <<https://www.fidh.org/IMG/pdf/382873255-egypt-a-repression-made-in-france.pdf>>.

¹³⁸Amnesty International, *Human Rights Council must address human rights crises in Egypt, India and China* (12 March 2021) available at :

<<https://www.amnesty.org/download/Documents/IOR4038212021ENGLISH.pdf>>. <https://cihrs.org/states-break-silence-to-condemn-egypts-abuses-at-un-rights-body/?lang=en>

¹³⁹Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventeenth to twenty-second periodic reports of Egypt* (6 January 2016) UN Doc CERD/C/EGY/CO/17-22, para. 29, see also Amnesty International *Egypt: Permanent State of Exception: abuses by the Supreme State Security Prosecution* (2019) available at

<<https://www.amnesty.org/download/Documents/MDE1213992019ENGLISH.pdf>>

¹⁴⁰ISHR, 'HRC46: States break silence to condemn Egypt's repression' (12 March 2021) available at: <<https://www.ishr.ch/news/hrc46-states-break-silence-condemn-egypts-repression>>.

¹⁴¹DW, 'France's Macron defends arms sales to Egypt despite rights concerns' (7 December 2020) available at: <<https://www.dw.com/en/frances-macron-defends-arms-sales-to-egypt-despite-rights-concerns/a-55846151>>.

¹⁴²European Parliament Resolution (RSP) 2020/2912 on the deteriorating situation of human rights in Egypt, in particular the case of the activists of the Egyptian Initiative for Personal Rights [2020], available at: <https://www.europarl.europa.eu/doceo/document/TA-9-2020-0384_EN.html>.

B. Exports to China

74. Amnesty International found evidence that Idemia, the French multinational company which sold biometric identification products to Egypt as described above, also sold in 2015 automatic facial recognition software to the Shanghai Public Security Bureau, which is a prominent actor in the Chinese state surveillance apparatus.¹⁴³ When asked by Amnesty International about this sale, the company explained that the product is a post-event facial recognition system, meaning that it is used to identify faces on recorded footage rather than in a live identification feed. It also explained that the technology aims at helping the police in identifying perpetrators in criminal cases.
75. This sale is particularly problematic given the inherent risky nature of the technology and the fact that it was sold to a country among the weakest in the world when it comes to privacy and data protection standards.¹⁴⁴ Biometric information is also one of the cornerstones of China's social credit system and has reportedly been massively collected by the authorities in the Xinjiang region to monitor the movement of Xinjiang residents.¹⁴⁵ Since this incident, the company has, according to Amnesty International, enforced a policy of not selling identification systems to China and has adopted a commitment to identify human rights risks associated with exports of surveillance technology.¹⁴⁶ While this is a positive individual development, this raises questions as to gaps in sales of such technology and how this sale was authorised in the first place by French authorities.
76. The cases in Egypt and China illustrate major gaps regarding the ability of French authorities to scrutinize exports of surveillance technologies including dual use products. First, the French export authorities do not publish export licensing information on surveillance technologies and dual-use products, or other data pertaining to their decision-making except from the number of individual licenses delivered for dual use products and the total amount of authorisations granted.¹⁴⁷ Transparency on export licensing is essential to provide the public and French parliament with oversight and trust in the export licensing system. In a December 2020 report, the French National Assembly called on the

¹⁴³Amnesty International, *Out of control: Failing EU laws for digital surveillance exports* (21 September 2020) available at: <<https://www.amnesty.org/en/documents/EUR01/2556/2020/en/>>.

¹⁴⁴OHCHR, 'UN experts call for decisive measures to protect fundamental freedoms in China' (*Geneva*, 26 June 2020) available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26006>>.

¹⁴⁵Dr. Krisztina Huszti-Orbán and Prof. Fionnuala Ní Aoláin, 'Use of Biometric Data to Identify Terrorists: Best Practice or Risky Business?' (Regents of the University of Minnesota, 2020) available at: <<https://www.ohchr.org/Documents/Issues/Terrorism/biometricsreport.pdf>>.

¹⁴⁶Amnesty International, *Out of control: Failing EU laws for digital surveillance exports* (21 September 2020) available at: <<https://www.amnesty.org/en/documents/EUR01/2556/2020/en/>>. See also, Olivier Tesquet 'Quand l'europe aide la Chine pour surveiller massivement ses concitoyens' (*Telerama*, 21 September 2020) available at: <<https://www.telerama.fr/idees/quand-leurope-aide-la-chine-pour-surveiller-massivement-ses-concitoyens-6700608.php>>.

¹⁴⁷Lasse Skou Andersen, Sebastian Gjerding & Maaike Goslinga, 'Europe's exports of spy tech to authoritarian countries revealed' (*Information*, 23 February 2017) available at: <<https://www.information.dk/udland/2017/02/europes-exports-of-spy-tech-to-authoritarian-countries-revealed>>; See also: Ministry of the Armes Forces, *Rapport annuel au Parlement 2020 sur les exportations d'armement de la France* (2020) page 52, available at: <<https://www.defense.gouv.fr/actualites/articles/exportations-d-armement-le-rapport-au-parlement-2020>>

government to increase transparency of information provided to the Parliament on arms exports, including on dual-use technologies, which are currently not adequately covered in the report to the Parliament, nor subject to a specific report.¹⁴⁸ This report noted the lack of information provided on exports of dual-use technologies.¹⁴⁹ As companies themselves do not disclose any information as to their trade agreements or licensing, there is no possibility, without export licensing data, for the Parliament or the public to hold the government to account with regard to its human rights obligations. The detection of human rights risks posed by the surveillance industry are thus largely dependent on investigative journalists and researchers and shows a major gap in the French government's duty to respect and protect human rights in this sector.

77. France has an obligation to prevent abuses before they occur and to strengthen the control and transparency of licensing arrangements for exports of surveillance technologies, technologies that can be used for surveillance and other relevant dual-use products. France should also ensure that companies in the sector under the law on the duty of vigilance carry out stringent human rights due diligence including on the end use of their products and services.
78. The recently adopted new EU export control regulation on dual-use products, which should enter into force in 2021 and that will among other, enhance information-exchange between licensing authorities and the European Commission with a view to increasing transparency of licensing decisions.¹⁵⁰ It will also create an obligation for Member States to “consider the risk of use in connection with internal repression or the commission of serious violations of international human rights and international humanitarian law”.¹⁵¹ Finally, the regulation also creates due diligence obligations and compliance requirements for exporters, recognising the role of the private sector in addressing the risks posed by trade in dual-use products.¹⁵² France should take advantage of the implementation of the new EU regulation at domestic level to tackle the gaps highlighted above in terms of transparency, democratic oversight, human rights risk assessments as well as the due diligence obligations of businesses in the sector.

¹⁴⁸Assemblée Nationale, ‘Rapport d’information, déposé en application de l’article 145 du Règlement par la Commission des Affaires étrangères, en conclusion des travaux d’une mission d’information constituée le 31 octobre 2018 sur le contrôle des exportations d’armement et présenté par M. Jacques Maire et Mme Michèle Tabarot’ page 114, available at : <https://www.assemblee-nationale.fr/dyn/15/rapports/cion_afetr/115b3581_rapport-information>.

¹⁴⁹ Ibid.

¹⁵⁰European Commission Press Release ‘Commission welcomes agreement on the modernisation of EU export controls’ (Brussels, 09 November 2020) available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2045>.

¹⁵¹Human Rights Watch & others, *Human Rights Organisations’ Response to the Adoption of the New EU Dual Use Export Control Rules* (March 2021) available at: <https://www.hrw.org/sites/default/files/media_2021/03/Reforms%20to%20EU%20Surveillance%20Tech%20Export%20Rules_Joint%20NGO%20Statement_20210324_0.pdf>.

¹⁵²European Commission Press Release ‘Commission welcomes agreement on the modernisation of EU export controls’ (Brussels, 09 November 2020), available at: <<https://trade.ec.europa.eu/doclib/press/index.cfm?id=2209>>.

79. As stated earlier, the State's duty to respect and protect individuals' civil and political rights under the ICCPR also entails a due diligence obligation of the State in relation to the activities of private companies in its territory or jurisdiction. The Human Rights Committee had previously expressed concern at Italy's provision of online surveillance equipment to Governments with a record of serious human rights violations and about the absence of legal safeguards or oversight mechanisms regarding the export of such equipment.¹⁵³ In addition, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that while export controls are important to reduce risks: "the focus on exports is an imperfect proxy for addressing the central problem: the use of such technologies to target lawful expression, dissent, reporting and other examples of the exercise of human rights."¹⁵⁴ The Special Rapporteur hence called for an immediate moratorium on the global sale and transfer of the tools of the private surveillance industry until rigorous human rights safeguards are put in place to regulate such practices and guarantee that Governments and non-State actors use the tools in legitimate ways.¹⁵⁵

VII. GAPS IN IMPLEMENTING THE VIGILANCE LAW IN THE ARMS AND SURVEILLANCE INDUSTRY

80. The defence industry is a high-risk sector. In Europe and most specifically in France, the arms industry relies on an extensive supply chain for the production of spare parts and components, as well as for the assembly and export of final products. Despite the clear risks attached to arms exports to some countries - such as the UAE, Saudi Arabia or Egypt - the Vigilance Plans of major French arms traders such as Naval Group, Thalès or Dassault provided under the Duty of Vigilance law very insufficiently identify these risks – sometimes by not even mentioning risks of serious violations of human rights or international humanitarian law. Consequently, no tailored measures are proposed in their plans to mitigate these risks.¹⁵⁶

¹⁵³UNHRC 'Concluding observations on the sixth periodic report of Italy' (1 May 2017) UN doc CCPR/C/ITA/CO/6 (CCPR 2017), para. 36. The Committee is concerned about reports that intelligence agencies are intercepting personal communications and employing hacking techniques without explicit statutory authorization or clearly defined safeguards from abuse. It is also concerned that the anti-terrorism decree and Law No. 21/2016 compel telecommunications service providers to retain data beyond the period allowed by article 132 of the personal data protection code, and that the authorities can access such data without authorization from a judicial authority. It is further concerned about allegations that companies based in the State party have been providing online surveillance equipment to Governments with a record of serious human rights violations and about the absence of legal safeguards or oversight mechanisms regarding the export of such equipment (art. 17).

¹⁵⁴UNHRC Forty-first session 24 June–12 July 2019'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: Surveillance and human rights' (28 May 2019) UN Doc A/HRC/41/35, para. 34

¹⁵⁵UNHRC Forty-first session 24 June–12 July 2019'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: Surveillance and human rights' (28 May 2019) UN Doc A/HRC/41/35, paras. 48, 49 and 66 (a).

¹⁵⁶Amnesty International and others, *The law of vigilance of parent and outsourcing companies : year 1, companies must do better* (February 2019) pages 25-30, available at :

81. Moreover, General Comment 31 of the Committee states that “The Committee attaches importance to States Parties’ establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law.”¹⁵⁷ Nevertheless, to this day and despite the requests of civil society, the French government has not put in place a monitoring mechanism on the implementation of the duty of vigilance law, nor has provided a list of companies that are subject to the obligation created in the law.¹⁵⁸
82. Being a shareholder in major French defence companies, the French State also bears heightened responsibility, including under the UNGPs, to ensure the respect of human rights due diligence in the companies it controls. In that sense, it is regrettable that while the “Agence de Participation de l’Etat” (Government Shareholding Agency - APE) indicates on its website acting according to a charter of Corporate Social Responsibility, this document - according to our research - is not publicly available.

VIII. IMPLEMENTATION OF UN SECURITY COUNCIL RESOLUTION 1325 ON WOMEN, PEACE AND SECURITY

83. In its second revised National Action Plan (the “NAP”) for the period inclusive of 2015-2018, France announced numerous actions toward fulfilling the goals of UN Security Council Resolution 1325 (UNSCR 1325). Under its NAP, France commits itself to “ensure the protection of women against all forms of violence in conflict and post-conflict countries.”¹⁵⁹ The continued sale and transfer of French weapons to countries in conflict stands in stark contrast to this commitment, since these weapons can be used to commit violence against women and gender-based violence and other violations of international human rights law and international humanitarian law.
84. Moreover, France has no policy coherence, in that while it states a commitment to “support and protect human rights defenders”¹⁶⁰, it continues to sell surveillance technology to countries where the technology is used to repress human rights defenders. Furthermore, despite its commitment to “encourage States to ratify and implement the Arms Trade Treaty

<https://amnestyfr.cdn.prismic.io/amnestyfr%2F8fcbc315-bebf-434f-9352-aacc9a0d943f_190614_web_version_anglaise.pdf>.

¹⁵⁷ UNHRC eightieth session ‘General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, para 15.

¹⁵⁸ Duthilleul Anne & De Jouvenel Matthias, *Evaluation de la mise en œuvre de la loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre* (January 2020), addressed to the Ministry of Finance and Economy, available at

<https://www.economie.gouv.fr/files/files/directions_services/cge/devoirs-vigilances-entreprises.pdf>.

¹⁵⁹ Ministry of Foreign Affairs and International Development, ‘France’s second national action plan - Implementation of United Nations Security Council “Women, peace and security” resolutions 2015-2018’, pillar 2 (2), 8.

¹⁶⁰ *Ibid.*

(2013)”¹⁶¹, France’s continues arms transfers to countries where these weapons could be used in serious violations of international human rights law and international humanitarian law as demonstrated in the present report.

85. Finally, on 25 October 2018, France stated that its third NAP would be presented in the first quarter of 2019.¹⁶² Questioned during the Senate session in June 2019, the French Ministry of Europe and Foreign Affairs confirmed that the development of the third NAP would be completed by end of 2019.¹⁶³ Almost two years later and according to publicly available information, the third NAP is still not completed.

IX. QUESTIONS TO FRANCE

86. ECCHR and WILPF recommend that France be asked to provide information on:

- Measures it has taken to ensure a full ban of arms transfers to all countries involved in the Coalition in Yemen and to any country where there is a clear risk that these arms might be used to violate international human rights law and/or of international humanitarian law, including the rights protected under the ICCPR;
- Measures it has taken to ensure that the relevant export authorities in France comply with their obligations under the EU Common Position and the Arms Trade Treaty, in particular by including in their assessment for granting licenses a monitoring of whether the recipient country is using licensed weapons in compliance with international humanitarian law and international human rights law.
- With regards to the French duty of vigilance law:
 - Measures it has taken to monitor and follow-up on the implementation of the duty of vigilance in the French arms industry, including in companies’ global arms transfers operations, supply chains and joint ventures, as well as by companies producing surveillance technologies;
 - In particular, measures it has taken to ensure that, as part of its implementation of the duty of vigilance law, defence and surveillance companies include in any commercial contract related to weapons and surveillance technologies conditions on compliance with international human rights and humanitarian law, including the contractual possibility of suspending or withdrawing products and services for non-compliance.

¹⁶¹ Ministry of Foreign Affairs and International Development, ‘France’s second national action plan - Implementation of United Nations Security Council “Women, peace and security” resolutions 2015-2018’, pillar 2 (3), 8.

¹⁶² JO Sénat (27 Jun. 2019) 3316.

¹⁶³ JO Sénat, (24 Oct. 2019) 5405.

- Given its central role as a shareholder in major French defence companies:
 - Measures it has taken to ensure, through its shareholder prerogatives and obligations, the respect of the duty of vigilance by companies over which it exercises financial or operational control;
 - Measures it has taken to ensure that the French “Agence de Participation de l’Etat” (Agency on the State’s Participation) which manages the State’s portfolio of shareholdings and incarnates the State-investor, abides by both the human rights due diligence obligations under French law and the ICCPR.

- Measures it has taken to ensure meaningful legislative control over French arms exported, by increasing transparency around its decision-making process for authorizing or denying exports in accordance with the ATT and the EU Common Position, as well as information on :
 - The end-user and end-use of exported weapons;
 - Comprehensive data on dates of orders and deliveries, in line in particular with the recommendations made by the French Parliament in November 2020 and French civil society;
 - The export refusals by country and by criteria of the EU Common Position;
 - The guarantees imposed on the end-use as well as on the possible mitigation measures put in place;
 - The use of intermediaries in the production or transfer of weapons.

- With regard to exports of surveillance and biometrics technologies and other dual use products, provide information on measures currently taken to assess the risk of violations of human rights, including but not limited to the right to privacy, freedom of expression, opinion and association, when authorising the export of such technologies, as well as information which is currently provided to the Parliament and the general public on such exports.

- Information on how the French government balances its international human rights obligations under the ICCPR with its strategic interests with other States, such as in providing arms or surveillance technologies to Egypt as part of counter-terrorism cooperation agreements and on the democratic oversight exercised over such decisions.

- When does France intend to adopt its third NAP on UNSCR 1325 and how has civil society been consulted in the elaboration of the third National Action Plan? Will the third NAP on UNSCR 1325 comprise commitments related to preventing the sale and transfer of French weapons and surveillance technologies to conflict-affected countries, where these weapons could be used to commit violence against women,

gender-based violence, and repression of civil society including women human rights defenders?