

**EUROPEAN CENTER FOR
CONSTITUTIONAL AND
HUMAN RIGHTS**



WILPF

WOMEN'S INTERNATIONAL
LEAGUE FOR PEACE & FREEDOM

**Joint submission to the Universal Periodic Review of
France
43rd session of the UPR Working Group**

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About the submitting organisations:

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, human rights, 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 against systematic human rights violations and hold state and non-state actors accountable for these acts. For the purpose of this submission, ECCHR has used its knowledge acquired in the context of legal interventions it developed to address European arms transfers and the conflict in Yemen. Together with the Yemeni-based organisation 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, as well as a criminal complaint in France in June 2022. Both complaints¹ contain extensive field research in Yemen, as well as research into the corporate structures of companies involved in arms trade in the context of Yemen and legal analysis.²

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

¹ECCHR, 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/>>.

² Based on 26 airstrikes on civilians and civilian infrastructures, the organisations 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. Based on this Communication, on June 1, 2022, ECCHR and Mwatana for Human Rights submitted a criminal complaint before the Tribunal Judiciaire de Paris (Paris judiciary Court) requesting the specialised unit in war crimes and crimes against humanity in Paris to investigate the criminal liability of Thalès, Dassault and MBDA France for potential complicity in war crimes and crimes against humanity in Yemen.

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I. INTRODUCTION

1. According to the Stockholm International Peace Research Institute (*SIPRI*), France was one of the five largest arms exporters in 2017–21 (the others were the United States, Russia, China, and Germany. Together, these five countries accounted for 77 per cent of all arms exports in 2017–21. France was the third world’s larger exporter of arms after the United States and Russia.) France increased its arms exports by 59 per cent between 2012-16 and 2017-21.³ The French State has substantial shareholder control in some major French arms companies.
2. In its latest review of France in 2016, the CEDAW Committee expressed concerns 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.⁴ It 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 (the *ATT*).⁵ In the 3rd UPR Cycle in 2018, France accepted recommendation 145.31, to “refrain from transferring conventional weapons when these can be used to violate human rights or international humanitarian law (IHL), in line with its obligations under the Arms Trade Treaty and target 16.4 of the Sustainable Development Goals”.⁶
3. In 2021, in its List of Issues, the Human Rights Committee asked France how national export authorities incorporate: “into their licensing assessment process a review of whether the recipient country is using the licensed weapons in a manner consistent with the right enshrined in article 6 of the Covenant, taking into account the international standards applicable to corporate responsibility and the right of victims to an effective remedy.”⁷
4. France continues to authorise transfers of weapons as well as surveillance technologies to countries suspected of serious human rights violations and of violations of international humanitarian law. This UPR submission provides examples of such

³Pieter d. Wezeman and others, *Trends in international arms transfers*, (SIPRI, 2022) 4. Available at: < <https://www.sipri.org/publications/2022/sipri-fact-sheets/trends-international-arms-transfers-2021> >.

⁴ UN 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, paragraph 22.

⁵ UN 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, paragraph 23.

⁶ UN Human Rights Council thirty-eight session ‘Report of the Working Group on the Universal Periodic Review’ (11 April 2018) UN Doc A/HRC/38/4, Recommendation 145.3, page 12.

⁷ Human Rights Committee, ‘List of issues prior to submission of the sixth periodic report of France’ (24 September 2021) UN Doc CCPR/C/FRA/QPR/6, paragraph 13.

transfers and an analysis of gaps in regulation, policies and practices on arms transfers and transfers of surveillance technologies. Further information and analysis are available in the joint submission by ECCHR and WILPF to the Human Rights Committee (2021) provided as an Annex II to this UPR submission.⁸

II. EXAMPLES OF ARMS TRANSFERS RAISING HUMAN RIGHTS CONCERNS

5. According to the 2020 report of the Ministry of Armed Forces to the Parliament on France's arms exports, Saudi Arabia was among France's top three clients and the United Arab Emirates (UAE) was in France's top five clients over the period 2010-2019.⁹ The report also indicates that in 2019, France's arms exports to Saudi Arabia amounted to 1.379 billion EUR and to 287.2 million EUR for the UAE.¹⁰ The 2021 report, regarding exports in 2020, mentions 1,060 export licences issued by the French authorities for Saudi Arabia since 2015, 1,093 for the UAE and 449 for Egypt.¹¹
6. In 2021, GEE on Yemen of the UN *HRC* reported that "French arms exports in general declined in 2020 (by 41 per cent), with the Ministry of Defence attributing this decline to the global health crisis and the absence of major contracts. However, its biggest client was Saudi Arabia, with orders received in 2020 worth some 703.9 million EUR."¹²
7. According to the 2022 report of the Ministry of Armed Forces on France's arms exports in 2021, Saudi Arabia is France's fifth largest customer, with orders worth 381 million EUR.¹³ Globally, Saudi Arabia is the most profitable country for France in terms of arms sales; since 2011, France has delivered 8 282.5 billion EUR in military equipment to

⁸ Joint ECCHR and WILPF submission to the Human Rights Committee also available at this link https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICS%2fFRA%2f44872&Lang=en.

⁹ Ministry of the Armed Forces, *Rapport annuel au Parlement 2020 sur les exportations d'armement de la France*, page 110. Available at: <https://www.vie-publique.fr/sites/default/files/rapport/pdf/274475.pdf>. 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.

¹⁰ Ministry of the Armed Forces, *Rapport annuel au Parlement 2020 sur les exportations d'armement de la France* (2020) page 100. Available at: <https://www.vie-publique.fr/sites/default/files/rapport/pdf/274475.pdf>.

¹¹ Ministry of the Armed Forces, *Rapport annuel au Parlement 2021 sur les exportations d'armement de la France* (2021) page 73. Available at: <https://www.defense.gouv.fr/rapport-au-parlement-2021-exportations-darmement-france>.

¹² See, Human Rights Council, forty-eighth session, 'Accountability Update: Group of Eminent International and Regional Experts on Yemen' (14 September 2021) UN Doc A/HRC/48/CRP.4, footnote 88 on page 16. The GEE report uses as a source the report of the Ministry of Armed Forces: Ministry of the Armed Forces, *Rapport annuel au Parlement 2021 sur les exportations d'armement de la France* (2021). Available at: <https://www.defense.gouv.fr/rapport-au-parlement-2021-exportations-darmement-france>;

¹³ Disclose, *La France a autorisé des livraisons d'armements à la Russie en 2021* (15 September 2022). Available at: <https://disclose.ngo/fr/article/la-france-a-autorise-des-livraisons-armements-a-la-russie-en-2021>.

Saudi Arabia, followed by India with 6 832 billion EUR, and Egypt with 6 675.5 billion EUR.¹⁴

8. Despite ample information on the serious impacts of the Coalition's operations on civilians and on essential civilian infrastructure 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;¹⁵ examples illustrating this are provided as Annex I to this submission.
9. In 2020, 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."¹⁶ The CAESAR¹⁷ long-range firing canons are produced by Nexter Systems S.A.¹⁸
10. 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 map¹⁹ 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."²⁰

¹⁴Ministry of the Armed Forces, *Rapport annuel au Parlement 2021 sur les exportations d'armement de la France* (2021) page 103-104. Available at: <<https://www.defense.gouv.fr/rapport-au-parlement-2021-exportations-darmement-france>>.

¹⁵A 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 international arms transfers*, (SIPRI, 2021). Available at: <https://www.sipri.org/sites/default/files/2021-03/fs_2103_at_2020_v2.pdf>.

¹⁶UN Human Rights Council, forty-fifth session, '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, paragraph 61.

¹⁷The 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.

¹⁸Nexter S.A. is a French government owned weapons manufacturer based in Roanne, France. See <<https://www.nexter-group.fr/en>>.

¹⁹Direction 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>>.

²⁰Disclose, *Yemen Papers* (15 April 2019). Available at: <<https://made-in-france.disclose.ngo/en/chapter/yemen-papers/>>.

11. The investigative media Disclose concludes that “We have studied data from the NGO Armed Conflict Location & Event Data Project (ACLED)²¹ 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.”²²
12. 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 the risks of misdirected attacks”.²³ 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 2024.²⁴
13. Moreover, the investigative media Lighthouse Reports²⁵ 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.²⁶ 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”.²⁷ It is unclear whether this training has continued beyond 2017.
14. On 1 June 2022, ECCHR and the Yemeni organization Mwatana for Human Rights submitted a criminal complaint before the *Tribunal Judiciaire de Paris (Paris judiciary Court)* requesting the specialised unit in war crimes and crimes against humanity in Paris to investigate the criminal liability of Thalès, Dassault and MBDA France for

²¹US based conflict analysis organisation 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.

²²Disclose, *Yemen Papers* (15 April 2019). Available at: <<https://made-in-france.disclose.ngo/en/chapter/yemen-papers/>>.

²³UN Human Rights Council, forty-fifth session ‘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, paragraph 75.

²⁴Disclose, *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: Disclose, *Itinéraire d’une livraison secrète* (15 April 2019). Available at: <<https://made-in-france.disclose.ngo/fr/chapter/the-route-of-a-secret-shipment/>>.

²⁵Stefano Trevisan, *Case 3: DCI’s military training of Saudi Arabia’s armed forces (EU arms exports, Lighthouse Reports)*. Available at: <<https://euarms.com/landing/4sAXz43g4jt12F159mB73V>>.

²⁶In 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>>.

²⁷Nikolaj 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 personnel.”

potential complicity in war crimes and crimes against humanity in Yemen.²⁸ Prior to that, in December 2019, ECCHR, Mwatana for Human Rights and several partners in Europe, ECCHR filed a 350 pages Communication before the Office of the Prosecutor of the International Criminal Court. Both complaints²⁹ contain extensive field research in Yemen, as well as research into the corporate structures of companies involved in arms trade in the context of Yemen and legal analysis.³⁰

15. Another example of transfers raising serious concerns are transfers to Egypt. On 3 May 2021, the investigative media Disclose revealed that a sale between France and Egypt was in its final stage. On 15 November 2021, Dassault confirmed that the contract for the acquisition by Egypt of 30 additional Rafales to equip its air force came into force.³¹ 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 EUR) and two more contracts with the France-based missile manufacturing consortium MBDA and avionics firm Safran Electronics & Defense (together worth 200 million EUR).³² Additional concerns regarding transfers to Egypt are available in the following section.

III. CONCERNS RELATING TO EXPORTS OF SURVEILLANCE TECHNOLOGIES

16. France is one of the top five countries with the highest number of registered surveillance companies.³³ There are 45 French companies featured in the Surveillance Industry Index (SII) of Privacy International.³⁴ 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

²⁸ ECCHR, Aiding and abetting crimes in Yemen (2 June 2022). Available at: <<https://www.ecchr.eu/en/press-release/aiding-and-abetting-war-crimes-in-yemen/>>.

²⁹ ECCHR, 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/>>.

³⁰ Based on 26 airstrikes on civilians and civilian infrastructures, the organisations 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. Based on this Communication, on June 1, 2022, ECCHR and Mwatana for Human Rights submitted a criminal complaint before the Tribunal Judiciaire de Paris (Paris judiciary Court) requesting the specialised unit in war crimes and crimes against humanity in Paris to investigate the criminal liability of Thalès, Dassault and MBDA France for potential complicity in war crimes and crimes against humanity in Yemen.

³¹ Dassault Aviation, Press release: Rafale contract for Egypt came into force (15 November 2021). Available at: <https://www.dassault-aviation.com/wp-content/blogs.dir/1/files/2021/11/PR_Dassault-Aviation_Rafale-contract-for-Egypt_Coming-into-force.pdf>.

³² 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/>>.

³³ Privacy International, *The Global Surveillance Industry* (July 2016). Available at: <https://www.privacyinternational.org/sites/default/files/2017-12/global_surveillance_0.pdf>.

³⁴ Privacy International, *The Global Surveillance Industry* (July 2016) page 19. Available at: <https://www.privacyinternational.org/sites/default/files/2017-12/global_surveillance_0.pdf>.

French export control regime of surveillance technologies including dual-use products³⁵, as well as regarding the responsibility of companies in the sector.

A. Exports to Egypt

17. 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.³⁶ Yet, France has also 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.³⁷ 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.³⁸ 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.³⁹
18. 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.⁴⁰ 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

³⁵ Dual-use products are goods, software and technology that can be used for both civilian and military applications.

³⁶UN Human Rights Council, forty-third session, ‘Report of the Working Group on the Universal Periodic Review on Egypt’ (27 December 2019) UN Doc A/HRC/43/16, paragraph 31 recommendation 31.189.

³⁷FIDH & 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>>.

³⁸Olivier Tesquet, *Amesys: Egyptian trials and tribulations of a French digital arms dealer* (Telarama, 7 August 2020). Available at: <<https://www.telarama.fr/monde/amesys-egyptian-trials-and-tribulations-of-a-french-digital-arms-dealer,160452.php>>.

³⁹Assemblée 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* (18 November 2020) 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/>>.

⁴⁰FIDH & 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>>.

product and with authorisation of the competent French authorities.⁴¹ 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.⁴² 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.⁴³ In October 2021 Nexa Technology was indicted for complicity in acts of torture and enforced disappearance by the National Anti-Terrorism Prosecutor's Office in relation to the sale of CEREBRO to the Egyptian government.⁴⁴

19. Civil society organisations have also raised concerns over the sale by Idemia, a French multinational company specialised 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.⁴⁵
20. Considering 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 characterised by violations of the right to freedom of association, expression and assembly, the right to access to information and the right to privacy.⁴⁶ 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".⁴⁷ France supported a joint statement on Egypt

⁴¹Olivier Tesquet, *On a encore trouvé une société française qui vend du matériel de surveillance électronique à l'Égypte* (Telarama, 26 March 2018). Available at: <<https://www.telarama.fr/monde/on-a-encore-trouve-une-societe-francaise-qui-vend-du-materiel-de-surveillance-electronique-a-legypte,n5533721.php>>.

⁴²FIDH & 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>>.

⁴³FIDH, *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>>.

⁴⁴Le Monde, *Vente de matériel de cybersurveillance à l'Égypte : la société Nexa Technologies mise en examen* (28 November 2021). Available at: <https://www.lemonde.fr/pixels/article/2021/11/28/vente-de-materiel-de-cybersurveillance-a-l-egypte-la-societe-nexa-technologies-mise-en-examen_6103924_4408996.html>.

⁴⁵FIDH & 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>>.

⁴⁶Amnesty International, *Human Rights Council must address human rights crises in Egypt, India and China* (12 March 2021). Available at: <<https://www.amnesty.org/en/documents/ior40/3821/2021/en/>>. Cairo Institute for Human Rights Studies, *States break silence to condemn Egypt's abuses at UN human rights body* (12 March 2021). Available at: <<https://cihrs.org/states-break-silence-to-condemn-egypts-abuses-at-un-rights-body/?lang=en>>.

⁴⁷UN Committee 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, paragraph 29, see also Amnesty International *Egypt: Permanent State of Exception: abuses by the Supreme State*

delivered by Iceland that raised these very concerns at the UN HRC session in March 2021.⁴⁸

21. 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]”.⁴⁹ 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.”⁵⁰ President Macron’s statement runs counter to France’s obligations under international human rights law, as well as under the ATT.
22. After an investigation by the investigative media Disclose,⁵¹ which revealed that since 2014 three French companies had transferred surveillance technologies to Egypt with authorisation from the French authorities, members of the European Parliament sent a letter in December 2021 to the President of the European Commission as well as to other top EU Commission officials urging them “to examine initiating an infringement procedure against France for its infringements and failures to fulfil its obligations under successive regulations on the export of dual-use items.”⁵² In February 2022, the President of the European Commission replied assuring that “considering the Commission’s responsibility for the correct application of EU legislation, my services are in contact with the French competent authority to clarify the circumstances of these cases and their compliance with EU export regulations.”⁵³

B. Exports to China

Security Prosecution (2019). Available at <<https://www.amnesty.org/download/Documents/MDE1213992019ENGLISH.pdf>>

⁴⁸International Service for Human Rights (ISHR), *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>>.

⁴⁹ Deutsche Welle (DW), *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>>.

⁵⁰European 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>.

⁵¹ Disclose, *Surveillance made in France* (23 November 2021). Available at: <<https://egypt-papers.disclose.ngo/en/chapter/surveillance-dassault>>.

⁵² Mounir Satouri & al. *Letter on French exports of cyber surveillance tools to the Egyptian regime* (Brussels, 20 December 2021). Available at: <<https://media.euobserver.com/ae2811e4d3dc40bc0f101082d9ccb0bb.pdf>>.

⁵³ Ursula von der Leyen, European Commission, *Letter to Mounir Satouri*, (8 February 2022). Available at: <<https://media.euobserver.com/02a6c432b67881ac6245959e1206ebf2.pdf>>.

23. Amnesty International found evidence that Idemia, the French multinational company which sold biometric identification products to Egypt as described above, in 2015 also sold automatic facial recognition software to the Shanghai Public Security Bureau, which is a prominent actor in the Chinese state surveillance apparatus.⁵⁴ 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.
24. This sale is particularly problematic given the inherently 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.⁵⁵ 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.⁵⁶ 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.⁵⁷ 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.

IV. REGULATORY GAPS

A. Lack of transparency

Lack of transparency of arms export controls

25. 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

⁵⁴ Amnesty 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/>>.

⁵⁵ 'UN experts call for decisive measures to protect fundamental freedoms in China' (26 June 2020). Available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26006>>.

⁵⁶ Dr. Krisztina Huszti-Orbán and Prof. Fionnuala Ní Aoláin, *Use of Biometric Data to Identify Terrorists: Best Practice or Risky Business?* (Human Rights Center of the University of Minnesota, 2020). Report prepared under the aegis of the Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Available at: <<https://www.ohchr.org/Documents/Issues/Terrorism/biometricsreport.pdf>>.

⁵⁷ Amnesty 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>>.

obligations stemming from domestic and international arms regulations, as well as those under international human rights law. The high number of written and oral parliamentary questions⁵⁸ 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.

26. 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 several ways, even if it means better defining the scope of national defence secrecy, which is sometimes interpreted in an unnecessarily broad manner".⁵⁹ 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."⁶⁰

27. 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 2020,⁶¹ this annual report contains data provided by France in its annual report as required by Article 13(3) of the ATT. French law provides that "as of the 2015 financial year, the annual report on French arms exports is sent to Parliament by 1 June each year."⁶² Nevertheless, France published its annual report with delay this year, as the 2022 report should have been published in June but was eventually leaked in September 2022 by the investigative media Disclose.⁶³ Moreover, French civil society and the

⁵⁸Oral and written Parliamentary questions are searchable on the National Assembly website at the following address: <<https://questions.assemblee-nationale.fr/recherche/questions/default>>.

⁵⁹Assemblée 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* (18 November 2020) page 108. Available at: <https://www.assemblee-nationale.fr/dyn/15/rapports/cion_afetr/115b3581_rapport-information>.

⁶⁰Assemblée 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* (18 November 2020) page 21. Available at: <https://www.assemblee-nationale.fr/dyn/15/rapports/cion_afetr/115b3581_rapport-information>.

⁶¹Ministry 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>>.

⁶²Law No. 2013-1168 of 18 December 2013 on military programming for the years 2014 to 2019 and on various provisions concerning defence and national security, Article 11. Available at: <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000028338825/>>.

⁶³Disclose, *La France a autorisé des livraisons d'armements à la Russie en 2021* (15 September 2022). Available at: <<https://disclose.ngo/fr/article/la-france-a-autorise-des-livraisons-armements-a-la-russie-en-2021>>.

French Parliament⁶⁴ 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. For instance, in the 2022 report, France stated that arms exports to the UAE amounted to almost 230 million EUR,⁶⁵ but it did not declare the breakdown of weapons that have been delivered.⁶⁶ 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.

28. Given all these concerns, on 9 September 2022, Senators from the Committee on Foreign Affairs, Defence and Armed Forces tabled a proposal for a law to strengthen the control of the arms trade.⁶⁷ The proposed law includes provisions to include in the national report to Parliament dual-use material, weapon components, end-users and end-uses of exported material.⁶⁸ It also creates a parliamentary delegation in charge of controlling arms exports, composed of six deputies and six senators representing various political parties.⁶⁹ The text also abolishes global export licences⁷⁰, which are a source of opacity, and includes a definition of the notion of embargo in the Criminal Code and provides for the applicable sentences.⁷¹
29. As noted earlier, ECCHR and Amnesty International France have submitted to the “*Direction Générale des Douanes et Droits Indirects*” or “DGDDI” (French customs) freedom of access to information requests on exports of specific weapons and export licenses from France to Saudi Arabia and the UAE. The French customs did not reply 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

⁶⁴Amnesty International France, *Ventes d’armes et transparence : Les omissions de la France: ce que l’on nous dit pas, ce qui doit changer (II)* (2020). Available at <https://amnestyfr.cdn.prismic.io/amnestyfr/bbfbcbf3-54f9-4b88-a60c-f8253b6dbed2_ventes-armes-transparence-omissions-france.pdf>.

⁶⁵Ministry of the Armed Forces, *Rapport annuel au Parlement 2022 sur les exportations d’armement de la France* (Septembre 2022) page 118. Available at: <<https://www.defense.gouv.fr/rapport-au-parlement-2022-exportations-darmement-france>>.

⁶⁶Ministry of the Armed Forces, *Rapport annuel au Parlement 2022 sur les exportations d’armement de la France* (Septembre 2022) page 121-123. Available at: <<https://www.defense.gouv.fr/rapport-au-parlement-2022-exportations-darmement-france>>; Amnesty International, *Ventes d’armes: sans surprise, le gouvernement maintient l’opacité* (26 September 2022), available at: <<https://www.amnesty.fr/contrôle-des-armes/actualites/ventes-darmes-sans-surprise-le-gouvernement-maintient>>.

⁶⁷Sénat, *Proposition de Loi visant à renforcer le contrôle sur le commerce des armes et relative à la violation des embargos* (9 September 2022). Available at: <<https://www.senat.fr/leg/pp121-878.pdf>>.

⁶⁸ Sénat, *Proposition de Loi visant à renforcer le contrôle sur le commerce des armes et relative à la violation des embargos* (9 September 2022) Article 1. Available at: <<https://www.senat.fr/leg/pp121-878.pdf>>.

⁶⁹ Sénat, *Proposition de Loi visant à renforcer le contrôle sur le commerce des armes et relative à la violation des embargos* (9 September 2022) Article 2. Available at: <<https://www.senat.fr/leg/pp121-878.pdf>>.

⁷⁰Global export licences are granted to an identified recipient, without limitation of quantity or amount, in one or more transactions.

⁷¹ Sénat, *Proposition de Loi visant à renforcer le contrôle sur le commerce des armes et relative à la violation des embargos* (9 September 2022) Article 4 and Article 5-8. Available at: <<https://www.senat.fr/leg/pp121-878.pdf>>.

of the French Commission for Access to Administrative Documents on the matter.⁷² ECCHR and Amnesty International France have filed such a request. The legal challenge is still pending before the French administrative Court.⁷³

30. The content of the licenses as well as the risk assessment conducted by the French authorities cannot be subject to any effective 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 (...)”.⁷⁴ Similarly, following a second legal challenge brought by 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”.⁷⁵ Regrettably, the judge declared the legal challenge unfounded for the granting of an urgent order on the cancellation of the export.

Lack of transparency of exports of dual-use products including surveillance technologies

31. The cases in Egypt and China developed in the previous section of this submission illustrate major gaps regarding the ability of French authorities to scrutinise 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 for the number of individual licenses delivered for dual-use products and the total amount of authorisations granted.⁷⁶ Transparency in export licensing is essential to provide the public and French Parliament with oversight in the export licensing system.

⁷²French 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/>.

⁷³ ECCHR, Press release: *French arms sales to Saudi Arabia and the United Arab Emirates* (23 September 2021). Available at: <<https://www.ecchr.eu/pressemitteilung/transparency-in-french-arms-sales/>>.

⁷⁴ Cour Administrative d’Appel de Paris, 3ème chambre, ruling n°19PA02929 (26 September 2019). The petitioning organisations 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>.

⁷⁵ Cour Administrative d’Appel de Paris, ruling n°2002311/9 (7 February 2020).

⁷⁶Lasse Skou Andersen, Sebastian Gjerding & Maaïke Goslinga, *Europe’s exports of spy tech to authoritarian countries revealed* (Information, 23 February 2017). Available at: <<https://www.information.dk/udland/2017/02/europe-exports-of-spy-tech-to-authoritarian-countries-revealed>>; See also: Ministry of the Armed 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>>.

32. In its December 2020 report, the French National Assembly (the lower house of Parliament) called on the 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.⁷⁷ The National Assembly's report noted the lack of information provided on exports of dual-use technologies.⁷⁸ 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 the fulfilment of its human rights obligations. The detection of human rights risks posed by the surveillance industry is 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.
33. 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 carry out stringent human rights due diligence including on the end use of their products and services as per the duty of vigilance law and as recommended by the UN Working Group on Business and Human Rights in its September 2022 information note on the arms sector.⁷⁹
34. The recently adopted new EU export control regulation on dual-use products, entered into force 9 September 2021,⁸⁰ is supposed to, among other things, enhance information exchange between licensing authorities and the European Commission with a view to increasing transparency of licensing decisions.⁸¹ It also creates 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

⁷⁷Assemblée 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* (18 November 2020) page 114. Available at: <https://www.assemblee-nationale.fr/dyn/15/rapports/cion_afetr/115b3581_rapport-information>.

⁷⁸Assemblée 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* (18 November 2020) page 114. Available at: <https://www.assemblee-nationale.fr/dyn/15/rapports/cion_afetr/115b3581_rapport-information>.

⁷⁹Information Note by the UN Working Group on Business and Human Rights, 'Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights' (30 August 2022). Available at: <<https://www.ohchr.org/en/documents/tools-and-resources/responsible-business-conduct-arms-sector-ensuring-business-practice>>.

⁸⁰European Commission, Press release: *Strengthened EU export control rules kick in* (9 September 2021). Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_4601>.

⁸¹European Commission, Press Release: *Commission welcomes agreement on the modernisation of EU export controls* (9 November 2020). Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2045>.

humanitarian law”.⁸² 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.⁸³ France should take advantage of the implementation of the new EU regulation at the 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.

35. The State’s duty to respect and protect individuals’ human rights under international human rights law also entails a due diligence obligation of the State in relation to the activities of private companies in its territory or jurisdiction. Examples of relevant recommendations made by the UN Human Rights Committee and the UN Special Rapporteur on freedom of expression are available in Annex I to this submission.

B. Loopholes in decision-making regarding arms export licenses

36. Several declarations emanating from the Ministry of Armed Forces 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 IHL and international human rights law are out of the scope of their assessment process.⁸⁴ 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”.

37. Secondly, a legitimate ground for questioning the reliability of the decision-making process of French authorities to authorise arms exports to Saudi Arabia and the UAE is

⁸²Human 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>.

⁸³European Commission, Press Release: *Commission welcomes agreement on the modernisation of EU export controls* (9 November 2020). Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2045>.

⁸⁴Assemblée 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?’.

a wrongful interpretation of the ATT. In a statement to the French National Assembly in 2020,⁸⁵ the Minister of Armed Forces declared that the list of criteria established by Article 7 of the ATT⁸⁶ 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) of the ATT, 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.”⁸⁷

C. GAPS IN IMPLEMENTING THE DUTY OF VIGILANCE LAW AND THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS IN THE ARMS AND SURVEILLANCE INDUSTRY

38. The arms industry is a high-risk sector. In Europe and most specifically in France, it relies on an extensive supply chain to produce 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 human rights risk assessments (called “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 international human rights law or of IHL.⁸⁸ Consequently, no tailored measures are proposed in their plans to mitigate these risks.⁸⁹

⁸⁵Assemblée 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>, ‘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. (...)’.

⁸⁶Arms Trade Treaty, Article 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.’

⁸⁷Arms Trade Treaty Article 7(3) ‘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].

⁸⁸ The duty of vigilance law 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. LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre, art. L. 225-102-4.-I. Available at:

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

⁸⁹Amnesty International & others, *The law of vigilance of parent and outsourcing companies: year 1, companies must do better* (February 2019) pages 25-30. Available at:

39. Moreover, General Comment 31 of the Human Rights Committee recommends that States establish “appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law.”⁹⁰ Nevertheless, to this day and despite civil society requests, the French government has not put in place a monitoring mechanism on the implementation of the duty of vigilance law, nor has it provided a list of companies that are subject to the law.⁹¹
40. Being a shareholder in major French arms companies, the French State also bears heightened responsibility, including under the UN Guiding Principles on Business and Human Rights (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 that it acts according to a charter of Corporate Social Responsibility, this charter - according to our research - is not publicly available.
41. In line with the UN Working Group on Business and Human Rights’ guidance note on the arms sector, France should ensure that both its NAP on business and human rights and the duty of vigilance law fully cover the arms sector including in terms of enhanced human rights due diligence obligations given the high risks posed by this sector including in conflict-affected areas.⁹²

V. IMPLEMENTATION OF UN SECURITY COUNCIL RESOLUTION 1325 ON WOMEN, PEACE AND SECURITY AND OF FRANCE’S FEMINIST DIPLOMACY

42. 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 to “ensure the protection of women against all forms of violence in conflict and post-conflict

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

⁹⁰ UN Human Rights Committee, 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, paragraph 15.

⁹¹Duthilleul 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>.

⁹²Information Note by the UN Working Group on Business and Human Rights, *Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights* (30 August 2022). Available at: <<https://www.ohchr.org/en/documents/tools-and-resources/responsible-business-conduct-arms-sector-ensuring-business-practice>>.

countries.”⁹³ In the recently released 3rd NAP, France affirmed that “the third National Action Plan continues on with commitments and actions undertaken under the second National Action Plan to strengthen the protection of women and girls against violence and the protection of their rights in conflict and post-conflict situations”.⁹⁴ 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 IHL.

43. Moreover, France has no policy coherence, in that while it states a commitment to “support and protect human rights defenders,”⁹⁵ 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 (2013),”⁹⁶ France continues arms transfers to countries where these weapons could be used in serious violations of international human rights law and IHL as illustrated by examples in this UPR submission.
44. Since March 2018, France defined its foreign policy action as “feminist diplomacy”. The key areas of this policy are contained in the ‘International Strategy on Gender Equality’ for 2018-2022, which addresses several gender-related priorities for the French government under its foreign assistance. One of France’s commitments is to pay particular attention “to protecting women’s rights and addressing gender-based violence in conflict and post-conflict situations.”⁹⁷ France highlights that “in armed conflict zones, rape is a weapon of war”. However, France fails to mention that weapons are also used to commit or facilitate serious acts of gender-based violence.
45. The Strategy also reaffirms that “France systematically ensures that its arms exports comply with the provisions of the Arms Trade Treaty and its other international commitments”.⁹⁸ Yet, in its 2020 review of the ‘International Strategy on Gender

⁹³Ministry 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), page 8. Available at: <https://www.diplomatie.gouv.fr/IMG/pdf/pna_eng_vf_cle0c99c8.pdf>.

⁹⁴Ministry of Foreign Affairs and International Development, *France’s 3rd national action plan 2021-2025: Implementation of United Nations Security Council “Women, peace and security”*, pillar 2, page 15. Available at: <https://www.diplomatie.gouv.fr/IMG/pdf/pna_eng_vf_cle0c99c8.pdf>.

⁹⁵Ministry 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), page 8. Available at: <https://www.diplomatie.gouv.fr/IMG/pdf/pna_eng_vf_cle0c99c8.pdf>.

⁹⁶Ministry 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), page 8. Available at: <https://www.diplomatie.gouv.fr/IMG/pdf/pna_eng_vf_cle0c99c8.pdf>.

⁹⁷French Ministry for Europe and Foreign Affairs, *France’s International Strategy On Gender Equality (2018-2022)*; Strategy Report (2018) page 22. Available at: <https://www.diplomatie.gouv.fr/IMG/pdf/meae_strategie_-_en_cle076525.pdf>.

⁹⁸French Ministry for Europe and Foreign Affairs, *France’s International Strategy On Gender Equality (2018-2022)*; Strategy Report (2018) page 28. Available at: <https://www.diplomatie.gouv.fr/IMG/pdf/meae_strategie_-_en_cle076525.pdf>.

Equality’ , the *Haut Conseil à l’Égalité entre les femmes et les hommes* (High Council on Equality between men and women, *HCE*) stated that:

“The persistence of arms sales to countries known for their non-respect of women's fundamental rights raises questions about the competition and hierarchy of issues within French foreign policy. A real feminist diplomacy would require that women's rights, gender equality and sexual and reproductive health rights be permanently at the heart of diplomatic exchanges, and even that they be made a condition of these exchanges. The HCE, while understanding the need to take into account the various interests of the nation, maintains that feminist diplomacy can and must permeate more diplomatic exchanges and be applied to all French foreign policy. “⁹⁹

VI. RECOMMENDATIONS

46.

- Ensure a full ban of arms transfers and the termination of related services 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 IHL;
- Ensure that the relevant French export authorities comply with France’s obligations under, international law, including human rights treaties it is party to, and the EU Common Position and the Arms Trade Treaty (ATT). This includes ensuring that they include in their assessment for granting licenses continuous monitoring of whether the recipient country or end user is using licensed weapons in compliance with IHL and international human rights law..
- With regards to the Duty of vigilance law¹⁰⁰:
 - 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;
 - ensure that, as part of its implementation of the Duty of vigilance law, arms and surveillance companies include in any commercial contract related to

⁹⁹High Council on Gender Equality, *Feminist diplomacy: Moving from a slogan to rally support to true momentum for change* (November 2020) page 34. Available at:

<https://www.diplomatie.gouv.fr/IMG/pdf/rapport-diplomatie_feministe-v4-2_cle8a99a1.pdf>.i

¹⁰⁰ LOI n° 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>>

weapons and surveillance technologies conditions on compliance with international human rights law and IHL, including the contractual possibility of suspending or withdrawing products and services for non-compliance.

- Given its central role as a shareholder in major French arms companies:
 - ensure, through its shareholder prerogatives and obligations, the respect of the duty of vigilance by companies over which it exercises financial or operational control;
 - 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 international human rights law, including the ICCPR and ICESCR.

- Ensure meaningful legislative control over French arms exported, by increasing transparency around its decision-making process for authorising 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, take measures to assess and prevent the risk of human rights violations, including but not limited to the rights to privacy, freedom of expression, opinion and association, when authorising the export of such technologies, and make information on such assessments public and available to the Parliament.

- Take into full account France’s international human rights obligations when assessing its strategic interests with other States, such as in providing arms or surveillance technologies to Egypt as part of counter-terrorism cooperation agreements, and ensure democratic oversight over such decisions.

- As part of the implementation of its third NAP on UNSCR 1325 and of its ‘International Strategy on Gender Equality’, prevent the sale and transfer of French weapons and surveillance technologies, where these weapons could be used to commit

violence against women, gender-based violence, and repression of civil society including women human rights defenders and assess and monitor the gender and human rights impacts of such transfers.