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Fifth periodic report

France*

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Introduction

1. France hereby submits to the Human Rights Committee its fifth periodic report on implementation of the International Covenant on Civil and Political Rights.

2. This report was prepared in conjunction with civil society, through the National Consultative Commission for Human Rights (CNCDH). The Commission, which has existed since 1947 and whose existence was endorsed by Act No. 2007-292 of 5 March 2007, is made up of 30 representatives of civil society (non-governmental organizations (NGOs) and trade unions), 30 qualified personalities (representatives of religions and currents of thought, independent experts in international human rights bodies, former ministers and senior civil servants, lawyers, judges and academics) along with the Defender of Rights, a representative of the Economic, Social and Environmental Council, a deputy and a senator. The Commission's aim is to promote and protect human rights.

3. The draft report prepared by the Government was submitted to CNCDH at a working meeting. The Commission made its comments on the draft known to the representatives of the administrative authorities, orally and in writing, and these were taken into consideration as far as possible in the present report.

4. In its first three reports France had the opportunity to present the mechanisms safeguarding the rights guaranteed by the Covenant. This report, like the fourth report, is made up of responses to the recommendations made by the Committee (CCPR/C/FRA/4 of 18 July 2007) after considering the previous report.

5. The Government will not fail to keep the Committee informed, in connection with the list of issues, of any developments that may occur between the submission of this report and its consideration by the Committee.

6. In addition to the detailed replies to the Committee's recommendations, three major institutional and judicial developments aimed at effectively strengthening rights and freedoms since the submission of the last report¹ by the Government in 2007 ought to be brought to the Committee's notice.

7. These concern the Comptroller General of places of deprivation of liberty (Contrôleur général des lieux de détention), the Defender of Rights and constitutional priority.

A. The Comptroller General of places of deprivation of liberty

8. Act No. 2007-1545 of 30 October 2007, supplemented by decree No. 2008-246 of 12 March 2008, established the function of "contrôleur général des lieux de détention" (CGLPL, or Comptroller General of places of deprivation of liberty) pursuant to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This authority, whose task is "to monitor the conditions of admission and transfer of persons deprived of liberty in order to ensure that their fundamental rights are respected", may receive referrals from "any natural or legal person seeking to ensure respect for fundamental rights" with regard to acts or situations that may come within its mandate.

9. The Comptroller General is an independent institution, whose responsibilities extend to all detention centres (prison establishments, police and gendarmerie stations, waiting

¹ CCPR/C/FRA/4.

areas and administrative detention facilities, closed educational centres, disciplinary quarters in military barracks, customs-service detention centres and hospitals containing persons detained against their will). The institution's task is to ensure that the fundamental rights of persons deprived of liberty are respected while also preventing any violation of those rights. In order to perform this task, the Comptroller General may at any time visit any place on French territory where persons are deprived of their freedom and may receive referrals from any natural or legal person with a view to protecting fundamental rights, if they believe that fundamental rights are being ignored owing to conditions of detention, custody, holding or hospitalization, or the organization or operation of a particular service. The Comptroller General may also take up an issue on his or her own initiative. The Comptroller General addresses visit reports and recommendations to the ministers concerned and submits an annual report to the President of the Republic. In the event of any criminal or disciplinary failings, the Comptroller General may bring them to the attention of the State Prosecutor and the authorities vested with disciplinary powers.

10. As at 1 January 2012, the Comptroller General had issued 14 recommendations² and submitted four activity reports³ (for 2008, 2009, 2010 and 2011).

B. The Defender of Rights

11. The function of Defender of Rights was enshrined in the Constitution by the constitutional amendment of 23 July 2008. It was established by Organic Law No. 2011-33 and Ordinary Statute No. 2011-334 of 29 March 2011. This new institution, which is independent, took over the functions of Ombudsman (Médiateur) of the Republic, the Children's Ombudsman, the High Authority to Combat Discrimination and Promote Equality (HALDE) and the National Security Ethics Committee (CNDS). Its functions are to protect individual rights and freedoms in dealings with administrative authorities, defend and promote the best interests and rights of the child, combat all forms of discrimination prohibited by the Act, promote equality and ensure that persons providing security services comply with professional ethical rules.

12. In order to achieve its goals, the Defender of Rights may receive individual complaints and has powers to investigate, seek friendly settlements and even intervene in legal proceedings on behalf of a complainant.

13. Besides dealing with individual complaints, he aims to prevent any violation of rights by taking specific action to promote equality, in particular by helping the leading players in the areas of employment, housing, education and access to goods and services, public and private, to implement changes in their practices. He makes proposals for legal or regulatory amendments and recommendations to both public and private authorities. He conducts and coordinates studies and research.

C. Constitutional priority

14. The concept of constitutional priority was established by the constitutional amendment of 23 July 2008 and Organic Law No. 2009-1523 of 10 December 2009. Since 1 March 2010, any defendant has been able to contend, in litigation before an

² The recommendations may be consulted at: <http://www.cglpl.fr/rapports-et-recommandations/dernieres-recommandations/>.

³ The reports may be consulted at: <http://www.cglpl.fr/rapports-et-recommandations/rapports-annuels-d%E2%80%99activite/>.

administrative or other court, that a legislative provision constitutes a breach of the rights and freedom that the Constitution guarantees. Before the amendment, only members of parliament, the Prime Minister and the President of the Republic could contest the constitutionality of a legislative provision, and only before it came into effect. Thanks to the amendment defendants may obtain greater protection of their rights and freedoms, since a legislative provision that has been declared unconstitutional may no longer be applied and will disappear from the legal system.

15. In qualitative terms, the Constitutional Council has had important questions relating to freedoms and fundamental rights referred to it and has held to be unconstitutional a number of legislative provisions submitted to it in accordance with this procedure. For example, questions relating to legislation on custody have been referred to it.

16. Between March 2010 and July 2012, 281 questions were transmitted to the Constitutional Council by the Council of State (Conseil d'État) and the Court of Cassation, a sign that defendants and their counsel have been using this new remedy to defend their fundamental rights.

I. Recommendation in paragraph 10 of the Committee's concluding observations

17. The reservation and declaration made in respect of article 4, paragraph 1, and article 27 of the Covenant have to do with the need to align the provisions of those articles with those of the French Constitution.

18. The general reservation to the Charter of the United Nations and the declaration concerning articles 19, 20 and 21, citing the European Convention for the Protection of Human Rights and Fundamental Freedoms, make it possible to ensure consistency among France's treaty obligations.

19. Since the last report, submitted in 2007, the French Government has requested an amendment to the reservation concerning article 14, paragraph 5, following the introduction of the possibility to appeal decisions rendered by the Court of Assizes in criminal cases. The reservation concerning article 14, paragraph 5, will refer only to some offences tried by the police courts – for example, certain driving offences such as illegal parking fines. Even these decisions may be appealed in the Court of Cassation.

20. The declaration on article 13 concerning the expulsion of aliens legally on French territory is justified by the applicable domestic legislation, under which an expulsion measure may be carried out without a prior administrative procedure, in particular in cases of utmost urgency. The Government wishes to recall that in this field, in accordance with the obligations arising from the French Constitution and all its international commitments, administrative expulsion orders may be appealed before the national courts and are thus subject to effective judicial control.

21. France's reservation to articles 9 and 14 of the Covenant is maintained owing to the rules governing the disciplinary regime applicable to members of the armed forces. As was explained in previous reports, the deprivation of liberty referred to as "arrest" is one of the disciplinary sanctions foreseen by the law and applicable to members of the armed forces (art. L. 4137-2 of the Defence Code). The Government considers that this disciplinary sanction does not fall within the scope of articles 9 and 14 of the Covenant.

22. The French Government does not plan to withdraw or amend any other reservations or declarations.

II. Recommendation in paragraph 11 of the Committee's concluding observations

23. As has been consistently explained in all its previous periodic reports, France does not recognize the existence of minorities within its population.

24. This approach is a result of France's history and the principles inscribed in the French Constitution, which states in particular in article 1 that: "France shall be an indivisible [...] Republic".

25. This notion, according to which there are no subdivisions within the French people, is a philosophical response to a desire on the part of the constitution makers to allow all citizens the fundamental individual freedom to decide whether or not to define themselves according to a given culture, religion or language and not to be automatically included in accordance with pre-determined criteria implying that they belong to a given group.

26. France made its position very clear when it ratified the Covenant, since article 27 was the subject of an interpretative declaration as was recalled earlier (see above, the response to the recommendation contained in para. 10). Moreover, the Human Rights Committee has received individual complaints in this connection and on two occasions decided that the communications were inadmissible.⁴

27. The legal consequences of this philosophical conception have been reiterated by the supreme courts of the French State.

28. The Constitutional Council, in a judgement on the constitutionality of draft legislation, ruled that the reference therein to "the Corsican people, which is a constituent part of the French people" was unconstitutional, as the Constitution only recognizes the French people, composed of all French citizens without distinction as to origin, race or religion (Decision No. 91-290 DC of 9 May 1991).

29. Similarly, in 1999 it ruled that the European Charter for Regional and Minority Languages "by conferring specific rights on 'groups' of speakers of regional or minority languages, within 'territories' where those languages are practised, is contrary to the constitutional principles of the indivisibility of the Republic, equality before the law and the unity of the French people" (Decision No. 99-412 DC of 15 June 1999).

30. The Council of State, called upon to give its opinion on the planned ratification of the framework Convention for the protection of national minorities, stated that it was by its very purpose contrary to the Constitution, which affirms that "France shall be an indivisible Republic" and the principle that the French people is composed of all French citizens "without distinction as to origin, race or religion" (Opinion of 6 July 1996).

31. The fact that the legal status of minorities is not recognized does not, however, prevent the application of many policies designed to assert France's cultural diversity and support individual choices in this field.

32. These policies are aimed in particular at ensuring full freedom of religion and conscience and encouraging the learning of the "regional languages".

33. In order to meet the expectations expressed by the Committee when France submitted its previous report, emphasis is also laid on specific action taken to preserve and

⁴ Communication No. 220/1987 (*T.K. v. France*), decision of 8 November 1989; Communication No. 222/1987 (*M.K. v. France*), decision of 8 November 1989.

promote the culture of the indigenous populations of the overseas departments and territories.

A. Freedom of thought, conscience and religion

34. Religious freedom in France was enshrined by the Declaration of the Rights of Man and of the Citizen of 1789, according to which “No man ought to be molested on account of his opinions, not even on account of his religious opinions, provided his manifestation of them does not disturb public order”. The Preamble to the 1946 Constitution reaffirms that “all human beings, without distinction as to race, religion or belief, possess inalienable and sacred rights”, while article 1 of the Constitution of 4 October 1958 states that “France shall be an indivisible, secular, democratic and social republic. It shall ensure the equality of all citizens before the law, without distinction on grounds of origin, race or religion. It shall respect all beliefs.”

35. In accordance with these constitutional principles, the French Republic guarantees the free practice of religion, without distinction. Article 1 of the Act of 9 December 1905 on the separation of Church and State provides that “the Republic shall ensure freedom of conscience. It shall guarantee the free practice of religion, subject only to restrictions imposed in the interests of public order”.

36. Enshrined in law over a century ago, secularism is a founding value of the French Republic. It has three dimensions:

- The neutrality of civil servants with regard to all opinions and beliefs. Neutrality is the common law of all civil servants in the exercise of their duties;
- Freedom of conscience: secularism is not merely state neutrality and tolerance. It cannot ignore religious practice. Secularism is not a denial or confinement of religions. It is not a given spiritual option but the condition of the very existence of all options. It is the condition of the respect of the most profound personal choices in an open society where history and heritage have been fashioned partly by the great spiritual or religious traditions;
- Pluralism: all convictions are entitled to the freedom of expression. Secularism implies equal attention being paid by the authorities to the various religions.

37. Secularism is the condition of the respect of the most profound personal choices in an open society. It enables the expression of all religious convictions, within limits set only by public order. Secularism is a principle of freedom.

38. In the name of this freedom, French legislation provides explicitly for authorized leave for the observance of Jewish, Muslim and Armenian religious holidays, and for major events specific to each faith (such as first holy communion or bar mitzvahs). For example, the circular of 23 September 1967, applied within the civil service, is recalled at the beginning of each calendar year with a list of all the feast days concerned. Special provisions have been enacted on ritual slaughter in abattoirs according to the rules of the Jewish and Muslim faiths. Provision is also made for special areas in cemeteries for members of religions other than Christianity.

39. French law allows the authorities to grant indirect aid for the construction or maintenance of places of worship, in the form of loan guarantees or long duration lease arrangements. As far as Muslim places of worship are concerned, in 1999 there were just over 1000 mosques, most of which were small prayer rooms. Most towns and cities with large numbers of Muslims are committed to helping them install places of worship (almost 200 projects). Currently, the number of mosques in metropolitan France stands at about 2000, most of which are in medium-sized buildings.

40. The public authorities have long encouraged religious communities to establish representative institutions to allow for daily dialogue with administrations and elected officials. Examples are the Episcopal Conference for the Catholic church, the Consistory of Paris (Consistoire de Paris), which dates back to 11 December 1808, which deals with the religious affairs of a Jewish community of almost 600,000 persons (places of worship, religious instruction, the celebration of marriage and ritual slaughter) and, since 1905, the Protestant Federation, encompassing most of France's protestant churches and associations. It represents French Protestantism to the public authorities and the media, and provides services in areas such as television (Présence Protestante), radio, army and prison chaplaincies, bible study and ecumenical relations. More recently, the French Council of the Muslim Faith (CFCM) was established to represent the Muslims of France. It deals with issues including the construction of mosques, Muslim spaces in cemeteries, the organization of religious holidays, the appointment of Islamic clerics for hospitals, prisons and secondary schools, and the training of imams.

41. France implements a proactive policy that aims to punish very harshly and prevent attacks on people and property that are motivated by religious beliefs. In the case of very many offences the Criminal Code makes an aggravating circumstance of the fact that a crime was committed with racial and religious motives (see below, the response to the recommendation contained in para. 24 of the Committee's concluding observations). The State finances arrangements to make places of worship safer, for example providing guards at places of worship during major religious feasts, so that everyone may freely practise his or her religion and the dignity and orderliness of places of worship are preserved.

B. The policy on teaching regional languages

1. General background

42. Article 75-1 of the Constitution, introduced by the constitutional amendment of 23 July 2008, states that: "The regional languages are part of the heritage of France".

43. The introduction of the teaching of regional languages was confirmed by section L312-10, paragraph 1, of the educational code, which specifies that it shall be provided according to the rules defined by agreements between the State and the territories where the languages are taught.

44. Currently, the following regional languages are taught in French schools: Breton, Basque, Catalan, Corsican, Creole, Gallo, Occitan-Language d'Oc, the regional languages of Alsace, the regional languages of Moselle, Tahitian and the Melanesian languages (Ajié, Drehu, Nengone and Paici).

45. The development of the teaching of regional languages is based on two pillars: the existence of a policy on regional languages defined regionally and integrated into the language-teaching policy decided on by the chief administrative officer, and the support for that policy by an active partnership set up when such an agreement is signed.

46. The teaching of regional languages was extended to continuous training by the creation of a regional language diploma by the Order of 13 December 2010 (Official Gazette of 29 December 2010). Currently this diploma can be awarded for Breton and Occitan.

(a) A renewed and extended agreement framework

47. Agreements have been signed or renewed between the State and the regional authorities. Three are for Occitan and the regional education authorities (académies) where

it is widely spoken. Others concern Basque, Catalan, Corsican, Breton and the regional languages of Alsace.

48. The partnership agreement on the teaching of Creole signed on 22 February 2011 by the Minister of National Education and the president of the Martinique Region, made the teaching of the Creole language and culture official and defined the arrangements for offering Creole classes at all levels of schooling.

(b) *The organization of education*

49. There are two arrangements for organizing the teaching of regional languages in primary schools. Either it is included in the normal school day, the most widespread model, or it is given in bilingual classes, in French and the regional language. In the bilingual classes, teaching often begins at nursery school. Each language is taught for an equal number of hours, with the French classes being maintained in full in elementary school. The regional language is also used to teach many subjects. When they reach lower secondary school, pupils may continue classes in the regional language. The rules and regulations for bilingual teaching on the basis of equal hours have been renewed. Since 2002, teachers with qualifications in regional languages may be recruited by special competition in the académies concerned. They can also sit an optional regional language test in the recruitment exam. Under the law, regional languages benefit from a “strengthening of policies in favour of regional languages in order to facilitate their use. Act No. 51-46 of 11 January 1951 on the teaching of local languages and dialects is applicable”. In secondary schools, regional languages can be used for other subjects, in accordance with the timetables and curricula applied in the classes concerned.

(c) *Numbers*

50. During the 2009/10 school year, 219,763 pupils in primary schools (aged 6 to 11 years), lower secondary schools (aged 11 to 15 years) and upper secondary schools (aged 15 to 18 years) were taught regional languages. Half and half bilingual teaching, at all three levels of schooling, is chosen by 51,765 pupils, 42,919 of them in primary schools (35,880 in State schools and 7,039 in private schools), 8,281 in lower secondary schools and 565 in upper secondary schools.

2. Teaching of regional languages in primary schools

51. At primary school, regional languages are taught (to 116,236 pupils) according to four types of arrangement, except in special cases (in Corsica and French Polynesia):

- One and a half hours of teaching of a regional language a week: in 2009, 47,543 pupils were taught in this way;
- Extra classes in a regional language: 21,601 pupils;
- Bilingual teaching, half and half: 42,919 pupils;
- Total immersion in a regional language: 4,173 pupils.

3. Teaching of regional languages in secondary schools

52. The teaching of regional languages can be found in 13 académies in metropolitan France. In the 2009/10 school year, 103,527 pupils in private and State lower secondary schools and upper secondary schools under the académies concerned studied a regional language.

4. Teachers

53. At the primary level, regional languages are taught by teachers who have been authorized by the education authority inspector or who have passed the special teachers' recruitment exam.

54. At the secondary level, regional languages are taught by a body of teachers with the Certificate of Aptitude for Secondary School Education (CAPES) in regional languages, all of which, with the exception of Corsican in the case of the Corsican CAPES, are in two languages. The subjects concerned, depending on the language, include history-geography, foreign languages, English and Spanish, modern languages, and mathematics in the case of Breton and Tahitian.

55. In 2009/10, the number of teachers qualified to teach regional languages stood at 570.

56. In continuous training, the consideration given to the teaching of regional languages was extended thanks to the creation of a regional languages diploma by the Order of 13 December 2010 published in the Official Gazette of 29 December 2010.

5. The beneficiaries of the teaching of regional languages

57. In lower secondary schools:

- Occitan-Language d'Oc: 19,758 pupils, or 1.8 per cent of pupils in lower secondary schools and upper secondary schools in eight regional education authorities (académies);
- Tahitian: 9,108 pupils;
- Corsican: 7,874 pupils (or 49% of pupils);
- Breton: 4,325 pupils or 2 per cent of pupils (1.1% in State schools and 3% in private schools) in 36 per cent of lower secondary schools;
- Basque: with 2,633 pupils, Basque is chosen by 10 per cent of pupils in the lower secondary schools in the department of Pyrénées-Atlantiques, 15 per cent of whom attend private schools and 6 per cent State schools, in 29 per cent of the lower secondary schools in the department;
- Catalan: 2,268 pupils, or 10.6 per cent of pupils, in 70 per cent of the lower secondary schools;
- Creole: 2,615 pupils in the four overseas departments;
- Melanesian languages: 2,080 pupils.

58. In upper secondary schools:

- Occitan-Language d'Oc: the main regional language at this level, with 3,722 pupils; 9 per cent of upper secondary schools offer it;
- Regional languages of Alsace: 2,708 pupils, in 22 per cent of upper secondary schools;
- Corsican: 2,415 pupils (+ 1,058 pupils in 2007/08), or 11 per cent of pupils;
- Tahitian: 1,445 pupils;
- Breton: 824 pupils, or less than 1 per cent of pupils, in 18 per cent of upper secondary schools;
- Melanesian languages: 757 pupils (+ 118 pupils in 2007/08);

- Catalan: 663 pupils (+19 pupils in 2007/08), or 5 per cent of pupils, in 45 per cent of upper secondary schools;
- Basque: 534 pupils (-372 in 2007/08), or 2.4 per cent of pupils (4% in private schools and 2% in State schools), in 17 per cent of upper secondary schools.

C. Special arrangements for overseas departments and territories

1. Consideration for the characteristics of the indigenous communities in French law

59. By voting in 2007 for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, France made a commitment to respect the provisions of the Declaration throughout its territory, including its overseas departments and territories. They include communities who meet the criteria for defining “indigenous peoples”. These are the Amerindians in French Guiana, Polynesians in French Polynesia, Kanaks in New Caledonia, Mahorais in Mayotte and Wallis and Futuna Islanders in Wallis and Futuna. These territories differ from one another and as does the situation of the populations inside each territory. Whereas in French Guiana, the Amerindians account for only 5 per cent of the population and in New Caledonia, Kanaks represent just under 50 per cent of the population, in Wallis and Futuna, Mayotte and French Polynesia the indigenous communities are the majority of the local population. They are for the most part governed by specific statutes, which set rules and share power among the different authorities. Certain territories have a status that is similar to that of the regions of metropolitan France, while others have a local government with wide-ranging powers. A presentation of the institutions of the overseas departments and territories is attached to this report.

60. While respecting the principles of indivisibility, equality and unity, France has set about respecting the express aspirations of the populations of its overseas departments and territories. These constitutional principles do not allow France to ratify International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Despite this incompatibility France has not been prevented from adopting ambitious policies in favour of the populations in its overseas departments and territories. France has taken their wishes into consideration and for a long time has incorporated the practices, customs and local knowledge of the communities living in the overseas departments and territories into its policies on the recognition and protection of indigenous populations.

61. In the case of the Kanaks in New Caledonia, the provisions of the Nouméa Accord often closely resemble those of the United Nations Declaration on the Rights of Indigenous Peoples. The Nouméa Accord on the future of New Caledonia was signed between the French State and the political representatives of the indigenous population. It was signed by the representatives of the two main political families of New Caledonia, the National, Kanak and Socialist Liberation Front (Front de Libération Nationale Kanak et Socialiste (FLNKS)), a grouping of political parties representing the majority of Kanaks, and the representatives of the French Government. The Statutory Act of New Caledonia translated the provisions of this agreement into law.

62. In accordance with the standing invitation to the United Nations special procedures issued by the French Government, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James Anaya, visited New Caledonia in February 2011. The Minister for Overseas France received Mr. Anaya in Paris in June 2011. During his visit he was able to note the consensus concerning the Nouméa Accord (report A/HCR/18/35/Add.6).

63. France has chosen not to adopt a comprehensive, uniform policy on the populations of its overseas territories, owing to their considerable diversity. Instead it has adopted

specific measures for each community, taken following consultations with their representatives. The Acts governing New Caledonia (Act of 19 March 1999), French Polynesia (Act of 27 February 2004) and Mayotte (Act of 7 December 2010) were adopted following the consultation of the local assemblies of the territories. Consultations of the communities were held in New Caledonia (decree of 20 August 1998) and Mayotte (decree of 20 January 2009). The establishment of the advisory council of the Amerindian and Bushinenge communities has enabled them to be consulted on any project or proposal before the general or regional council with consequences for the environment or habitat or concerning the communities' cultures. The measures taken by the French Government were tailored to each community, taking into account the local situation, in cultural, social and economic terms.

64. These specific features have proved easier to take into account in the statutes of the overseas territories (New Caledonia, French Polynesia and Wallis and Futuna) than in those of the overseas departments (French Guiana, and Mayotte since 31 March 2011). The "legislative assimilation" system, or the direct application of the national laws of metropolitan France in the overseas departments, may have made it more difficult to understand the specific situations of the indigenous populations, which were unknown in metropolitan France. However, the greater autonomy granted to the authorities of the territories of French Polynesia and New Caledonia, along with the transfer of powers, helped local communities to have their needs taken into account.

65. In line with resolution 18/8 of the Human Rights Council, entitled "Human rights and indigenous peoples", and in view of the celebration of the fifth anniversary of the adoption by the United Nations General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples, France answered the questionnaire established by the Expert Mechanism on the Rights of Indigenous Peoples on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration. In its answers it outlined the measures adopted in the overseas departments and territories to achieve the objectives of the full participation of their populations in the taking of decisions that directly or indirectly concerned their ways of life. It took into consideration the cultural traditions and aspirations of the populations, in particular land-related issues. It encouraged the teaching of local and regional languages and cultures and the restoration, conservation and protection of their sites.

2. Policy on regional languages in the overseas departments and territories

66. France has adopted a policy aimed at protecting and promoting its regional languages. Of the 75 regional languages recorded in addition to French, about 50 are spoken in the overseas departments and territories. The actions taken include the introduction of protection arrangements, the teaching of these languages, the conducting of academic research and the raising of culture awareness.

67. Established in October 2001 and attached to the Ministry of Culture and Communications, the Department for the French Language and the Languages of France has confirmed the special role conferred by the State on these languages in the country's cultural life.

68. In order to take local customs into account in France's overseas communities, a body of special regulations has been developed for the indigenous communities on the promotion of regional languages and educational and cultural strategies in those communities. What was established in French Guiana differs from the approach taken in New Caledonia or French Polynesia to take into consideration the specific characteristics of each community and the realities of geography and custom. Sometimes the power for implementing these policies is shared, as in New Caledonia or French Polynesia, where the

local authorities have responsibility for the school curricula or the promotion of local culture.

69. At the instigation of growing social demand for the recognition of local cultural identities, local languages have been introduced into school courses at a rate of between three and five hours a week. The French education system offers regional languages a special role and they can be studied by pupils in both metropolitan France and the overseas departments and territories. The curricula take account of the linguistic realities of the indigenous populations. The Teacher Training Institutes hold introductory courses in local languages. In Polynesia, a compulsory Tahitian exam is required for the recruitment of the territory's teachers. Universities conduct research programmes to increase knowledge of these languages. France's policy on multilingualism also envisages actions to promote the use of these languages in literature, live performance and the media.

70. Thanks to all these developments in legislation the importance of regional languages in the overseas departments and territories has been increased but there is still room for improvements. Consequently, in December 2011 France organized a conference on multilingualism in the overseas departments and territories, in French Guiana. At the conference a set of new recommendations was drawn up, in line with principles that might lead to the introduction of a Charter to improvement the framework and actions undertaken to protect local languages. Language practices were reviewed and the tools needed for spreading languages were presented. French is not the mother tongue of the majority of the populations of the overseas departments and territories, whose linguistic heritage is rich. A specific language policy is therefore needed to reconcile a good command of French with the enhancement of the regional languages. The aim of the conference was to frame a linguistic policy in the overseas departments and territories, and foster the coexistence of all the different languages alongside French.

71. In French Polynesia, since its creation in 1972 the Tahitian Academy (Académie Tahitienne – Fare Vāna'a) has endeavoured to respond to its mission, namely the conservation and promotion of the Tahitian language, with the support of successive governments. Fare Vāna'a has been entrusted with protecting and enriching the language, by standardizing its vocabulary, grammar and spelling, studying its origins, development and relationship with other Pacific languages, encouraging the publication of works written in Tahitian and the translation into Tahitian of world literature, turning Tahitian into a research tool for anyone with an interest in folklore, ethnology, archaeology, history and, in general, all aspects of science concerning the Pacific, restoring to the Tahitian language the nobility of its age-old tradition, promoting widespread education in the Tahitian tongue, and ensuring the correct use of the Tahitian language in all forms of expression (songs, advertisements, etc.).

72. In New Caledonia there is also an Academy of Kanak languages (ALK). A result of the Nouméa Accord but not established until 2007, this fledgling state body, run by the Government of New Caledonia, aims to "set the rules of usage and contribute to the promotion and development of all Kanak languages and dialects", which are part of the Austronesian family of the Oceanic group. The Academy is comprised of eight regional sections in the eight traditional areas. Each is made up of a representative, an education specialist and a reference linguist, who oversees and monitors the work carried out. The education specialists are appointed by the Customary Senate for a renewable five-year period. They have to speak and write the language or one of the dialects of the area and be acquainted with its customs. The Academy undertakes actions to enhance and promote the Kanak languages and the associated oral heritage: talks, seminars, work meetings with different partners, activities, festivals, radio shows, etc.

3. Promotion and protection of culture

73. The Ministry of Culture is present in Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, and Saint-Pierre and Miquelon via the regional directorates of cultural affairs (directions régionales des affaires culturelles (DRAC)). Each directorate is entrusted with carrying State cultural policy in the areas of the knowledge, conservation and enhancement of heritage, the promotion of architecture, support for artistic creation and dissemination in all their components, the development of books and reading, artistic and cultural education and the transmission of knowledge, the promotion of cultural diversity and widening of publics, development cultural economics and cultural industries, and promotion of the French language and the languages of France. It sees to the implementation of State actions, develops cooperation with the territorial authorities and where necessary provides them with technical support.

74. The actions taken to protect the culture of the indigenous populations are many and varied. There are about 20 museums in the overseas departments along with the Musée du Quai Branly in Paris. Inaugurated in June 2006, this museum honours the arts and civilizations of Africa, Asia, Oceania and the Americas, allowing the visitor to wander across the planet discovering its indigenous peoples and their cultures and traditions, focusing to a large extent on the civilizations of France's overseas departments and territories.

75. There are theatres in Réunion, Guadeloupe and Martinique. In September 2011, during a visit to French Guiana, the Minister of Culture announced plans to open a theatre there.

76. In accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention for the Safeguarding of the Intangible Cultural Heritage, ratified by France in 2006, the State has begun drawing up an inventory of its intangible cultural heritage. It has already listed the ritual of Maraké in French Guiana (an initiation ritual found only in Amerindian communities) and the intangible cultural heritage of Aije-Aro in New Caledonia.

77. In New Caledonia, the Nouméa Accord of 5 May 1998 and the Organic Law of 19 March 1999 on New Caledonia confirmed the preponderant role of the provinces in terms of culture. In order to support the cultural development of New Caledonia, a department of cultural affairs, under the High Commissioner's office, was established in 1989. Renamed the delegation of cultural affairs in 1992, in January 2001 it became the cultural affairs mission. According to the French Constitution State cultural affairs missions are intended to guarantee all citizens equal access to culture. In New Caledonia this has been translated into the provision of financial support for the cultural policies of the provinces, Government and communes, and the offering of advice and proposals to all cultural players in New Caledonia.

78. Article 215 of the Act of 19 March 1999 stipulates that "in order to promote its cultural development, New Caledonia, having consulted the provinces, signs a special agreement with the State". This cultural and political agreement was signed in Paris on 22 January 2002 by the Ministry of Overseas France and the president of the Government of New Caledonia in the presence of the presidents of three provinces. This 11-point agreement provides a specific framework for the priority actions to be taken by the State in the cultural field in New Caledonia.

79. One such action was the inauguration in 1998 of the Centre Culturel Tjibaou, a public establishment set up to promote Kanak culture, under the Matignon accords. Its name is a homage to Kanak pro-independence leader Jean Marie Tjibaou. It is run by the agency for the development of Kanak culture. It is a hub of Kanak artistic creation and a centre for the dissemination of Kanak contemporary culture.

80. In French Polynesia, responsibility for culture lies exclusively with the Government of Polynesia. The Ministry of Culture, Crafts and Family Affairs oversees a dynamic policy for the promotion of Polynesian culture. In French Polynesia there are two museums, an arts conservatory, a house of culture and two regional education authorities (for Polynesia and the Marquesas Islands). For more than 30 years, the arts conservatory of French Polynesia has endeavoured to promote and defend the arts; the theoretical and practical teaching of music, singing, dancing and the plastic arts, preparing students and helping them gain access to education; promoting Polynesian dancing and singing; preserving by the written and mechanical reproduction of the Polynesian musical heritage; and establishing and promoting all kinds of orchestras and choirs. The conservatory offers classes in classical art and also in the traditional arts, such as Ori Tahiti (traditional dance), Orero (public speaking), percussion, the guitar and the ukulele.

81. Since 2000, the Day of reo mā'ohi has been held every 28 November. Reo mā'ohi is the generic name given to the vernacular dialects of the archipelagos of French Polynesia. On the Day of reo mā'ohi this unique heritage is promoted through a number of cultural events: talks, plays, exhibitions, etc.

82. For 125 years, every July, all the islands of Polynesia have observed Heiva (or "festival"), formerly known as Tiurai ("July", in Tahitian), to celebrate Polynesian culture. Dancing, singing, dancing and singing competitions and sports competitions (pirogue races, javelin throwing, fruit carrier races, stone lifting, individual and team competitions) are held over several weeks. Heiva revives the past and gives the younger generations a sense of tradition. It allows the culture to be expressed and develop freely through the different activities that take place during the event. Although culture is the responsibility of the Government of French Polynesia, the French Government lends its support when necessary, for example in support of Polynesia's requests for the Marquesas Islands and the Marae Taputapuhatea to be proclaimed as UNESCO World Heritage sites.

III. Recommendation in paragraph 12 of the Committee's concluding observations

83. In its 2008 recommendations the Committee called on France to collect ethnic and racial statistics.

84. The reasons for the lack of such statistics were explained to the Committee at length in the State party's first set of responses to the Committee's recommendations (CCPR/C/FRA/CO/4/Add.1).

85. The French conception of society, founded on equality and non-discrimination, and recognizing only one indivisible French people, unequivocally prohibits the collection of statistics disaggregated on the basis of racial or ethnic origin. This is reflected in article 1 of the Constitution, which specifies that the Republic ensures "the equality of all citizens before the law, whatever their origin, race or religion". In 2007 the Constitutional Council was called upon to give its opinion on the constitutionality of draft legislation authorizing the collection of data in which people's "racial or ethnic origins would appear directly or indirectly" with a view to "measuring diversity (...), integration and discrimination". The Council confirmed that "although the processing of data necessary for carrying out studies regarding the diversity of origin of people, discrimination and integration may be done in an objective manner, such processing cannot, without infringing the principle laid down in Article 1 of the Constitution, be based on ethnicity or race" (decision No. 2007-557 DC, 15 November 2007).

86. The question of whether or not to have statistics based on notions of origin or race has repeatedly been the subject of much debate since 2007. It is clear from the various

reports produced since then that, in the opinion of all those concerned, having national statistics based on ethnic origin or race would be more disadvantageous than advantageous in terms of the republican values on which the traditions of the French State are founded.

87. These studies highlighted the fact that the lack of statistics based on these criteria did not stand in the way of a better understanding of the phenomena of discrimination by means of other statistical data.

88. In its report of 15 May 2007, the National Commission on Information Technology and Freedoms (CNIL) expressed strong reservations about creating a national nomenclature of “ethno-racial” categories, in particular owing to the “risks of strengthening stereotypes, stigmatization, community-based reactions and unclear, unscientific, simplistic and inaccurate classifications”.

89. In its report of December 2008, an advisory committee on the Preamble to the Constitution, chaired by Ms. Simone Veil, opposed any amendment to article 1 of the Constitution, which upholds “the equality of all citizens before the law, whatever their origin, race or religion”, stating that “it is reasonable to think that taking account of the name, geographic origin or nationality prior to the acquisition of French nationality, taken together with the ‘feeling of belonging’ expressed by the interviewees, could produce results comparable to those made possible by use of an ethno-racial frame of reference”.

90. In March 2009, the President of the Republic entrusted a committee for the measurement and evaluation of diversity and discrimination, chaired by the director of the National Institute for Demographic Research (INED), with the task of assessing “the arrangements and tools needed to observe and ascertain diversity and discrimination in all its forms in France”. It submitted its report on 5 February 2010 and, in particular, proposed a set of criteria (nationality and mother tongue) that would improve knowledge of the diversity of the population by means of statistics.

91. However, the committee’s recommendations were criticized by human rights defence associations and an alternative advisory committee on “ethnic statistics” and discrimination firmly opposed the committee’s conclusions.⁵

92. The latest examination of this issue was carried out by CNCDH, which on 22 March 2012⁶ issued an opinion on “ethnic” statistics. The Commission decided against the authorization of gathering statistics on an “ethnic” basis, expressing a wish that “quantitative tools should be established that improve implementation of the right to non-discrimination”.

93. On 11 May 2012, the Defender of Rights and CNIL jointly prepared a guide⁷ to help businesses gain a better understanding, on the basis of reliable indicators, of any structural discrimination in their midst and to be able to promote equality internally.

94. Since 2008, the National Institute for Demographic Research (INED) has been conducting a survey aimed at pinpointing the impact of people’s origins on their living conditions and social mobility, taking into consideration other sociodemographic characteristics, such as background, neighbourhood, age, generation, sex or level of education. The initial findings have been published on the INED website.⁸ INED has also

⁵ Website: Carsed.fr.

⁶ This opinion may be consulted at: www.cncdh.fr/IMG/pdf/avis_sur_les_statistiques_ethniques.20120322.pdf.

⁷ This guide may be consulted at: http://defenseurdesdroits.fr/sites/default/files/upload/promotion_de_%20legalite/progress/fiches/ldd_cnil_interactif.pdf.

⁸ Ongoing work on the Mobility and Origins survey may be consulted at: <http://teo.site.ined.fr/>.

carried out a survey of civil servants working for the city of Paris on “equality in the workplace and the perception of discrimination.”⁹

IV. Recommendation in paragraph 13 of the Committee’s concluding observations

95. Noting that women were disadvantaged compared with men in the workplace (A), the French Government is implementing a proactive policy on equality in the workplace and wages (B). In addition it has introduced more specific measures to increase the representation of women in high-level positions in private companies (C) and in the public sector (D). A number of specific measures are also being implemented in the overseas departments and territories (E).

A. Gender equality: findings

1. Women at work

96. The entry of large numbers of women into the labour market is one the most important phenomena of the second half of the twentieth century in France. The larger share of women in employment went hand in hand with the rise of the wage-earning class and the emergence of the tertiary sector.

97. Although overall women have better school results than men and more of them attend higher education, they face more difficulties than men in terms of employment. They tend to have a smaller presence in the labour market and are likelier to face special forms of employment (fixed-term contracts, part-time, etc.) and unemployment. Women’s incomes and wages are, as a result, markedly lower than men’s. Consequently, and also as a result of the non-linearity of their professional careers, their pensions are smaller than men’s, although they receive them for longer owing to their greater longevity.

(a) Past developments

98. Nevertheless from 1975 to 2009, women increasingly joined the workforce almost continually, regardless of the number and age of their children (with the exception of women living with two children the younger of whom is aged less than 3 years). In 2010, women accounted for almost half of the active population (47.7%). Women’s and men’s behaviour has become much more similar over the past 30 years or so: the proportion of women in the workforce has increased whereas that of men has decreased. The gap between the proportion of women and men has therefore narrowed (27.6 percentage points difference in 1978 compared with 8.8 points in 2010). Across all sectors, women employees with fixed-term contracts are more numerous than men (10.7% compared with 6.5%) but also in jobs of indeterminate duration. Interim employment and apprenticeships are overwhelmingly dominated by male employees.

(b) Part-time employmen

99. According to the report of the Economic, Social and Environmental Council: “Most of the increase in the employment of women during the period 1983–2002 was due to part-time employment.” Whereas 30.1 per cent of women employees work part-time, in 2010,

⁹ A summary of this study may be consulted at: www.ined.fr/fichier/t_presse_fichier/59/fichier_fichier_fr_synth.se.simon.mairieparisdef.pdf.

only 6.7 per cent of men employees did so. From 1980 to 2010, among women with a job, the share of those working part-time doubled from 15 per cent to 30.1 per cent (just below the European average). Over this period, it rose from 2 per cent to 6.7 per cent for men. Since 1980, the share of women among part-time workers has remained above 80 per cent.

100. Women are in involuntary part-time work more often than men. Of women aged between 15 and 64 years, 8.4 per cent were in involuntary part-time work in 2010, slightly more than one quarter of all part-time women's jobs, compared with 2.3 per cent of men's jobs.

(c) *Women and men do not have the same jobs*

101. Just as pupils and students study different subjects according to their gender, so men and women choose different careers. Almost a half of working women in employment (47.5%) are employees, whereas over one third of men are workers (33.7%). Some 82.4 per cent of all workers are men whereas more than three quarters of employees are women. The concentration of women is manifest in certain service professions (home helps, domestic staff, childminders, etc.), education and the health and social sectors. One half of women's jobs (50.6%) are concentrated in 12 of the 87 recognized professional groups: a high share of women (77.5% on average) work in them and they are large employers (516,000 women on average). By way of comparison, the first dozen professional groups occupied by men account for 35.7 per cent of their jobs and an average of 218,000 men. There is an increasing gender balance in some of the qualified professions. But the polarization of professions between men and women is greater in less qualified jobs. Very few professions have a gender balance. Only five can be regarded as "equal" (with 48 to 52% of women). They account for less than 10 per cent of all jobs.

(d) *The burden of parenting weighs mostly on women*

102. Despite the arrival of large numbers of women on the labour market from the 1960s onwards and the progress made towards the egalitarian "norm", the sharing of domestic chores remains unequal in couples. The gap between women and men has narrowed slightly, but it is mainly that women spend less time on cooking and shopping thanks to the availability of new services (prepared food, delivery, etc.). Participation in domestic chores by men has changed little. In 2010, women on average spent 3 hours 52 minutes a day on domestic chores compared with 2 hours 24 minutes for men. Parental leave is taken by women in 95 per cent of cases.

(e) *Wage gaps remain wide*

103. The wage gaps between women and men reflect the inequalities between the two sexes on the labour market. The figure stands at around 27 per cent regardless of causes, and the gap between gross hourly salaries is 14 per cent (*Source*: DARES Analyses, March 2012, "wage gaps between men and women in 2009.").

104. The main explanation for women's lower wages is their professional situation. Women are less numerous than men in managerial positions and more often hold unqualified jobs.

2. Women and decision-making posts in private enterprises

105. In 2008, women held just under one third of managerial positions in private and semi-public enterprises whereas they were the majority in universities. The number of women managers is on the increase in all sectors. The construction sector registers the lowest share of women managers (13.5%) whereas the highest is in the service sector (34.2%). Under-represented in management, women are even less well represented among

heads of enterprises (17.1%). This share has levelled out and varies from sector to sector, from 7.2 per cent in construction to 21.3 per cent in trade. It diminishes as company size or turnover increases.

106. The percentage of women on boards of directors of companies in the CAC 40 (French stock market index) leaped from 10.5 per cent in 2009 to 21.1 per cent in 2011. The proportion of enterprises with over 20 per cent of women on their boards of directors rose from 13 per cent in 2009 to 30 per cent in 2010.

3. Women and senior positions in the civil service

107. Women account for 59.1 per cent of jobs in the three civil services, but only 27.6 per cent of the 4,480 higher positions. Their share is smallest in the territorial civil service.

(a) State civil service

108. The share of women in top positions is 21.4 per cent. This is still low when taking into account the fact that women are in the majority in management (58.1% of category A positions are held by women). Of the 191 prefect posts only 10.5 per cent are women, of the 100 posts of treasurers-paymasters general 8 per cent, and 15.6 per cent of the 160 posts of ambassador. Their share is higher among department heads, assistant directors and deputy directors (30.6%).

(b) The territorial civil service

109. Women account for 60.4 per cent of staff in the territorial civil service and 60 per cent of managers. As at 31 December 2007, 16.6 per cent of the directors general of regional and departmental councils, 18.4 per cent of the directors of communes with more than 40,000 inhabitants and 17 per cent of the directors of joint municipal council bodies were women. Their share is greater in national State establishments: 28.4 per cent.

(c) The hospital civil service

110. Women account for 62.3 per cent of category A staff. As at 31 December 2009, they held 40.2 per cent of the managerial positions in the hospital civil service: 16 per cent of all director-level positions and 53 per cent of directors of health, social and medico-social establishments.

B. Gender equality in the workplace and equal wages for women and men

111. The promotion of equality in the workplace between women and men, which benefits employees, enterprises and society as a whole, is based on two principles:

- Equal rights, which prohibits any discrimination between employees on the grounds of gender; and
- Equal opportunities, which is intended to remedy de facto inequalities faced by women.

112. The policy on equality in the workplace is implemented by a twofold approach, both integrated and specific:

- Integrated, owing to the need to take into account the respective needs of men and women in the conception and implementation of State, branch and company policies;
- Specific, because persisting de facto inequalities call for action in favour of women.

113. Enshrined in law at the international, European and national levels, equality in the workplace is also the responsibility of the social partners and enterprises, with the aid, mainly financial, of the State.

1. Broadening girls' choices of educational and vocational orientation in initial training

114. Various actions have been undertaken to promote equality between girls and boys and diversify vocational orientation by disconnecting the choices from sexual stereotypes.

115. The second interministerial agreement for equality between girls and boys, women and men, in the education system was signed on 29 June 2006 by nine government ministries: the ministries for women's rights and equality, national education, higher education and research, justice, transportation and other infrastructure facilities, agriculture, culture and communication, employment, health and sports. It is a road map with three priorities:

- Improving the educational and professional orientation of girls and boys to enhance their chances of finding employment: the production of studies and statistics on the professional orientation and integration of girls and boys; taking into account the gender dimension in information on subjects and careers; and encouraging young women to take up scientific, technical and vocational subjects;
- Providing young people with education in sexual equality: integrating into teaching programmes the theme of the place of women and men in society; preventing and combating gender-based violence; and
- Integrating sexual equality into the professional and educational practices of all players in the education system: training for educational players; integrating equality into educational establishment projects.

116. The next interministerial agreement for equality between girls and boys will be signed in autumn 2012 by the ministers concerned.

117. The "discovery of professions and training", a programme begun in academic year 2009/10, open to all pupils in the last six forms, is intended to ensure respect of the principle of equal opportunities, not only in terms of social background but also between boys and girls. It is also aimed at enabling girls to diversify their subject choices and break through any gender bias. In lower secondary school (pupils aged 11 to 15 years), the programme helps children to become acquainted with professions and the education and training that match them. It also develops pupils' autonomy and initiative, as part of core knowledge and skills. In upper secondary school (pupils aged 15 to 18 years), it helps students and their families to make life-changing decisions: consequently it includes a visit to a higher education establishment, personalized careers guidance interviews and active guidance. All action that fosters equal opportunities is emphasized (diversification of courses, organization of talks about professions, forums, company visits and presentations by professionals). The "academic internship banks", first developed in the 2009/10 academic year, are designed to ensure the greatest possible equality of access to internships and combat all forms of discrimination. They meet the challenge of equality by setting the objective of opening the field wide for girls and boys alike.

118. The National Office for Educational and Vocational Information (ONISEP) develops all the necessary tools (written publications, digital and videos), laying emphasis on the development of parity in different sectors.

119. Published on International Women's Day (8 March) 2010, a ministerial brochure called "Girls and boys on the road to equality from school to higher education" compiled the main statistical data comparing girls' and boys' school careers: gender difference according to level of education, choice of subject, type of establishment and examination

results. It is offered to regional education authorities (académies) as a reference tool; nationally it provides means of comparing, analysing and decision-making to promote action in favour of the positive orientation of young people and to improve the achievement of girl-boy equality at school. The sixth edition of the report was published in March 2012.¹⁰

120. Moreover, most regional education authorities (académies) offer enterprise awareness-raising classes in secondary education, mainly in vocational upper secondary schools and technical upper secondary schools, but also in lower secondary schools. Often conducted with external partners in the education establishments, this focuses on innovation, team work, project management, and even the virtual or real creation of small enterprises for a limited period. These projects are usually supervised by volunteer teachers who play a vital role of adviser and instructor.

121. For example, thanks to the “mini-enterprise” exercise implemented in partnership with the association “Entreprendre pour Apprendre” (“learning through enterprise”), over 500 mini-enterprises have been set up, and both the regional and national championships have revealed that a high number of girls take part in the teams that have been formed and the prize-winning projects.

2. Promoting the mixing of sexes and equality between women and men in business

122. The “contract for the mixing of sexes in jobs and equality between women and men in the workplace” is open to all enterprises without a minimum staff number requirement, to help finance a plan of exemplary actions in favour of equality in the workplace or measures that help improve the mixing of genders in jobs.

123. The contract may, inter alia, help to finance training or job adaptation actions in professions occupied by a majority of men.

3. Closing the wage gap between women and men

124. Reducing differences in pay for women and men is the aim of a proactive policy in France. One of the two most recent laws, Act No. 2006-340 of 23 March 2006 on equal pay for women and men, is aimed at reducing the gaps by obliging enterprises and professions to negotiate the definition and planning of measures that are liable to eliminate those gaps on the basis of a diagnosis of the comparative status of women and men.

125. Since 2008, the laws aimed at guaranteeing equal pay for women and men have been further strengthened to make real progress in reducing professional inequalities between women and men at the workplace. One such legislative provision is article 99 of Act No. 2010-1330 of 9 November 2010 on pension reform, which provides that:

- Employers in enterprises with at least 50 employees are liable to be penalized if the enterprise is not covered by an equality agreement or else by objectives and measures comprising a plan of action designed to guarantee equality between women and men in the workplace. Having evaluated the objectives set and measures taken over the year, this plan of action, based upon clear, precise and operational criteria, determines the progressive targets for the coming year, the qualitative and quantitative definition of the actions that would allow them to be achieved and an assessment of their cost;

¹⁰ This document may be consulted at: http://cache.media.education.gouv.fr/file/2012/66/0/DEPP-filles-garcons-2012_209660.pdf?bcsi_scan_96404f7f6439614d=1.

- The maximum amount of the penalty is set at 1 per cent of the remunerations and wages paid to all employees and persons treated as such during the periods when the enterprise was not covered by an agreement or plan of action. The actual amount is set by the administrative authority, on the basis of its assessment of the efforts made in the enterprise to achieve professional equality between women and men and the reasons for its shortcomings.

126. This financial penalty is unique in Europe with regard to equality in the workplace between women and men. It poses a strong threat to enterprises but its primarily an incentive, as the aim is not to collect revenue but to act as a powerful lever to ensure that longstanding obligations in the Labour Code concerning gender equality (the obligation to negotiate and the obligation to produce a report comparing situations between women and men) are practically reflected in company life.

127. The other law, Decree No. 2011-822 of 7 July 2011 on implementation of the obligations of enterprises for professional equality between women and men, provides for the possibility for the administrative authority to impose a fine of up to 1 per cent of the payroll when an employer fails to meet their legal obligations even after a warning. The legal obligation is to set progress targets with numerical indicators on at least two fields of action out of eight fields in the report on comparative status in the case of enterprises with fewer than 300 employees and at least three fields of action out of eight in the case of those with at least 300 employees. The eight themes of the report on comparative status are recruitment, training, promotion, qualification, classification, working conditions, real pay and balancing work with family responsibilities.

128. The financial sanction may be decided by the administrative authority six months after the warning. The administrative authority may decide not to apply it in the case of specific reasons for the shortcoming, namely: economic difficulties, ongoing restructuring or mergers, collective bargaining procedures under way, or the fact that the company went below the 50-employee threshold (above which companies are obliged to have an agreement or a plan of action) during the 12 months preceding the sending of an order from labour inspectorate.

129. The Act on pension reform (art. 99) and the decree of 7 July 2011 provide that a plan of action summary, compulsory for enterprises with 50 or more employees, must be posted within the enterprise, included in its website and be made available on request.

130. The aim of a circular of 28 October 2011 was to present, in particular to labour inspectors, the scope and conditions of the financial penalty provided for by article 99 of the Act of 9 November 2010 on pension reform. Two annexes attached to the circular concern the report on comparative status and a summary of the sanction procedure.

131. Tools designed for the decentralized departments of the labour inspectorate to help with their checks, but also for any enterprises whose agreements or plans of action are inadequate, have been produced jointly with the department for women's rights and equality. Good practice files¹¹ are available on the Ministry of Labour website, together with examples of progress targets and actions for achieving them and numerical indicators in eight thematic fields of the report on comparative status.

132. With regard to the financial sanctions, in effect since 1 January 2012, it would appear that to date the labour inspectorate has sent enterprises, as part of its checks, some 70 letters containing its observations and a dozen warnings to enable the enterprises

¹¹ These files may be consulted at: <http://travail-emploi.gouv.fr/espaces,770/travail,771/dossiers,156/gestion-des-ressources-humaines,474/egalite-professionnelle,506/la-negociation-collective-2118/des-exemples-de-bonnes-pratiques,14655.html>.

concerned to regularize their situation regarding their legal obligations in terms of equality between women and men.

133. Since 2009, as proposed by HALDE, and later the Defender of Rights, a working group has been preparing a guide called “An equal wage for work of equal value, taking action for gender equality”. The aim of this guide, due to be published by the end of 2012, is to provide new means for the collective bargainers in different professions and enterprises to take more account of the value of jobs when renegotiating a classification or negotiating salaries – in order to address the pay gap between women and men.

4. Harmonizing working hours and family time

134. France remains a model society where the increase in women’s share in the active population has not had a negative impact on the fertility rate. Since 2000, the French model has been atypical: it combines one of the highest fertility rates in the European Union – in 2009 it was 1.99 children per woman – and a high level of women’s participation in professional life.

135. The actions to be carried out imply the mobilization of three main players to act as guides: the State, local authorities and enterprises, in connection with European initiatives on demographic evolution.

136. This theme is part of the priority areas taken into account in negotiations on equality between women and men in the workplace. It mobilizes territorial players taking innovative actions, partly financed by the European Social Fund or in the framework of European programmes.

137. The State saw to the mobilization of the social partners on this subject by organizing, in June 2011, a national conference on sharing work and family responsibilities.

138. The conference brought together trade union and employers’ organizations along with officials from associations, academics, elected officials and enterprises. Considerable time was spent on discussing gender stereotypes, the organization of labour and family leave. It was followed by bilateral meetings between the Minister for Solidarity and Social Cohesion with the trade union and employers’ organizations. The social partners, which have placed on their social agenda discussions on the question of reconciling professional and personal life, and gender equality, have yet to take a stand on the issue.

5. Fostering the integration of young women in professional life

139. With the Integration into Social Life Contract (contrat d’insertion dans la vie sociale (CIVIS)), the idea is to offer every unqualified young person long-term, personalized and robust assistance with finding a job, with an individual counsellor. The Act of 21 April 2006 on young persons’ access to employment in companies gave a further boost to this arrangement by extending its access to young graduates who are a long way from finding employment (having spent a total of 12 months unemployed out of 18 months) and by stepping up the effort to find them employment.

140. A principal aim is to help solve parenthood issues facing young parents, in particular single mothers. Account is also taken of the way in which young people and employers themselves conceive of certain professions. On that score, “vocational platforms”, set up by employment centres, involving employers, enable young people regardless of gender to be guided towards professions that recruit locally, provided they have the necessary “skills” for the job. For example, a boy might be guided towards personal caring while a girl might be encouraged to work in the building trade. The “jobs barometer”, a national tool made available to young people and families, shares the same objective.

141. Since 2005, when the programme began, a million young people have benefited from guidance towards employment, helped by the local youth employment offices. More than half of them have no basic higher education qualification and 91 per cent do not have the baccalaureate. The majority are women (on average 53% since 2005, 51.6% in 2010).

142. Of all the young people who have benefited from the arrangement (altogether since 2005) 34 per cent have permanent jobs (and 41% have jobs of different degrees of permanence), in the case of those who took part in the scheme for 18 months on average. The results after one year are less positive (19% have permanent jobs).

143. At the same time, implementation of the CIVIS allowance, designed to help young people while they find a job (paid in 2010 to 43% of all eligible young people, at an annual average of 409 euros) and the Fonds pour l'Insertion Professionnelle des Jeunes (fund for the professional integration of young people), designed to complement locally integration opportunities, have acted as means of lifting obstacles to seeking employment.

6. Encouraging the creation and purchase of enterprises by women

144. According to an opinion poll conducted by the Institut français d'opinion publique¹² in 2000, of the 13 million people in France who wanted to set up their own business, 50 per cent were women. However, the inquiry into the "system of information on new enterprises", a study of the birth and life of new enterprises, showed that in 2006 only 29 per cent of enterprises were set up or purchased by women.

145. In order to increase the number of women creating enterprises, actions are being taken, mainly consisting in facilitating access to bank loans, via the guarantee fund for the establishing, buying, or developing of enterprises by women (Fonds de Garantie à l'Initiative des Femmes (FGIF)), and ensuring that women are taken into account in aid schemes for creating enterprises.

7. Making it possible to choose part-time work

146. Legislation on part-time work is aimed at guaranteeing voluntary part-time work to enable employees to reconcile their working, personal and family lives.

147. Part-time work is one of the main subjects of discussion at the triennial compulsory negotiations organized in each branch or professional sector on equality between men and women in the workplace, and in the annual negotiations within each enterprise on the targets for equality between men and women in the workplace.

148. Choice of work time, considered to be the best way of reconciling the obligations of working and personal lives, is covered by negotiated agreements, in which it is recalled that part-time working must not be an obstacle to the careers of women or men. Sectoral agreements, in other words those concluded for all enterprises in a given sector of activity, leave it to enterprises to look at ways of organizing work taking into account the diversity of working times so that they are not a source of discrimination.

149. At the social conference held on 9 and 10 July 2012, it was decided that on the following 21 September the social partners would start negotiations on equality and quality of life in the workplace, with the aim of ending them by the end of the first quarter of 2013. The Government would be updated at the end of 2012. One aspect of the negotiations would be balancing working and personal lives and taking parenthood into account in enterprises.

¹² Institut français d'opinion publique (IFOP), an opinion poll and market research company.

C. Women's access to decision-making in the business world

150. The French Government has undertaken proactive actions to enable women to have access to decision-making positions in enterprises.

151. Act No. 2011-103 of 27 January 2011, on the balanced representation of women and men on the boards of directors and supervisory boards of enterprises and equality in the workplace, makes the following provisions.

152. An obligation to respect a minimum quota of members of each sex allowing for a balanced representation of women and men on the boards of directors and supervisory boards of enterprises is imposed in the conditions described below.

153. For private enterprises, in particular public limited companies and limited stock partnerships whose shares are admitted for trading on a regulated market, and companies which, for three years, employ an average number of at least 500 permanent employees and have a net turnover or total assets of at least 50 million euros:

- If there are no women on the board of directors or supervisory board on the date of publication of the Act, it is an obligation to appoint at least one woman at the next ordinary general assembly to rule on the appointment of directors or members of the supervisory board;
- A quota of 40 per cent on 1 January of the sixth year following the year of publication of the Act (or as of 1 January 2017);
- When the board of directors or supervisory board has more than eight members, the difference between the number of members of each sex may not exceed two;
- With regard, in particular, to companies whose shares are listed, an intermediate quota of 20 per cent must be respected after the first ordinary general assembly following 1 January of the third year following the year of publication of the Act (or as of 1 January 2014, or 2015 depending on the situation).

154. The board of directors or supervisory board has six months to make provisional appointments when the board membership ceases to comply with the quota.

155. Lists for elections of employees' representatives on the board of directors or supervisory board must observe parity.

156. For national public enterprises, public industrial and trading establishments and mixed State establishments whose staff members are subject to the rules of private law, the following rules apply to the members of the board of directors or supervisory board appointed by decree:

- If there are no women on the board of directors or supervisory board on the date of publication of the Act, at least one woman must be appointed at the next when the next vacancy arises;
- A quota of 20 per cent must be respected at the first renewal following the publication of the Act;
- A quota of 40 per cent must be respected at the second renewal of the board following the publication of the Act. When up to eight members are appointed, the difference between the number of members of each sex may not exceed two.

157. The sanctions provided for by the Act are the invalidity of appointments made in infringement of the set quotas and the suspension of payment of attendance fees if the board's membership is unlawful.

158. The board of directors or supervisory board governed by the commercial code must hold an annual debate on the company's policy on equality in the workplace and equal pay on the basis of the report comparing the general employment conditions of women and men in the enterprise.

159. In listed companies the report of the chairman of the board of directors or supervisory board to the general shareholder's assembly must take account of the application of the principle of a balanced representation of women and men on the board of directors or supervisory board. When this report must contain details of the remunerations of corporate officers, it must also indicate, if appropriate, the suspension of attendance fees due to the unlawful membership of the board of directors or supervisory board.

160. The State must produce a report on its public administrative establishments and public industrial and commercial establishments whose staff members are subject to the rules of private law.

161. The percentage of women on boards of directors of companies in the CAC 40 (French stock market index) leaped from 10.5 per cent in 2009 to 20.8 per cent in 2011. The proportion of enterprises with over 20 per cent of women on their boards of directors rose from 13 per cent in 2009 to 30 per cent in 2010.

D. Access by women to high-level positions in the civil service

162. The Government submitted to Parliament a set of measures to strengthen equality between women and men in public administrations, in Act No. 2012-347 of 12 March 2012 on access to staff employment and improvement of the employment conditions of contractual staff in the civil service, combating discrimination, containing various provisions on the civil service.

163. In 2018, at least 40 per cent of all appointments to senior management posts in the civil service will go to women. This arrangement will be introduced gradually: the rate will be 20 per cent on 1 January 2013, and 30 per cent on 1 January 2015. Respect for these targets by public employers will be guaranteed by the introduction of a financial penalty mechanism.

164. The Act also extends to the boards of directors of public establishments the provisions of the Act of 27 January 2011 on the balanced representation of women and men on boards of directors and supervisory boards of enterprises and equality in the workplace, which set a rate of at least 40 per cent of women on boards of directors and supervisory boards of listed enterprises.

165. The Act also endorsed the principle of parity for the membership of recruitment and juries and social dialogue bodies.

166. The arrangements for taking parental leave have been improved. The first year is now counted as a year of actual service during which the civil servant preserves all of his or her rights, including the right to promotion.

167. In tandem, the Government is continuing to negotiate with the social partners an agreement protocol to improve statistical knowledge on equality in the workplace, women's careers and the balance between personal and working life.

168. The policies conducted in favour of professional equality in the civil service will be the subject of an annual report to be discussed by the joint civil service council before being transmitted to Parliament.

E. Actions specific to the overseas departments and territories

169. Legislation on equality in the workplace applies in the same way in metropolitan France and in the overseas departments and territories. However, the actions that the Government takes in the overseas departments and territories must always take into account local realities and be adapted to each overseas department or territory. The overseas departments and territories differ from metropolitan France, but also from each other, in terms of history, culture and mindset.

170. In each of the prefectures in the overseas departments and territories (Guadeloupe, French Guiana, Martinique, Mayotte, Réunion and Saint-Pierre-et-Miquelon) there is a delegate for women's rights. This delegate is responsible for local implementation of government policy in favour of equality between men and women in four fields, in particular regarding access by women to responsibilities in political, economic and associative life and professional equality.

171. In New Caledonia and French Polynesia, women's rights are the responsibility of local governments. In both governments, there are ministries of the status of women. Questions of the status of women are being paid growing attention in the Pacific, in particular through the Pacific Community. In 2011 the Community's department of human development in 2011 organized the eleventh regional conference on the status of women, where it presented the results and progress made in programmes dedicated to women. It is at the fourth conference on the status of women that the action platform for the Pacific, a region-wide declaration worked out regionally, was approved. The fundamental fields of action are divided among 13 sectors of intervention, in particular education and participation in decision-making, and the rights of indigenous peoples.

172. In New Caledonia, since 2004, the Ministry of the Status of Women in the Government of New Caledonia has been implementing several tools to improve the status of all New Caledonian women. In particular, in 2006, an observatory on the status of women was established with the aim of determining the fields where the Government should take priority action. At the same time, the Committee on the Elimination of Discrimination against Women has responsibility for advising the Government of New Caledonia on how to work out its policy on women. In response to the request made by New Caledonian women regardless of ethnic origin, the Ministry on the status of women has produced an educational guide on women's rights.¹³ Part of this guide concerns the international texts, in particular the International Covenant on Civil and Political Rights, with a whole page set aside for its presentation and a detailed account of the rights that it protects. In 2009, a study was conducted on "women in employment and training". According to these results, New Caledonian women represented 42.9 per cent of employees but the increase in the number of women employees has been greater than that for men. From 1989 to 2009, the employment rate of women in New Caledonia increased by 11 points, thanks to an increase in their level of training, the growth of the tertiary sector, the increase in the number of employees, the opening of certain professions to women, and also a greater desire for emancipation. Currently, 43 per cent of all jobs in New Caledonia are occupied by women, compared with 37 per cent in 1989. Moreover, this increase in the number of women at work has been homogenous in all three provinces and across all communities, despite differences in lifestyles. Women now represent 45 per cent of economically active persons among Kanaks, 42.5 per cent among Europeans and 38.3 per cent among people from Wallis and Futuna. Women's jobs are mainly related to education or administration. As for management posts (managers, supervisors, etc.), they are mostly

¹³ This guide may be consulted at: <http://www.gouv.nc/portal/pls/portal/docs/1/10434003.pdf>.

held by men, with only 21.6 per cent of women managers. However, the presence of women in traditionally male sectors is on the increase in the sectors of “mining and metallurgy”, “building/public works” and, to a lesser extent, agriculture. Government action to establish equality between men and women is beginning to bear fruit. The results of its communication and awareness-raising actions are perceptible.

V. Recommendation in paragraph 14 of the Committee’s concluding observations

173. In 2011, French legislation on police custody underwent significant changes. The Act on custody of 14 April 2011 has two principal objectives:

- Strictly to limit the use of police custody, a measure that by its nature infringes the freedom of movement; and
- To bring french legislation into line with constitutional and treaty-related requirements concerning the right to a defence and the right to a fair trial.

174. It also aligned as far as possible the different police custody arrangements existing under French law. The main provisions concerning the rights of the detainee are the following.

A. Duration of custody and bringing arrested persons before a judge

175. The duration of custody may not exceed 24 hours. However, it may be extended for up to a further 24 hours in the case of persons accused of a crime or offence punishable with at least one year of imprisonment. In 2009, 82.7 per cent of cases of police custody lasted 24 hours or less, giving a custody extension rate of 17.3 per cent (National observatory of crime and the responses of criminal justice, July 2010).

176. Extension is decided and reasoned by the State Prosecutor and may be granted only after the person’s presentation, if required, with a means of audiovisual telecommunication. As an exception, it may be granted without a prior appearance before the State Prosecutor.

177. For offences of organized crime and terrorism,¹⁴ police custody may be extended up to 96 hours¹⁵ if required by the needs of the investigation or inquiry.

178. Extension beyond the first 48 hours of police custody is decided and reasoned:

- By the liberty and custody judge at the request of the State Prosecutor, if the inquiry is led by the prosecutor; and
- By the investigating judge when an investigation has been initiated.

179. The decision to extend is taken for a duration of 24 hours by a written and reasoned decision after the detainee has been brought before the competent judge.

180. A second extension of 24 hours may be decided in the same conditions. Nevertheless, as an exception, the second extension may be authorized without appearance before a judge owing to the needs of investigations under way or to be initiated.

¹⁴ These offences are exhaustively enumerated in article 706-73 of the Code of Criminal Procedure.

¹⁵ Including for minors aged over 16 years when one or more adults have taken part as authors or accomplices in the commission of the offence.

181. As an exception to the previously described rules, if at the end of the first 48 hours of police custody the foreseeable duration of the remaining investigations justifies it, the liberty and custody judge or the investigating judge may decide that the police custody will be extended once by 48 hours.

182. As an exception, with regard to terrorism, in the case of adults, if it emerges from the initial inquiry or the police custody itself that there is a serious risk of imminent terrorist action in France or abroad or if the requisites of international cooperation absolutely require it, the liberty and custody judge, seized at the request of the State Prosecutor, may after the first 96 hours of police custody order, by written and reasoned decision, demand that police custody be further extended by 24 hours.

183. This decision may be renewed once (at the end of the 120th hour).

184. The provisions authorizing custody up to 144 hours have been used only once in France since 2006, when they were adopted.¹⁶

B. Rights of persons in custody (apart from the right of access to a lawyer)

185. The judicial police officer must immediately inform the detainee:

- Of the legal classification of the facts which he or she is suspected of committing or attempting to commit and their alleged date;
- Of the right in interviews, after disclosing his or her identity, to make declarations, answer the questions put to him or her or remain silent; and
- Of the right to be examined by a doctor who will decide on his or her aptitude to remain in custody and note all the relevant facts.

186. In matters of organized crime and terrorism, if police custody is extended beyond 48 hours, the detainee must be examined by a doctor, who will give his or her views above all on the compatibility of the extension with the state of the detainee's health. In the event of an extension beyond 96 hours, at the beginning of both further extensions, the detainee must again be examined by a doctor.

187. In the event of police custody extended beyond 48 hours, the detainee must also be informed by the criminal investigation officer that he or she may at any time request a further medical examination, as a right, and be informed of his or right to notify a person with whom he or she normally lives or a parent, brother or sister, or his or her guardian or curator or his or her employer and the consular authorities of the country of which he or she is a national, in the case of foreign nationals.

188. The necessary steps to inform the above-mentioned third parties must be taken, at the latest, within three hours of the time when the request is made.

189. In view of the requisites of the inquiry – for example, if informing a third party seems likely to interfere with an ongoing investigation or might damage the evidence, the State Prosecutor might postpone this notification.

190. In matters of organized crime and terrorism, if the detainee's request to inform a close relative has not been met and in the event that the custody is extended beyond the 96th hour, the detainee may repeat his or her request to notify a close relative.

¹⁶ The individual concerned was not, however, held in custody for 144 hours in a row. He had been placed in custody and then released. Later, after fresh evidence had been brought to the attention of the authorities, he was taken into custody anew.

C. The right of access to a lawyer

1. The principle granting detainees access to a lawyer at the beginning of custody

191. Before the Act of 14 April 2011, French law provided that a person placed in police custody for acts of terrorism could not have access to a lawyer until the 72nd hour of police custody.

192. Since this Act entered into force, all persons placed in custody have been entitled to speak to a lawyer at the beginning of their custody regardless of the kind of acts committed. The Act provides that for two hours after the lawyer has been notified the investigators may not interview detainees in connection with the facts of the case. If the requisites of the inquiry dictate it, the State Prosecutor may, however, authorize an immediate interview without waiting for the lawyer.

193. The Act provides that meetings between lawyers and detainees are confidential. In practice, they must take place in the absence of an investigator and in a space that allows them to speak to one another without being heard. The lawyer has access to an exhaustively enumerated number of procedural records (which he may not copy or obtain copies of): police custody records and related rights, medical certificate and interview and confrontation records. The lawyer may attend all the detainee's interviews and confrontations. Following each interview or confrontation attended by the detainee the lawyer may ask questions. The investigating officer or police officer may oppose the questions if they seem likely to interfere with the investigation. Such a refusal must be noted in the record. Following each meeting, interview or confrontation, the lawyer may submit written observations, which are adjoined to the proceedings.

2. The restrictive conditions of delaying access to a lawyer at the beginning of custody

194. The conditions for delaying access to a lawyer are strictly defined by the Act. They are the following:

(a) Delaying access to a lawyer under ordinary law

195. As an exception, the State Prosecutor may delay access to a lawyer for a limited duration if such a measure seems indispensable for urgent reasons relating to the specific circumstances of the inquiry, either to allow for the proper conduct of urgent investigations, or to prevent an imminent attack on persons (cases of persons suspected of abduction and whose declarations must be heard at once in order to help to locate the victim).

196. Such delays cannot therefore be systematic, nor can the classification of the offence alone be taken into account. The decision, in writing and reasoned, is taken for a period of 12 hours.

197. Extension of the delay can be decided only by the liberty and custody judge seized by the State Prosecutor, for a maximum duration of 12 hours and only for crimes or offences punishable by five years' or more imprisonment. Delays are dependent on the consultation of the procedural documents and the presence of a lawyer at interviews: the 30 minute interview at the beginning of custody cannot, however, be delayed.

198. If the detainee is a minor, the State Prosecutor may decide to delay assistance by a lawyer at interviews and confrontations, for a duration of 12 hours. This first delay may be extended for a further 12 hours on the decision of the liberty and custody judge, when custody has been initiated for a crime or offence punishable by five years' or more imprisonment. However, the lawyer always has access to the police custody statement and the medical certificate issued.

(b) Delaying access to a lawyer in matters of organized crime and terrorism

199. As an exception, access to a lawyer may be postponed and delayed, for the same reasons as under ordinary law, for a maximum of:

- 72 hours for acts of terrorism and crimes and offence of drug trafficking;
- 48 hours for all other offences covered by article 706-73 of the Code of Criminal Procedure.

200. If police custody takes place as part of an investigation, it is the investigating judge who takes the decision to delay.

201. In the case of an investigation led by the State Prosecutor, the State Prosecutor may decide to delay access until the 24th hour; afterwards it is the liberty and custody judge who decides whether to delay at the request of the State Prosecutor.

202. In any case, the judge's decision, written and reasoned, specifies the duration for which access to a lawyer is postponed.

203. Access to detainees by a lawyer has become the rule in French law. Delaying access to a lawyer is possible only in cases exhaustively enumerated by the law and strictly monitored by the judge.

VI. Recommendation in paragraph 15 of the Committee's concluding observations

204. It was with a view to improving the respect for fundamental individual rights that the liberty and custody judge was established by the Act of 15 June 2000, which strengthens the protection of the presumption of innocence and victims' rights, the Act on "presumption of innocence". The provisions concerning this new judge entered into force on 1 January 2001.

205. The Act of 15 June 2000 introduced a number of requirements that help to strengthen the presumption of innocence. For example, in principle the liberty and custody judge must be:

- An experienced judge: article 137-1, subparagraph 2, of the Code of Criminal Procedure provides that the liberty and custody judge must be a trial judge with the rank of president, first vice-president or vice-president. They must have at least five years' service and their rank confers upon them a certain moral authority;
- An impartial judge: the Act of 15 June 2000 provides for the impartiality of the liberty and custody judge in the statute. According to article 137-1 of the Code of Criminal Procedure, the liberty and custody judge may not take part in the judgement of criminal cases known to them or the judgement will be null and void; and
- A judge taking decisions in accordance with strict procedural guarantees: when the judge intends to place the accused pretrial detention, he or she must inform him or her that the decision may be taken only following a public hearing (art. 145 of the Code of Criminal Procedure). He or she must also inform the accused of his or her right to be assisted by a lawyer and request the public hearing to be delayed, to give him or her time to prepare his or her defence properly. When the liberty and custody judge informs the person under investigation of the latter right he or she must also explain to him or her that he or she might be imprisoned while preparing his or her defence. The file must include a fast inquiry into the accused's personality (art. 41.6 of the Code of Criminal Procedure). Decisions to place in detention are handed

down by an order that must be reasoned in accordance with the limiting criteria. It may be appealed. The liberty and custody judge may also refuse to place the accused in detention and order him or her to be placed under judicial review or assigned to house arrest with electronic surveillance.

A. The competences of the liberty and custody judge in terms of pretrial detention

206. The liberty and custody judge has exclusive competence for pretrial detention, regarding both the placement in detention and its renewal. With a view to protecting individual freedoms, these decisions are strictly circumscribed in terms of the duration of the detention itself. These differ in an investigation or in fast prosecution procedures before a criminal court.

1. In an investigation

207. The duration of pretrial detention depends, on the one hand, on whether the accused is an adult or a minor and, on the other, on whether the alleged misdemeanour for which the person brought before the liberty and custody judge has been charged is a criminal or ordinary offence:

208. For adults:

- For criminal offences, pretrial detention may not in principle exceed one year. However, several extensions are possible in connection with certain kinds of sentences, bringing pretrial detention up to four years. Of course, each extension depends on a reasoned decision by the liberty and custody judge and may be appealed;
- For ordinary offences, the detention of adults is provided for in principle for a duration of four months, which may be extended up to two years.

209. For minors:

- For criminal offences, pretrial detention is impossible for minors aged less than 13 years, may not in principle exceed six months for minors aged 13 to less than 16 years (renewable once) and may not exceed a year for minors aged 16 years and more (renewable by six month periods up to a maximum of two years in total);
- For ordinary offences:
 - Pretrial detention is impossible for minors aged less than 13 years;
 - Pretrial detention is possible for minors aged 13 years to less than 16 years only when probation is breached;
 - Pretrial detention is possible only if the sentenced incurred is three years or more and when probation is breached.

210. The detailed duration in the table below depends on the age of the minor and the seriousness of the facts. In no case may it exceed one year.

<i>Age</i>	<i>Penalty incurred</i>	<i>Duration of pretrial detention</i>	<i>Extension of detention</i>	<i>Maximum</i>
Under 13 years	-	Impossible	Impossible	-
13 to 16 years, and only when probation is breached	Less than 10 years	15 days	15 days	1 month
	10 years and more	1 month	1 month	2 months
16 years and over	3 to 7 years	1 month	1 month	2 months
	More than 7 years	4 months	2 × 4 months	1 year

Source: Public prosecutor's office

211. The data transmitted by the courts on the number of placements in pretrial detention during investigative proceedings concerning adults and minors demonstrate, according to the table below, that since 2003, the number of persons placed in pretrial detention steadily declined. The reduction between 2003 and 2010 was 27.1 per cent.

Number of pretrial detentions during investigation (adults and minors)

<i>Year</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Number	24 002	23 741	23 196	20 205	19 087	18 709	17 058	16 625

Source: Public prosecutor's office

212. This reduction is also visible in the number of placements in pretrial detention per duration between 2003 and 2010 as shown in the table below. The duration of pretrial detention ranging from six days to four months remained the most frequent in 2010, with 4,863 out of a total of 11,624, or 41.8 per cent of all cases.

Duration of pretrial detention in investigation (adults and minors)

<i>Year</i>	<i>Less than 6 days</i>	<i>Between 6 days and</i>	<i>Between 4 months plus</i>	<i>Between</i>	
		<i>4 months</i>	<i>1 day and 6 months</i>	<i>6 months and</i>	<i>1 year</i>
2003	490	7 847	2 665	4 661	1 796
2004	408	7 925	2 478	4 869	2 336
2005	313	7 718	2 397	4 258	2 042
2006	350	7 434	2 346	3 967	1 862
2007	290	6 574	2 207	3 456	1 706
2008	297	5 870	2 017	3 173	1 526
2009	313	5 275	1 934	3 419	1 450
2010	314	4 863	1 743	3 145	1 559

Source: Public prosecutor's office

2. In pretrial appearance proceedings

213. The liberty and custody judge also has the authority to place adult accused in pretrial detention in cases where immediate referral proceedings are legally possible, envisaged by the State Prosecutor but cannot take place the same day. In such cases and where pretrial hearings are held, lawmakers have given the liberty and custody judge limited powers of coercion.

214. First, pursuant to article 395 of the Code of Criminal Procedure:

- The maximum legally provided prison sentence must be equal to six months in cases of in *flagrante delicto* and at least two years in other cases;
- All of the charges must be sufficient and the trial must be under way.

215. However, if the court cannot meet on the same day and the main elements seem to require pretrial detention, the State Prosecutor may bring the accused before the liberty and custody judge, sitting in chambers in the presence of a registrar (art. 396 of the Code of Criminal Procedure).

216. The judge, having carried out, unless they already have been, the verifications required by article 41, paragraph 7, of the Code of Criminal Procedure, rules on the formal applications of the prosecutor's office for the purposes of pretrial detention, having heard any comments by the accused or his or her lawyer.

217. He may place the accused in pretrial detention until he appears before court. The order requesting the detention is handed down in accordance with the arrangements provided by article 137-3, paragraph 1, of the Code of Criminal Procedure, and must include the legal and factual considerations that justify the measure in reference to provisions 1 to 6 of article 144 of the Code of Criminal Procedure. This decision must list the charges and refer the case to the court; the accused must be notified verbally and the decision must be noted in the records, a copy of which must be delivered to the accused immediately. The accused must be brought before the court by the third working day following the decision. Otherwise he or she will be released automatically.

B. Average duration of pretrial detention in criminal proceedings and those related to offences leading to conviction

1. Convictions for offences

(a) *Convictions for offences handed down in first instance*

218. The first two tables below refer to the period between 2003 and 2010 and proceedings in first instance with pretrial detention in immediate referral and other proceedings, the latter including, de facto, proceedings dealt with by the investigating judges.

219. It can be noted that, in the case of convictions handed down in immediate referral and preceded by a pretrial detention, the number decreased slightly by 11.8 per cent between 2003 and 2010. At the same time, the average duration of pretrial detention for these fast procedures remained steady at 10 days on average.

Convictions for offences handed down in immediate referral

<i>Year</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Number	11 332	11 102	11 537	10 655	10 990	10 464	9 748	9 996
Average duration of pretrial detention (days)	10	9	9	8	9	10	9	10

Source: Criminal records office

220. With regard to proceedings not in immediate referral, the number of convictions handed down preceded by a pretrial detention also fell by 17.9 per cent between 2003 and 2010. The average duration of pretrial detention throughout the period remained about six months.

Convictions for offences handed down in first instance, other than immediate referral

<i>Year</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Number	15 555	15 788	15 949	15 225	15 242	14 459	12 876	12 770
Average duration of pretrial detention (months)	5.9	6.3	6.7	6.5	6.3	6.1	6.1	6.1

Source: Criminal records office

(b) Convictions for offences delivered on appeal

221. As in first instance, the number of convictions preceded by a pretrial detention also fell, with regard to convictions for offences delivered on appeal. The number of convictions preceded by a pretrial detention fell by 16.2 per cent. The average duration of pretrial detention increased slightly between 2003 and 2010, from 5.9 months to 6.5 months.

Convictions for offences delivered on appeal

<i>Year</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Number	4 840	4 696	4 311	4 370	4 198	4 634	4 380	4 055
Average duration of pretrial detention (months)	5.9	6.3	6.5	6.6	6.3	6	6.3	6.5

Source: Criminal records office

2. Criminal convictions

222. The number of criminal convictions preceded by a pretrial detention also fell by 16.5 per cent between 2003 and 2010. Over the same eight-year period the duration of pretrial detention, on the other hand, remained at between 2.1 and 2.3 years.

Criminal convictions handed down in first instance and on appeal

<i>Year</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Number	2 061	2 174	2 266	2 174	2 077	1 841	1 780	1 720
Average duration of pretrial detention (years)	2.1	2.1	2.2	2.3	2.3	2.3	2.2	2.2

Source: Criminal records office

223. It emerges from the figures presented above that:

- Domestic legislation strictly limits the duration of pretrial detention;
- Decisions to place the accused in pretrial detention are court decisions that may be appealed;
- In fact, since 2003, there has been a decrease in the number of persons placed in pretrial detention.

VII. Recommendation in paragraph 16 of the Committee's concluding observations

224. France has seen to it that civil preventive detention (*réention de sûreté*), under Act No. 2008-174 of 25 February 2008, is very strictly limited in order to reconcile the prevention of disturbances of the peace and reoffending with the exercise of individual freedoms, in particular the freedom of movement. Moreover, since the Act of 25 February 2008 entered into force, only one person has been placed in a social-medical-judicial security centre, and for a very short period (from 24 December 2011 to 2 February 2012).

225. The limits on use of the mechanism are five-fold.

A. Narrow scope

1. The most serious criminal attacks on persons

226. Civil preventive detention is applicable, exceptionally, to persons sentenced to at least 15 years' imprisonment for murder, manslaughter, torture or act of barbarity, rape, abduction or sequestration of a minor, or of an adult in one or more aggravating circumstances, committed after the Act of 25 February 2008 entered into force.

2. Particularly dangerous persons with a serious personality disorder

227. The Court of Assizes must have expressly provided in its sentence for the possibility of re-examining the convicted person's situation in order to sentence him or her to civil preventive detention, if it has been established that the convicted person is of a particular degree of dangerousness with a very high risk of reoffending because of a serious personality disorder (arts. 706-53-13 and 706-53-14 of the Code of Criminal Procedure).

B. Improved medical and psychological care

228. All sentenced persons to whom civil preventive detention is applicable follow an individualized sentence enforcement plan defined by the judge responsible for the enforcement of sentences, including if necessary psychiatric care (art. 717-1-A of the Code of Criminal Procedure).

229. Two years before release, the sentenced person must offer proof to the judge responsible for the enforcement of sentences of the action taken on the appropriate medical and psychological monitoring that was proposed. In the light of his assessment, the judge responsible for the enforcement of sentences might propose follow-up treatment in a specialized prison establishment (art. 717-1 of the Code of Criminal Procedure). This improved care offered to convicted persons is designed to enable them to be released if possible with limited risks of reoffending, without civil preventive detention.

C. Highly restrictive basic conditions

230. In order to guarantee the exceptional nature of civil preventive detention, the Act of 25 February 2008 set six cumulative conditions on sentencing to civil preventive detention (art. 706-53-14 of the Code of Criminal Procedure):

- The Court of Assizes must have expressly provided for the possibility of civil preventive detention in its judgement;
- The convicted person must have been able to benefit, during the enforcement of his or her sentence, from appropriate medical, social and psychological care for any personality disorder (art. 706-53-15 of the Code of Criminal Procedure);
- At the end of the sentence, he or she must be of a given level of dangerousness and therefore highly likely to reoffend in the view of medical experts;
- The multidisciplinary commission on security measures must propose special detention in order to assess the person's dangerousness along with a medical report issued by two experts;
- The obligations resulting from registration on the file of perpetrators of sexual or violent crimes, a medical treatment order or placement under surveillance by means of electronic tagging, as part of socio-judicial surveillance or judicial surveillance, must seem to be insufficient to prevent the commission of fresh crimes within the scope of civil preventive detention; and
- Civil preventive detention must be the only way of preventing the commission, with a very high degree of probability, of these crimes.

D. Important procedural guarantees

1. Guarantees at the stage of placement in civil preventive detention

231. Persons are sentenced to civil preventive detention by the regional civil preventive detention court, comprising a president and two members of the Court of Appeal, by a specifically motivated decision, exclusively on the grounds of the dangerousness of the convicted person at the end of his or her sentence, following a debate involving both the prosecution and defence and, at the convicted person's request, in public, during which he or she must be assisted by a lawyer. The convicted person is entitled to a second expert opinion.

232. Sentences to civil preventive detention may be appealed before the national civil preventive detention court, comprising the three members of the Court of Cassation, whose decision may in turn be appealed before the Court of Cassation (art. 706-53-15 of the Code of Criminal Procedure).

2. Guarantees at the stage of maintenance and renewal of civil preventive detention:

233. Sentences to civil preventive detention are valid for one year but may be extended, if the conditions set out above are still met, following a favourable opinion of the multidisciplinary commission on security measures (art. 706-53-16 of the Code of Criminal Procedure).

234. The person concerned might ask for the civil preventive detention to be terminated before the regional civil preventive detention court three months after the final sentence to place him or her in civil preventive detention was handed down. The court must decide within three months or the sentence is automatically terminated. If the request is rejected,

the person may still file another request three months later. The regional civil preventive detention court may at any time call for an immediate termination of civil preventive detention if the conditions are no longer met (art. 706-53-18 of the Code of Criminal Procedure).

235. Such decisions may be appealed before the national civil preventive detention court, and then before the Court of Cassation (art. 706-53-17 of the Code of Criminal Procedure).

E. Rights preserved during detention at the social-medical-judicial security centre

236. The exercise of the recognized rights of detainees cannot be subjected to further restrictions other than those that are strictly necessary for the maintenance of law, order and security in the centres, the protection of others, and the prevention of offences and any evasion of the detention measure in question (art. R. 53-8-66 of the Code of Criminal Procedure). Detainees are also entitled to attend educational and training activities, exercise an employment compatible with their presence in the centre, practise religious or philosophical activities, take part in cultural, sports and leisure activities, correspond in writing and by telephone and receive visits (art. R. 53-8-68 of the Code of Criminal Procedure).

237. The lack of retroactivity of this mechanism, the conditions of implementation and the procedural guarantees limiting its use make civil preventive detention a measure that is compatible with the provisions of articles 9, 15 and 16 of the Covenant.

VIII. Recommendation in paragraph 17 of the Committee's concluding observations

A. Strengthening of the monitoring of prison establishments and administrative action with regard to detainees

238. Of all the institutions, prison is the one that is most closely monitored, to observe practices and deter abuses. The monitoring takes different forms.

1. Court monitoring of action taken by the prison service during detention

239. All individual sanctions liable to affect detainees adversely may be reviewed by the administrative courts (cf. Act of 12 April 2000).

240. In recent years, administrative case law has markedly strengthened the protection of the rights of detainees, who must be treated "with humanity and with respect for the inherent dignity of the human person" (art. 10 of the Covenant).

241. This increased protection of the rights of detainees results from two relative steps forward in terms of case law, on the one hand, the narrowing of the scope of internal measures and, on the other, the intensification of monitoring by administrative judges in terms of responsibility for the prison service.

242. Internal measures refer to certain decisions of the public administrative authorities whose lack of importance in principle concerns only minor interests. Accordingly they may be reviewed by the administrative judge. Originally, this category covered management and disciplinary measures in the army, prisons and schools. In the case of prisons, it referred, for example, to punishments meted out on detainees, transfers from one prison establishment to another or placements in more secure quarters.

243. However, having for a long time qualified them as internal measures, against which appeals may not be lodged, the Council of State has gradually extended its control over decisions taken by the prison service concerning detainees, when they are challenged by inmates. In its “Marie decision” (Assembly, 17 February 1995, No. 97754), on the legality of a disciplinary sanction, the Council of State made a step forward in case law by declaring the principle according to which it is with regard to the nature and seriousness of a sanction that it should be determined whether or not it may be challenged before the administrative judge.

244. The recent case law of the Council of State (Conseil d’État – CE) broadened the scope of decisions reviewable by the courts at the request of detainees. Accordingly referrals may be made to the administrative judge with regard to decisions:

- To send a detainee to a prison instead of an arrest centre (CE, 14 December 2007);
- To declassify an employment (CE, 14 December 2007);
- To submit a detainee to a so-called “security rotation” regime (CE, 14 December 2007);
- To place a detainee, provisionally or preventively, in solitary confinement (CE, 17 December 2008);
- To submit a detainee to full body searches (CE, 14 November 2008);
- To register and maintain a detainee in a special list of inmates (CE, 30 November 2009);
- To set the essential arrangements for organizing visits to detainees (CE, 26 November 2010); and
- To place detainees under a “differentiated closed door regime” (CE, 28 March 2011).

245. These judicial remedies are accessible in practice to detainees. In 2011, 309 appeals, on grounds of abuse of authority, were lodged by detainees against decisions taken by the prison service. There had been 257 such appeals in 2010.

246. In addition to this case law introducing controls over the legality of prison service decisions that can affect the rights and fundamental freedoms of detainees, the latter may also seek reparation for damage arising from poor detention conditions (Administrative Court of Appeal of Versailles, decision No. 08VE00299 of 16 December 2010; Administrative Court of Appeal of Lyon decisions Nos. 10LY01579 and 10LY01580 of 31 March 2011).

2. Monitoring by judicial authorities and specialized bodies

247. Judicial authorities are under an obligation to make regular visits to establishments to ensure that they are properly run.

248. Article 10 of Act No. 2009-1436 of 24 November 2009 (hereinafter the Prison Act) considerably lengthened the list of judicial authorities that must visit each prison establishment for which they are responsible at least once a year.

249. Every year, during these visits, the president of the examining chamber verifies the situation of accused persons in pretrial detention. The State Prosecutor hears detainees with complaints to make. A joint annual report by the first president of the court and the State Prosecutor informs the Minister of Justice of the running of the prison establishments for which they are responsible and the service given by the staff at these establishments.

250. At least once a year the president of the high court, the liberty and custody judge, the investigating judge, the judge responsible for the enforcement of sentences and the juvenile judge visit each prison establishment in the territory for which they are responsible.

251. Article 5 of the Prison Act set up within each prison establishment an assessment board responsible for “evaluating the operational conditions of the establishment and propose, where appropriate, all measures that might improve them”.

252. These boards comprise judges and magistrates, representatives of local communities, representatives of State departments and external players working inside the establishment (associations, prison visitors and chaplains). They meet at least once a year to consider the activity report submitted by the governor and may hear from any external figure who might throw light on their work.

253. The presence in these assessment boards of elected officials and association partners assure the openness and impartiality of these monitoring bodies.

254. Since June 2000, Parliamentarians have had the ongoing right to visit prison establishments. A large majority have since exercised that right. The Prison Act extended this visiting right to representatives in the European Parliament elected in France.

255. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on average visits more than one establishment every two years.

3. Monitoring by the independent public administrative authorities

(a) *Specific monitoring by the Comptroller General of places of deprivation of liberty (CGLPL), an independent administrative authority*

256. As was explained in the introduction, France has introduced the institution of Comptroller General of places of deprivation of liberty (CGLPL).

257. As at 1 January 2012, the Comptroller General had issued seven specific recommendations,¹⁷ relating to prison establishments and seven general opinions, relating to the treatment of detainees, and submitted four activity reports¹⁸ (for 2008, 2009, 2010 and 2011).

(b) *Monitoring by the Defender of Rights*

258. The Defender of Rights may be referred to by a detainee who feels that his or her rights have not been respected owing to an administrative irregularity, discrimination or non-observance of security ethics. The Defender of Rights also intervenes when the best interests of the child are disregarded.

259. An agreement¹⁹ signed on 8 November 2011 between the Defender of Rights and CGLPL provides for an information exchange procedure, in particular with regard to cases referred to them, in order to coordinate their respective interventions and public actions and avoid redundant measures being imposed on detainees or conflicting responses being given.

¹⁷ These recommendations may be consulted at: <http://www.cglpl.fr/rapports-et-recommandations/dernieres-recommandations/>.

¹⁸ The reports may be consulted at: <http://www.cglpl.fr/rapports-et-recommandations/rapports-annuels-d%E2%80%99activite/>.

¹⁹ The text of this agreement can be found at: http://www.cglpl.fr/wp-content/uploads/2009/03/convention-DDD_CGLPL_201111081.pdf.

4. Internal monitoring by the public administrative authorities themselves

260. For several years, internal monitoring of the prison service has been strengthened by action taken by the inspectorate of prisons, through either administrative inquiries following incidents or thorough inspections of establishments.

261. The inspectorate's tasks are defined by the Order of 29 December 2010.

262. The inspectorate of prisons may be referred to by the Director of the Prison Service, in particular to conduct administrative inquiries into incidents and the behaviour of individuals. The aim of these administrative inquiries is to determine the circumstances in which an incident occurred, analyse the causes and gauge the consequences concerning any professional misconduct.

263. The reports submitted by the inspectorate of prisons to the Director of the Prison Service include general or establishment-specific recommendations aimed at eliminating or reducing the risks of reoccurrence and may propose disciplinary action.

264. In 2010, the inspectorate of prisons produced 42 reports on administrative inquiries.

265. In addition to these monitoring measures are those taken by the labour inspectorate and other ministerial inspectorates in their respective fields and the meeting of an annual surveillance board in each establishment under the authority of the prefect.

B. Policies implemented with a view to reducing prison overcrowding

266. A historic record of prison overcrowding was reached in 2008, with an overall occupation rate of 126.5 per cent in all types of prison establishment. As at 1 June 2012, the occupation rate stood at 117.13 per cent (66,915 inmates for an operational capacity of 57,127 places). Prison overcrowding mainly concerns the establishments receiving detainees in pretrial detention or persons sentenced to prison for less than two years.

267. On the other hand, the occupation rates of establishments receiving detainees sentenced to prison for more than two years or minors cannot exceed their capacity.

268. The Government has implemented proactive measures to combat prison overcrowding: either through the application of adjusted sentences and the completion of prison sentences outside prison establishments, or by implementing a new prison accommodation programme.

269. While the situation in certain overseas territories is alarming, specific measures are being taken there to combat prison overcrowding.

1. The policy on penalty adjustment and completing prison sentences outside prison establishments

270. One of the actions undertaken to combat prison overcrowding entails the implementation of a policy to encourage penalty adjustment and alternatives to imprisonment.

271. The Prison Act of 24 November 2009 enshrined the policy already being implemented to encourage penalty adjustment and alternatives to imprisonment, extending the possibilities for penalty adjustment (broadening the criteria for granting it), facilitating its issuance (introduction of a simplified procedure for granting detainees a sentence adjustment) and creating, in parallel, a measure allowing the final stages of prison sentences to be executed under electronic tagging.

272. The use of alternative sentences has progressed and the number of beneficiaries of an alternative custodial sentence increased by almost 47 per cent between 1 June 2010

(8,597 persons) and 1 June 2012 (12,627 persons). The number of beneficiaries of an alternative custodial sentence represented 16.5 per cent of all convicts as at 1 June 2010 and 20.7 per cent as at 1 June 2012.

273. Electronic tagging is the most widespread alternative custodial sentence (74% au 1 January 2012) while semi-custodial sentences account for 17 per cent of these measures (1,857 persons) and non-custodial placement 9 per cent (947 persons).

274. Decrees Nos. 2010-1276 and 2010-1278 of 27 October 2010 in application of the Prison Act were supplemented by the circular of 10 December 2010 on the simplified procedure for sentence adjustment and the circular of 10 May 2011 on electronic tagging on completion of sentence.

275. Since January 2011, a mechanism to assess the simplified procedure for sentence adjustment and electronic tagging on completion of sentence has been implemented by the prison service directorate and these provisions have been very regularly monitored to pinpoint any difficulties, continue service support and consider any changes that might help to make these procedures more efficient. Analysis of the initial findings reveals that these provisions are being taken on board by the prison services and judicial authorities.

276. In 2011, 18,881 cases were dealt with by the Integration and Probation Correctional Service as part of the simplified procedure for sentence adjustment: in 2,232 cases (12%) it was suggested to the public prosecutor's office that the sentence should be adjusted and in 820 cases sentence adjustment was granted. The explanation for these initial results might be the large number of inmates serving short prison sentences ruling this procedure out, along with the preference for the classic sentence adjustment procedure.

277. In 2011, 28,876 cases were dealt with by the Integration and Probation Correctional Service with regard to electronic tagging on completion of sentence: 5,493 cases (19%) were referred to the prosecution service, and 3,069 requests for electronic tagging on completion of sentence were granted. Of the cases not referred to the prosecution service by the Integration and Probation Correctional Service, almost half (49%) could not be owing to the material impossibility of carrying out the measure (mainly because the prison sentence was too close to its end).

2. Implementation of the new prison place programme

278. Presented on 5 May 2011 by the Garde des Sceaux (Minister of Justice), the new prison place programme reflects the desire of the Government and the Ministry of Justice and Freedoms to increase the number of places and bring establishments into line with the targets set by the Prison Act of 24 November 2009 and European Prison Rules²⁰ adopted by the Council of Europe.

279. The new prison place policy is a response to efforts to improve detention conditions and staff working conditions. It is intended to improve preparedness for rehabilitation and prevent repeat offending. It is also intended to help prevent suicide.

280. One of the construction projects resulting from the Planning Act on the enforcement of sentences of 27 March 2012 concerns the construction of new short-sentence establishments. Short-sentence centres and quarters are designed to receive exclusively and on principle those sentenced to a total of two years or less and who have less than a year of their sentence still to serve.

²⁰ Available on the following website: <https://wcd.coe.int/ViewDoc.jsp?id=955547>.

281. The new prison accommodation programme is a new prison housing concept devised by the prison service directorate with a view to ensuring that short sentences are served effectively on a personalized basis. It also helps inmates to serve their sentence in a way that gradually prepares them for their return to life outside prison, in particular by means of sentence adjustment.

282. It is based on a plan to restructure prison housing while increasing the prison service's housing capacity and improving the execution rate of prison sentences handed down by the criminal courts and providing all detainees with individual cells.

283. When the new prison accommodation programme reaches completion almost 16,000 new places (at a total of 28 sites – 27 new constructions and an extension) will replace 6,672 dilapidated prison places, giving a net gain of 9,253 places.

284. France will then have more than 70,000 prison places, more than half of which will have opened since 1990.

285. The Planning Act [on the enforcement of sentences of 27 March 2012] provides for a strengthening of the prison programme announced in May by setting a target of 80,000 available places by 2017. This includes the planned construction of low-security facilities for inmates presenting no risk or unlikely to escape and a strengthening of the new prison accommodation programme. About 7,500 new low-security places are planned. The facilities for short-term inmates could be built alongside traditional establishments, and could have a capacity of 150 places, or they could take the form of stand-alone establishments that could house up to 190 detainees.

286. This new planning figure of 80,000 places and 71,000 cells (compared with 48,000 cells as at 1 January 2011) for 2017 (new prison accommodation programme and Planning Act) is in line with statistical forecasts. It is estimated that the prison population will then stand at 96,000, including 16,000 placed under electronic tagging.

287. The priority of the prison service with regard to new constructions is to look for sites very close to major urban centres, to benefit from vital services (hospitals, police, national education, a concentration of associations, housing) and satisfactory access to public transport.

288. Moreover, the choice of establishments to be closed was dictated by their obsolescence or lack of functionality, without major rebuilding work, and the fact that the Prison Act and European prison rules cannot be applied in their regard.

289. The design of these facilities applies the new norms laid down by the Prison Act of 24 November 2009, in particular the requirement of individual cells and the broadening of the choice of activities on offer with a view to rehabilitating inmates.

290. The prison service has gone out of its way to draw on the experience of previous prison housing programmes. Practices at 16 establishments set up under previous prison housing programmes were assessed and working groups, composed of officials of the State agency for justice-related real estate, the prison service and external partners, met regularly for one year. These working groups addressed conditions for prisoners, the organization of inmates' days, the rehabilitation project, activities, movements inside establishments and security arrangements. Prison service staff also visited Germany, Spain, Sweden and the United Kingdom to study their prison systems and visit the latest establishments. There were regular exchanges with trade unions for 18 months.

291. The conclusions of these fruitful exchanges were taken into account in the drafting of operational programmes for future establishments, to be based on the concept of “active rehabilitation” establishments according to the following main criteria:

- An individual cell rate of 95 per cent. In other words, 95 per cent of all inmates will have their cell to themselves;
- Units (40 places = 2×20 places) and quarters (160 places, or four units with 40 places each) built to human dimensions, in order to maintain links between wardens and inmates. These dimensions were adjusted downwards by comparison with programme 13 200 (which allowed for 210 places per quarter). The design will include half-roofs to increase natural light and inmate and staff security (by increasing visibility between floors). Particular attention is to be paid to cell soundproofing and the construction of gangways. Moreover, open-plan living/relaxation areas will be provided in each unit in the open prison quarters;
- Exercise yards to be provided, along with an area of grass with trees and sturdy furniture;
- Detention types adapted to the personality and degree of dangerousness of each inmate. Placement in new establishments will depend on assessment/diagnosis of convicts and the accused on the basis of interviews with various officials. The type of measure will depend on the personality, degree of dangerousness and desire for rehabilitation of each inmate. Two detention regimes are planned: the “open” regime and a “closed” regime. Thanks to this screening the population of each quarter will be more homogenous, which should lead to few incidents of unrest in detention, while acting as a rehabilitation factor. The open detention regime is based on free movement of inmates within the quarter, reproducing as far as possible outside living conditions in order to facilitate social reintegration;
- Care for detainees with mental disorders will be improved thanks to the systematic provision, in accordance with the ministry of health, of psychiatric facilities in the mobile consultation and care units;
- Activities areas to be 40 per cent larger than under the programme 13 200. A unit for integration and the prevention of repeat offending will be set up, covering all activities facilities shared by the establishment (classrooms, cyber base, library, theatre, multipurpose hall, activity rooms, multicultural hall, internal information channel, etc.). A theatre will be also be built along with a central (multimedia) library that is large enough for group activities (instead of small libraries). The construction of a special integration unit will allow inmates to meet institutional partners (employment office, family allowance fund, housing services, etc.). Moreover, each quarter will have social and educational facilities for all inmates, for organizing activities such as a computer room, gym, etc.;
- The number of family life units and family visiting rooms will be increased to facilitate longer visits and improve the maintenance of family relations (on the basis of a ratio of one unit for every 75 places);
- A special effort will be made to improve the comfort of the family and lawyer visiting rooms (natural light requirements, larger waiting areas, acoustics); and
- The perimeter security of certain sites will be altered (no watchtowers, anti-helicopter ropes).

292. The prison service directorate will assign to these establishments only those inmates whose degree of prison dangerousness (risk of escape or record of detention problems) has been assessed as “low risk”.

293. This set of measures will help to improve the living conditions of inmates and relations inside future establishments, while improving preparation for rehabilitation and helping to prevent repeat offending.

294. The increase in the overall capacity of prison establishments and the development of alternative measures to detention are complementary in the attempt to reduce prison overcrowding.

3. Measures implemented in the overseas departments and territories

295. In Guadeloupe, Martinique, French Guiana, and Mayotte, the number of places rose from 2,501 to 3,101 in five years, an increase of 24 per cent. The overall occupation rate fell from 121.4 per cent to 115.5 per cent over this period. However, the situation is still worrying in the prisons of Tahiti and Nouméa. On the other hand, there is no overcrowding in Réunion.

296. To address this situation, adjusted sentences have been developed. The Integration and Probation Correctional Service is doing an excellent job tracking down inmates who qualify for sentence adjustment. The number of placements under electronic tagging almost doubled between 2009 and 2011. As at 1 July 2012, there were 329 persons being electronically tagged (compared with 132 in 2009) and 60 undergoing end-of-sentence electronic tagging.

297. Alongside these measures, numerous construction or renovation projects are under way or planned:

- In Martinique, the construction of an extension with 160 extra places is under way. Delivery is due in the first half of 2014;
- In French Guiana, the construction of 75 extra places is under way, with the opening scheduled for October 2012;
- In Mayotte, work on the extension of the prison has just begun, and will raise the capacity to 267 places, or 162 extra places in modern detention conditions. Delivery should take place in the second half of 2014;
- In Polynesia, a decision has been made to build a new establishment with 410 places in Papeari by 2016 on the basis of a new active rehabilitation prison concept; and
- In New Caledonia, an action plan to keep the existing site operational is being implemented by the prison service. The reconstruction of the closed quarter of the detention centre is under way, with 48 places delivered in December 2011 and May 2012; another 24 places will be delivered in September 2012 and an extra 24 places are scheduled for 2013. The reconstruction of the open quarter at the detention centre is planned for 2013, followed by the restructuring of the men's prison. The public works contract for the construction of a pre-release centre with 80 places is being organized, with delivery planned in October 2013.

298. In addition to these existing operations, a large number of actions are at the pre-feasibility study stage:

- In Guadeloupe, studies are under way for rebuilding and extending Basse-Terre prison. It would be totally demolished and rebuilt on the same site. Neighbouring plots of land are being acquired, so that the establishment can be brought into line with standards and its capacity can be enhanced (from 130 to 180 places in individual cells). As for the Baie-Mahault prison centre, studies are under way to increase capacity by 180 places while renovating the establishment's back-up facilities;

- In French Guiana, studies are under way for creating 130 extra places outside the existing building of the Rémire-Montjoly prison centre;
- In Polynesia, studies are being conducted for the restructuring of the Faa'a prison centre; and
- In Réunion, pre-feasibility site studies are under way with regard to the construction of a new establishment to replace the existing Saint-Pierre prison.

299. Some original training and rehabilitation policies for inmates are being implemented. The Ministry of Justice launched the Bradzour project under which wasteland around the Port de Rivière des Galets prison in La Réunion will be used to build a photovoltaic power station. This power station would enable a dozen inmates to be trained in growing under-glass (2 ha) medicinal plants for use in medical laboratories and perfumery (ylang-ylang and aloe vera), geraniums to be sold to CAHEB (Coopérative Agricole des Huiles Essentielles de Bourbon – the Bourbon essential oils farming cooperative) to make up for the lack of seedlings (enabling inmates to be paid) and even organic market-gardening to supply the centre's canteen. This project is awaiting approval.

300. By way of examples of the implementation of this policy in Guadeloupe, paid vocational training courses (composites, computer studies, planned hairdressing course in the women's quarter) and unpaid courses (combating illiteracy, preparation for release, setting up a business, house painting (yet to start), French as a foreign language in the women's quarter (yet to start) are offered at the Baie-Mahaut prison centre. Paid training (computer studies, house painting (yet to start) and unpaid (combating illiteracy, preparation for release, setting up a business, French as a foreign language) are also offered at Basse-Terre prison.

IX. Recommendation in paragraph 18 of the Committee's concluding observations

301. The President of the Republic has made a commitment to re-examine the detention conditions of illegal aliens. The aim is to favour alternatives to detention and, where it is necessary, to ensure that living conditions are in full respect of human dignity and human rights. The matter is under discussion and the Committee will be informed of developments in this area.

302. Consequently, on the date the Government is submitting its report to the Committee, it invites the Committee to refer to the explanations given in 2009 (CCPR/C/FRA/CO/4/Add.1), supplemented and updated in 2010 (CCPR/C/FRA/CO/4/Add.2) and in 2011 (CCPR/C/FRA/CO/4/Add.3), where legislation and practice are described in detail.

303. The Committee, by letter dated 27 April 2012, requested information on “the measures adopted by the State party to improve the exercise of their rights by persons in administrative detention, in terms of health, education, work, family life and the legalization of their status”.

304. The following aspects should be underscored with regard to the detention of foreigners.

A. Detention in waiting areas and administrative detention centres

305. Detention measures concerning foreigners who unlawfully entered or are unlawfully present in French territory may cover two different situations:

- “Detention in waiting areas” concerning foreigners who have been refused entry at the border or who submit an application for asylum at the border;
- “Detention in administrative detention centres” concerning foreigners subjected to a removal order.

306. Since the Committee considered the last report submitted by France, only the detention arrangements have been modified by Act No. 2011-672 of 16 June 2011, which ensured the transposition of European directive No. 2008/115/CE of 16 June 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (known as the Return Directive).

307. The Act of 16 June 2011 reformed the procedures for the removal of illegally staying nationals and made the voluntary return of illegal aliens a priority (requiring it to take place within 30 days) except in cases of a threat to public order or the risk of evading the obligation to leave French territory.

B. Detention measures strictly limited by the law and monitored

308. Detention in waiting areas or administrative detention are short-term measures:

- Detention in waiting areas cannot in principle last more than days. In practice, detention in waiting areas lasts two days for foreigners who have been refused entry at the border and six days for those who submit an application for asylum at the border; and
- Administrative detention may not exceed 45 days and in practice lasts an average of 10 days.

309. These measures are strictly controlled by the courts.

310. The initial decision to detain someone in a waiting area may be appealed before the administrative courts. After four days, detention in waiting areas may be authorized only by the liberty and custody judge, before whom the foreigner is heard in the presence of a counsel.

311. The administrative decision to place someone in detention is subject to the control of the administrative judge and, after five days, detention must be authorized by the liberty and custody judge.

312. Foreigners placed in waiting areas or detention have certain rights guaranteed: the assistance of an interpreter and doctor and the right to communicate with a counsel or any person of their choice. They are informed of their rights, in a language that they understand, as soon after they are detained as possible. In waiting areas, at Roissy airport (Paris), the National Association for Assistance to Foreigners on the Borders (ANAFE) may provide foreigners with legal assistance. The Red Cross offers humanitarian assistance at all times. At the detention centre, legal assistance is provided by CIMADE (a non-governmental ecumenical assistance group that helps migrants, refugees and asylum seekers) or other specialized associations, and humanitarian aid is provided by the French Office for the Protection of Refugees and Stateless Persons (OFPRA).

313. These measures requiring access to medical and legal assistance, and the housing conditions described below, enable the foreigners concerned to enjoy the rights guaranteed

by the Covenant. On the other hand, it should be recalled that detention in waiting areas or placement in a detention centre are determined for a duration that is strictly limited by law and, in practice, lasts a maximum of six days with regard to detention in waiting areas and 10 days with regard to placement in an administrative detention centre. Accordingly there is no reason to take work-related or educational measures in waiting areas and detention centres, as suggested by the Committee in its question of 24 April 2012.

314. The conditions in which foreigners are kept in waiting areas and in detention and respect for their rights are controlled by the judicial authority (State Prosecutor and the liberty and custody judge), by parliamentarians and the Comptroller General of places of deprivation of liberty. Experience shows that dialogue between the independent Comptroller General of places of deprivation of liberty and the authorities has helped to improve the conditions in waiting areas and places of detention. International bodies may also monitor these places of detention: the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe (CPT), Commissioner for Human Rights of the Council of Europe and the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

C. Material conditions

315. Administrative detention centres are governed by the provisions of the decree of 30 May 2005, which sets out the material conditions for inmates. In particular, it provides for 10 m² of space for each person, standards of sanitation and comfort, free access to a telephone, and shared accommodation and catering facilities. Rooms are available for private meetings with lawyers, and it is possible to receive visitors. Rooms are also available for medical purposes and for daily visits from a nurse. Other holding facilities are required to provide adequate temporary accommodation (dormitories, sanitation) and to enable inmates to exercise their rights (by providing a telephone, visiting area, room for lawyers). The norms for holding centres take the recommendations of the CPT into account. The authorities ensure that efforts are constantly made to renovate and build new constructions, in keeping with these norms. The same requirements apply to waiting areas.

D. Unaccompanied minors

316. No unaccompanied minor may be held in detention in that French law prohibits the removal of minors. However, if an unaccompanied minor arrives at the border without the requisite entry documents or seeking asylum, he or she may be placed in waiting areas for the period of time strictly needed to examine his or her situation. In addition to the legal guarantees applying to all foreigners, an ad hoc administrator may be designated immediately by the State Prosecutor, entrusted with assisting the minor and ensuring that he or she is properly represented in all judicial and administrative procedures. If it seems that the minor would be at risk if he or she returned, he or she will be allowed into France, directed towards a special reception centre and benefit from protective measures. If the need for protection in France cannot be established, efforts are made to ensure that the minor is recovered by his or her family in his or her country of origin, in the necessary conditions of safety.

E. The overseas departments and territories

317. The set of legal guarantees applying to detention and placement in waiting areas also applies to the overseas departments and territories. The visits and monitoring mechanisms

are applied in the same conditions. The same is true of the provisions of the Decree of 30 May 2005 on the physical conditions of administrative detention. Particular efforts were made between 2008 and 2011, above all in French Guiana, Guadeloupe and Mayotte.

318. These efforts were reported on in the responses conveyed to the Committee in November 2011 (CCPR/C/FRA/CO/4/Add.3). Renovation work was carried out between 2008 and 2011, in the administrative detention centres in French Guiana, Guadeloupe and Mayotte (recommendation of CGLP of 30 June 2010). With regard to the administrative detention centres in French Guiana, there are plans to build new premises including a family area, followed by the demolition of the existing administrative detention centre. A new administrative detention centre with 136 places and a waiting area with 12 places will be opened in Mayotte at the beginning of 2015.

F. Overcrowding in detention centres and waiting areas

319. Generally speaking there is no overcrowding in detention centres and waiting areas in metropolitan France. However, overcrowding may occur as an exception, as was the case at Roissy (Paris airport) in December 2007, owing to an unusually large build-up of migrants. That situation (mentioned in the 2009 response to the Committee) was resolved at the end of January 2008. The average occupation rate in detention centres is 55 per cent (57% in the overseas departments and territories). With regard to Mayotte, in 2010, 27,000 persons were admitted into the administrative detention centre in Mayotte, with a daily occupation rate of 70/80 persons (for a capacity of 60 places) and an average duration of detention of less than one day (0.78 day). Overcrowding in the administrative detention centre in Mayotte occurs only very occasionally, and the number of persons admitted varies considerably within any given day.

X. Recommendation in paragraph 19 of the Committee's concluding observations

320. The French authorities wish to stress that they do not tolerate any acts of ill-treatment by law enforcement officials whatsoever, whatever the circumstances of the persons subjected to them.

321. The French authorities are very attentive to the conditions in which individuals are arrested or held in custody or any other form of deprivation of liberty, as well as during the execution of removal orders against aliens.

322. Much effort is put into teaching prison staff about human rights, both in their initial training at the National School of the Prison Service and in continuous training. In their initial training all prison service staff, whether future wardens or prison governors, receive human rights training and, on the recommendation of 11 January 2006, on the European Prison Rules. In continuous training, 30 selected prison officers a year take a Master 2 degree in law on the execution of sentences and human rights at the University of Pau.

323. The prison service supported the transcription of the European Prison Rules into good professional practices. This approach is translated in practical terms into a labelling of French prison establishments in terms of incoming inmates by an independent certification body.

324. Ill-treatment by prison service staff is no more tolerated than that by law enforcement officials. The perpetrators are held criminally responsible and are disciplined.

325. Very close attention is paid to three important principles listed in the code of ethics of 16 March 1986 and elaborated on in the practical guide to ethics, as revised in 2001:

absolute respect for all persons, whatever their nationality or origin; only the strictly necessary and proportionate use of force; and the protection of individuals after arrest and respect for their dignity.

326. Observance of these principles has recently been highlighted in a circular from the Ministry of the Interior dated 11 March 2003, on the dignity of persons in custody, as well as in the new rules and regulations of the national police, of 6 June 2006, and in the development plan for the national police for 2008–2012. The code of ethics is being updated, to include the latest principles and new prescriptions.

327. Act No. 2011-392 of 14 April 2011 banned strip searches of detainees. The security measures that can now be carried out were specified in a decision of 1 June 2011 taken by the Minister of the Interior. Both texts expressly recall the need to respect human dignity.

328. To ensure effective implementation of these principles, the French authorities endeavour to provide the appropriate training, exercise vigilance and impose severe penalties in all cases of proven misconduct.

329. The part of training dedicated to ethics has been strengthened since 1999 and the principle of the respect of the dignity of all persons and the prohibition of ill-treatment are underscored with special vigour.

330. Training modules included input from the National Security Ethics Committee and HALDE. An identical arrangement is being worked out with the Defender of Rights, the successor to those independent bodies. The Defender of Rights is now called on to take part in the initial training of French police officers (officers and commissioners).

331. Special attention is also paid to training in the use of professional methods of intervention that incorporate the principles mentioned above, in particular with regard to procedures for the removal of aliens. The director of the Office of the Inspector General of the National Police issued a memorandum on 8 October 2008 on ways of exercising physical coercion.

332. Special courses can also be arranged, such as the one held on “Police officers and diversity”, to help ensure that people’s cultural, religious or other differences are taken into account.

333. Alongside training, there is an emphasis on the supervision of staff by their superiors and, in particular, by the inspection unit that monitors conditions of arrest and detention.

334. As the internal security forces are responsible for law enforcement and are authorized to use legitimate force, they are one of the most closely monitored public services, and are subject to both internal and external controls.

335. Respect for human rights is monitored internally by the hierarchy and by specific bodies such as the Office of the Inspector General of the National Police (IGPN) and Office of the Inspector General of the National Gendarmerie (IGGN). Police officers and gendarmes are subjected to a judicial review and under the authority of the courts les perform legal tasks entrusted to them by law.

336. Numerous external control mechanisms have also been established.

337. It should be noted in the first place that police officers who have committed criminal offences are prosecuted.

338. In addition, France has established independent administrative authorities to which lawmakers have assigned specific tasks in the field of human rights, such as the Defender of Rights and the Office of the Controller-General of Places of Deprivation of Liberty. The recommendations of the Defender of Rights (and those of its predecessor the National Security Ethics Committee) have been taken into account in numerous instructions. These

texts, covering every aspect of the exercise of the prerogatives of the authorities concern, *inter alia*, the use of individual and collective firearms and intermediate means of force (flash-ball guns and stun guns; the conditions of maintenance of authorizations to use such equipment); security measures and handcuffing (memorandum of the director general of the national police of 7 June 2008). Following the recommendations of the Defender of Rights, the Ministry of the Interior also began discussions on an evaluation of flash-ball guns and likely developments in their use.

339. It should be added that respect for human rights in France can also be monitored by a number of international mechanisms, whether by a court such as the European Court of Human Rights or by committees such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, or the Committee against Torture (CAT).

340. Any police officer who breaks the law or breaches ethical rules is liable to both criminal and disciplinary sanctions.

341. In 2011, 2,969 disciplinary sanctions were imposed on officers (as compared with 2,698 in 2010 and 3,109 in 2009). Of these 132 were for proven acts of violence; 11 resulted in dismissal or a similar penalty and two in compulsory retirement for the officers concerned.

342. In the same year, 1,542 cases of allegations against police officers were referred to the Office of the Inspector General of the National Police (as compared with 1,385 in 2010 and 1,479 in 2009). Of these 758 (49%) concerned assaults, of which 652 concerned acts of violence (42% of the total and 86% of alleged assaults), as compared with 698 (50% of the total), of which 672 concerned acts of violence (49% of the total and 96% of alleged assaults) in 2010, and 690 (47% of the total), of which 668 concerned acts of violence (45% of the total and 97% of alleged assaults) in 2009.

343. These figures need to be seen in the context of the 4 million interventions made by the police each year.

XI. Recommendation in paragraph 20 of the Committee's concluding observations

344. The French Government gave a lengthy and detailed response to the Committee's recommendations in 2009, 2010 and 2011. It therefore invites the Committee to refer to the explanations given in reports CCPR/C/FRA/CO/4/Add.1, CCPR/C/FRA/CO/4/Add.2 and CCPR/C/FRA/CO/4/Add.3.

345. Accordingly only the most important aspects and salient developments are presented in this report along with specific responses to the new questions put by the Committee on 27 April 2012 relating to the "frequency" and "conditions of application of the "priority procedure" and the "steps taken to guarantee that asylum seekers are effectively informed of their rights and obligations once they are on French territory".

346. The risks that a foreigner may incur in the event of their return to their country may be referred to in various procedures: in an asylum application, the most widespread case, but also in cases of removal, whether or not the foreigner has made a prior asylum application.

347. An asylum application may be presented at the border or on the territory, at any time. Asylum applications are examined with reference to the Convention relating to the Status of Refugees, as well as to "complementary protection", which covers those who do not meet the criteria set out in the 1951 Convention but who would be at risk of being

subjected to capital punishment, torture or other inhuman or degrading treatment or punishment, or who may face threats as a result of widespread violence. Applications are examined by OFPRA, an independent public institution with a qualified, specialized and properly trained staff.

A. Judicial remedies in the event of decisions refusing asylum

348. A decision refusing asylum may be the subject of judicial remedies.

349. Since the adoption of the Act of 20 November 2007, an application may be made to the administrative court for the setting-aside of a decision refusing leave to enter for the purposes of asylum, and this application has full suspensive effect, as required by the European Court of Human Rights. Decisions by OFPRA to reject an application can be appealed to the National Court on the Right of Asylum (CNDA), a special administrative court. In principle appeals to CNDA have a suspensive effect except in three types of case, where the priority procedure may be applied (posing a serious threat to public order, the application is manifestly fraudulent or unjustified or submitted purely to block a removal order, the seeker is from a country considered as safe). In any case, foreigners whose asylum application has been rejected under this procedure may appeal their removal to the administrative judge with fully suspensive effect.

B. Information on asylum rights and the related guarantees

350. As explained in the response to the recommendation contained in paragraph 18 of the Committee's concluding observations, any foreigner seeking to enter France as an asylum seeker enjoys the same rights as those conferred upon foreigners placed in waiting areas, of which they are informed as soon as possible in a language that they understand. They may benefit from the legal assistance of ANAFE. They are informed of their right to use recourse to judicial remedies against the decision to reject their request and, under this procedure, the foreigner may make oral comments, request the services of an interpreter and be assisted by a counsel, appointed by the court if need be, and receive legal aid.

351. A foreigner who makes an application on French territory must be informed of their rights and receive help with filing the asylum application from the reception platforms or the asylum seeker reception centres (centres d'accueil de demandeurs d'asile (CADA)). In the event of an appeal before the national asylum court, they may be assisted by an interpreter and a counsel and receive legal aid.

C. Priority procedure for examining asylum requests

352. The Committee requested, in its question of 24 April 2012, a description of cases of implementation of the priority procedure.

353. Under this procedure the asylum application made by the foreigner will be examined a matter of priority by OFPRA.

354. It can only be emphasized that this examination is made by OFPRA in the same conditions as the study of any other asylum application and the foreigner cannot be escorted to the border until OFPRA has given its decision on the asylum application.

355. The conditions of implementation of the priority procedure are strictly defined by the law (arts. L 723-1 and L 741-4 2, 3 and 4 of the Code governing the Entry and Stay of Aliens and the Right to Asylum). The priority procedure can be implemented only if:

“The foreigner seeking asylum is a national of a country for which the provisions of article 1.C.5 of the aforementioned Geneva Convention apply or a country considered to be a safe country of origin. A country is considered as such if it ensures respect for the principles of freedom, democracy and the rule of law, as well as human rights and fundamental freedoms. Taking account of the safeness of country of origin cannot hinder the individual examination of each request” (art. L 741-4 -2° of the Code). It should be made clear here that recognition of a State as a “safe country” is subjected to the effective oversight of a judge. Since 1 June 2012, following decisions of the Council of State (deletion on 23 July 2010 of Armenia, Turkey, Madagascar and Mali – as far as women are concerned – and, on 26 March 2012, of Kosovo and Albania), the list of safe countries of origin comprises 18 countries (Armenia, Bangladesh, Benin, Bosnia and Herzegovina, Cape Verde, Croatia, Ghana, India, Mali (as far as men are concerned), Mauritius, Mongolia, Montenegro, the Republic of Moldova, Senegal, Serbia, the former Yugoslav Republic of Macedonia, Ukraine and the United Republic of Tanzania).

“The [foreigner’s] presence in France represents a serious threat to public order, public security or State security” (art. L 741-4-3° of the Code);

“The application is based on deliberate fraud or misuse of the asylum procedures, or is solely aimed at preventing execution of an imminent deportation order. In particular, a case of misuse of the asylum procedures is the fraudulent submission of several applications for residence as asylum under different identities. Another example of misuse of the asylum procedures is an asylum application submitted in an overseas department or the same application under examination in another Member State of the European Union. An asylum application based on deliberate fraud might be an application submitted by a foreigner who provides false information, conceals information about their identity, nationality or means of entry into France in order to mislead the authorities” (art. L 741-4-4 of the Code).

356. We should inform the Committee that implementation of the priority procedure is not automatic and is subjected to an examination of the individual situation of the person concerned.

357. It should also be recalled that the decision to apply the priority procedure may be disputed before the courts.

358. In 2011, applications placed in priority procedure accounted for 26 per cent of all requests. Requests from safe countries of origin accounted for 6.9 per cent of the total.

D. The special case of asylum requests submitted in detention by foreigners under a deportation order

359. This is one of the cases for which the “priority procedure” may be applied.

360. Upon arrival at the detention centre, the foreigner is specifically informed of his or her right to submit an asylum application within five days of being notified of the right to do so. The foreigner may benefit from legal aid provided by the associations that are permanently present at the detention centres.

361. In a judgement of 2 February 2012 (complaint No. 9152/09 *I.M. v. France*), the European Court of Human Rights found that the asylum procedure in administrative

detention disregarded the right to effective remedies, and the principle of prohibition of inhuman or degrading treatment, as guaranteed by the [European] Convention. This judgement principally calls into question the automatic nature of placing an asylum application in priority procedure as soon as it is submitted while in detention, after a deportation order. In conformity with its international commitments, the French Government intends to respect the Court's judgement and will swiftly take the necessary steps to amend the legal arrangements applying to asylum applications made in detention.

E. Addressing risks in the event of return to the stage of deportation procedures

362. Regardless of whether or not the alien has previously submitted an asylum application in France, in conformity with France's international commitments, French law prohibits their return to a country where there are substantial grounds for believing that they would be in real danger of being subjected to ill-treatment. This rule applies whatever form the removal decision takes.

363. In all cases, if there are claims of a risk to the applicant, the administrative authority examines the situation. The assessment of risk in the event of return may be controlled by the administrative judge, who may overturn the decision regarding the country of destination. If an appeal is lodged against a decision requiring the person to leave the territory or to be escorted to the border, the appeal has full suspensive effect.

364. In the case of such an appeal, the alien is heard if necessary in the presence of an interpreter and may be assisted by a counsel, appointed by the court if need be.

365. The French authorities wish to recall that they never call upon "diplomatic assurances".

F. Recent developments regarding asylum and prospects

366. For the fourth year in a row, in 2011 France was the leading host country in the European Union for asylum seekers, with 57,337 applications submitted to OFPRA.

367. The increase in asylum applications led to longer times for processing asylum applications and saturation of reception facilities. To remedy these problems, measures were taken to increase staffing at OFPRA and CNDA in 2010/11. At the same time, legislative provisions were made to improve the operation of the courts, in particular thanks to Act No. 2011-672 of 16 June 2011 (concerning time frames and the conditions for granting legal aid, the possible use of videoconferences for hearings before the CNDA).

368. As the President of the Republic emphasized, the fundamental right of asylum must be protected and strengthened and it is incumbent on France to welcome anyone being persecuted in their home country. The asylum policy will therefore be reformed in keeping with two main objectives: improving examination times and strengthening the rights of asylum seekers. The Committee will be informed of future developments.

XII. Recommendation in paragraph 21 of the Committee's concluding observations

369. Refugees are not subject to the rules applying to other foreigners in terms of family reunification. The conditions of duration of prior stay in France, resources and housing are not binding upon them. The right to family reunification is guaranteed once the family links

between the refugee and his or her family members in the country of origin are established as genuine.

370. This right is translated into the issuance of an entry visa into France. In 2010, 4,467 visas were issued to members of refugees' families.

371. Since 2009, a reform of the arrangements for the family reunification of refugees has been undertaken in order to reduce the time taken. Procedures have been simplified, information of those concerned has been improved and measures have been introduced to take account of difficulties to which families may be exposed in some countries of origin.

372. The time taken to issue visas still depends on the diligence of the applicants to provide proof of their link with the refugee and the reliability of the local register for births. In countries where such registers are reliable and local services respond rapidly to requests from diplomatic and consular posts, visas may be issued within a matter of weeks or months. It may take longer when filiation or other links are harder to prove. Although the burden of proof may be slackened in some cases, that burden cannot be entirely dispensed with as that might lead to fraud.

373. The French authorities are continuing with their efforts in this area.

374. The Act of 20 November 2007 gave aliens the opportunity to request the identification of the applicant for a long-stay visa by his or her genetic fingerprints, in order to provide proof of a declared filiation with the mother of the applicant.

375. The implementation of this measure is subject to a decree by the Council of State, which has been taken after receiving an opinion from the National Advisory Committee on Ethics on the conditions of its implementation. In the absence of such a decree this legislative provision has not subsequently been pursued.

XIII. Recommendation in paragraph 22 of the Committee's concluding observations

376. A number of measures have been taken to ensure that the gathering, storage and use of sensitive personal data are consistent with the obligations incumbent upon the State under article 17 of the Covenant:

- Act No. 78-17²¹ of 6 January 1978 [concerning information technology, files and freedoms], amended, strictly limits the conditions for creating and using such files;
- CNIL, an independent administrative authority, comprising four members of parliament, two members of the Economic and Social Council, six high court representatives and five public figures designated by the Cabinet, the Speaker of the National Assembly and the Speaker of the Senate, was established by this Act to ensure the respect of rights and fundamental freedoms in this domain; and
- Wide-ranging powers of judicial review allowing all applicants to have the compatibility of such files with article 17 of the Covenant (or provisions of equivalent scope such as article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) checked. The new concept of constitutional priority introduced by the constitutional reform of 23 July 2008 and presented in the introduction to this report also allows a complainant to have the

²¹ The full text of the Act is available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460&fastPos=1&fastReqId=2009681580&categorieLien=cid&oldAction=rechTexte>.

compatibility of such files with the rights and freedoms guaranteed by the Constitution, including the right to privacy (guaranteed by art. 2 of the Declaration of the Rights of Man and of the Citizen), checked.

A. Data collection and storage in processes governed by the law

377. The Act of 6 January 1978 concerning information technology, files and freedoms governs the fundamental rules on the protection of personal data. Those responsible for processing data, whether in the public or private sector, may gather and process data only if they respect the obligations laid down by this Act. Disregard for some of these obligations may give rise to criminal sanctions.

1. Authorization or declaration arrangements for the most sensitive data

378. Processing “high-risk” or “sensitive” data requires the express authorization of the CNIL (an independent administrative body) (art. 25 of the Act of 6 January 1978) or a decision of the competent minister, following a reasoned submission and published by CNIL (arts. 26 and 27 of the Act).

379. Other data can be processed in principle only following a declaration to CNIL (art. 22.I. of the Act of 6 January 1978), except in the cases expressly mentioned by the Act for which no authorization or declaration are required (art. 22.II of the Act).

2. Criminal sanctions for more serious failures to meet obligations

380. Violations of the rights of the person resulting from computer files or their processing that do not meet the obligations imposed by the Act of 6 January 1978 are subject to criminal sanctions (arts. 226-16 to 226-24 of the Criminal Code) by sentences of up to five years’ imprisonment and a 300,000-euro fine. This concerns, inter alia:

- Processing data without respecting the pre-requisites laid down by the Act of 6 January 1978 (art. 226-16 of the Criminal Code);
- The failure of the processor to see to the security of the data, in particular in cases of access to the information by unauthorized third parties (art. 226-17 of the Criminal Code);
- The gathering of personal data by fraudulent, unfair or illicit means (art. 226-18 of the Criminal Code).

B. Effective measures to guarantee that this information is not accessible to unauthorized persons

381. With regard to personal data relating to offences, convictions and security measures, the Act lists a limited number of persons who may have access to these files (art. 9).

382. Article 34 of the Act of 6 January 1978 obliges the processor to take all possible precautions in the light of the type of data, including preventing their corruption or damage or third-party access. As mentioned earlier, disregard for these provisions is an offence punishable by five years’ imprisonment and a 300,000-euro fine (art. 226-17 of the Criminal Code).

383. More generally, CNIL exercises supervisory functions with regard to anyone who might carry out automatic data processing and is authorized to conduct investigations. In the event of failures to meet the obligations laid down by the Act of 6 January 1978, it may

issue, following an adversarial procedure, warnings or formal notices, and even impose sanctions on those responsible (art. 45 of the Act).

384. In 2010, CNIL carried out more than 300 controls giving rise to three warnings, 111 formal notices and five fines.²² In cases of serious and immediate violations of fundamental rights and freedoms, the President of CNIL may apply to the courts for a summary ruling in order to put an end to the violation of human rights.

C. Access to data by interested persons

385. The Act of 6 January 1978 expressly entitles anyone not only to oppose the processing of data concerning them (art. 38 of the Act) but also to exercise their right to gain access to data gathered about them (art. 39 of the Act). Anyone may also request modifications to be made to the recorded information should it be “inexact, incomplete, erroneous or out of date” (art. 40 of the Act).

386. The means of exercising this right are limited in cases of information concerning State security, defence or public safety. Access is through CNIL, which designates a Supreme Court judge to carry out investigations and, if necessary, to make the necessary modifications (art. 41 of the Act). The purpose of this procedure is to preserve the finality of the data processing without depriving the interested persons of their rights.

387. To inform individuals and facilitate their action, in 2010 CNIL published a practical guide on the right of access to data.²³

D. Restrictions on recording of data in the EDVIGE database

388. The EDVIGE document and information system (exploitation documentaire et valorisation de l’information générale) was abandoned by the Ministry of the Interior in favour of two different systems for the prevention of threats to internal security and administrative inquiries (PASP and EASP), implemented by the national police. The national gendarmerie uses a system called “gestion de l’information et la prévention des atteintes à la sécurité publique (management of information and prevention of threats to public safety – GIPASP)”. The creation of these files has been submitted to CNIL for its opinion.²⁴

389. Decrees No. 2009-1249 of 16 October 2009 and No. 2011-340 of 29 March 2011, respectively authorizing data processing to prevent attacks on public safety and creating a personal data processing system for the management of information and prevention of threats to public safety (PASP and GIPASP) include safeguards as to the data gathered on minors aged 13 years and over. Minors may not be included in this data processing system unless their individual or collective activity indicates that they might pose a threat to public safety. Recording data about them therefore depends on their actual actions.

²² For more details of the activities of CNIL, see annual reports. The 2010 report is available at: http://www.cnil.fr/fileadmin/documents/La_CNIL/publications/CNIL_rapport_annuel_%202010.pdf.

²³ This guide is available on the CNIL website: http://www.cnil.fr/fileadmin/documents/Guides_pratiques/CNIL_Droit_d_acces.pdf.

²⁴ Proceedings No. 2009-355 of 11 June 2009, Official Journal of the French Republic of 18 October 2009; No. 2009-356 of 11 June 2009, Official Journal of the French Republic of 18 October 2009; No. 2010-427 of 25 November 2010, Official Journal of the French Republic of 7 July 2011; No. 2010-456 of 9 December 2010, Official Journal of the French Republic of 30 March 2011.

390. These decrees established a contact judge (magistrat référent), who contributes through his or her recommendations to the respect of the safeguards for minors. Inter alia, this judge ensure respect for the rules on data deletion.

E. Restrictions on the processing of data in the STIC system

391. The aim of the STIC (Système de Traitement des Infractions Constatées) crimes processing system is to facilitate the detection of criminal offences, the assembling of the evidence of those offences and the search for their perpetrators.

392. Established by decree No. 2001-583 of 5 July 2001 amended, STIC was later provided with a legal framework by article 21 of Act No. 2003-239 of 18 March 2003 on internal security. These rules were recently amended and expanded by Act No. 2011-267 of 14 March 2011 on orientation and programming for the performance of internal security, whose provisions have been codified in articles 230-6 to 230-11 of the Code of Criminal Procedure.

393. This file may be used to record data on persons regarding whom, in the light of preliminary or on-the-spot investigations or pretrial proceedings, there exists serious or corroborating evidence that renders his or her participation likely, either as author or as accomplice, in the commission of a crime, an offence or an offence of the fifth degree.

394. Under article 230-7 of the Code of Criminal Procedure and article 2 of the Decree of 5 July 2001, the file may also include information on the victims of these offences. The duration of their conservation may not exceed 15 years, but this may be extended, in the interest of the victims, until the discovery of the objects stolen from them, when the offence concerns works of art, jewels or arms.

395. However, these victims may oppose the conservation of personal data concerning them in the file once the perpetrator of the offence has been convicted. They are also informed of their right of access provided for in article 41 of Act No. 78-17 of 6 January 1978 concerning information technology, files and freedoms.

396. Access to STIC is restricted to individually designated, specially authorized staff members working for the national police and national gendarmerie, along with customs officers authorized to perform criminal investigation tasks. Similarly, public prosecutors and investigating magistrates may have access to STIC in order to carry out research into offences referred to them. In certain conditions, staff members working for the administrative police, individually designated and specially authorized by the prefect, may consult it. In all cases, access is limited to determining the identity of the accused and not the victim.

397. STIC is placed under the control of the State Prosecutor, and Act of 14 March 2011 [on orientation and programming for the performance of internal security] increased the role of the judicial authority by establishing a judge who is specially designated by the minister of justice and entrusted with monitoring the implementation and updating of STIC: this judge may act of its own initiative or in response to individual complaints, and has the same powers to delete, correct or maintain personal data as the State Prosecutor.

398. Taken as a whole these rules provide sufficient safeguards to protect the right to privacy of victims of criminal offences, whose identity is recorded solely to facilitate the identification of the perpetrators of the criminal offence and consequently compensation for injury to the victim. The report published by CNIL in 2009 referred to shortcomings in the updating of STIC, already identified by the Ministry of the Interior. Whereas the accuracy of STIC data largely depends on the information to be transmitted by the prosecution services to the police on legal action taken, the transmission by the prosecution services of

this information to the file manager, or the national police, fail to comply with the rules. A final response will be given in the coming months to the problems of updating STIC, and the “judicial documentation and operations system” (JUDEX) of the gendarmerie, thanks to the entry into service of “traitement des procédures judiciaires” (judicial procedures processing – TPJ), which will combine STIC and JUDEX. Input for this single criminal records file, created by decree of 4 May 2012, will be linked to the judicial procedures follow-up file of the Ministry of Justice, known as CASSIOPEE, which will automatically transmit to the TPJ file information on legal action taken.

399. The conditions for creating and using these files, under the supervision of the independent CNIL and the judicial authority help to ensure that they are compatible with the rights and freedoms guaranteed by article 17 of the Covenant. It is also important to recall that the compatibility of these files with article 17 of the Covenant may also be challenged before the courts, either directly with regard to the provisions of article 17 of the Covenant itself, or equivalent provisions (art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) or under constitutional priority.

XIV. Recommendation in paragraph 23 of the Committee’s concluding observations

400. The Committee drew the attention of the French Government to the Act of 2004 prohibiting the conspicuous wearing of religious symbols in State schools. The Government wishes to explain to the Committee the conditions in which this Act has been applied for eight years in France.

401. Owing to the reference to articles 18 and 26 of the Covenant it also wishes to present to the Committee Act No. 2010-1192 of 11 October 2010 prohibiting the concealment of the face in public areas.

A. The Act of 15 March 2004 prohibiting the conspicuous wearing of religious symbols in State schools

1. Legislative machinery

402. France is a secular republic, as cited in article 1 of its Constitution, and since 1905 it has enforced a strict separation of Church and State.

403. The principle of secularism aims to guarantee the neutrality of the State and provide an open forum centred on the shared democratic values of freedom of conscience, thought and expression, the dignity of all persons, cultures and religions and respect for others. The Act of 15 March 2004, which prohibits the conspicuous wearing of religious symbols in public schools, gives dual expression to the principle of secularism.

404. Firstly, it reaffirms the republican vocation of the State. The latter is responsible for “inculcating the values of the Republic, which include the dignity of all human beings, equality of men and women and the freedom of all, including in the choice of lifestyle (...). By shielding from the pressures that might arise from conspicuous manifestations of religious affiliation the public secondary schools, whose vocation is to educate all children, irrespective of whether or not they hold religious beliefs and of their religious or philosophical values, the Act guarantees freedom of conscience for all” (implementing circular dated 18 May 2004).

405. In fact, the Act does not run counter to the texts that, in accordance with articles L. 141-2, L. 141-3 and L. 141-4 of the educational code, enable the obligation to

attend school to be reconciled with the right of parents to have their children given a religious education if they so desire.

406. The implementing circular cited above states among other things that “Secularism, as it is based on respect for persons and their beliefs, is inconceivable without a resolute struggle against all forms of discrimination. Civil servants in the national education system must exercise the greatest vigilance and rigour with regard to all forms of racism or sexism and all forms of violence against an individual on grounds of affiliation, real or supposed, with an ethnic or religious group (...).”

407. Second, the Act of 15 March 2004 protects the unity of the educational community against the rise in religious sectarianism. All apparel and symbols that result in immediate recognition of one’s religious affiliation are banned. Nevertheless, the Act does not single out any one faith and contains no list of prohibited religious symbols, nor is the prohibition systematic. The application circular confines itself to citing examples of prohibited symbols and clothing, such as “the Islamic veil, however it is named, the yarmulke or an obviously oversized cross”. “Discrete religious symbols” such as “accessories and apparel worn by all students and that have no religious significance” are, on the other hand, authorized.

408. The Act applies to all students in public elementary, middle and high schools. Students in private elementary, middle and high schools, apprentices (who are covered by the labour code) and university students, on the other hand, are not affected by the text.

2. Implementation of the Act

409. The lawmakers have sought to give priority to educational efforts and dialogue. They have accordingly emphasized pragmatism and left to those actually involved the responsibility of ensuring compliance with the Act and punishing any offences. An initial period of dialogue with the student who has committed the offence is thus envisaged, to be organized and carried out by the head of the scholastic institution in cooperation with the administrative and pedagogical staff. Only following this period of dialogue can disciplinary action be undertaken, if necessary. Lastly, if the disciplinary board decides on expulsion, the academic authorities will examine with the student and his or her parents the conditions in which his or her schooling can be continued.

410. Students expelled pursuant to this Act have nevertheless not been deprived of access to education and training. In accordance with article 5 of decree No. 85-1348 of 18 December 1985, the rector or inspector must be notified about the students expelled so that they can make immediate provision for their enrolment in another institution or public facility for correspondence courses (art. L. 131-2 of the education code). Those who are not subject to compulsory schooling may also enrol in the national distance learning institution to continue their studies. In any event, students are always able to undertake private or religious education to which local authorities contribute on the basis of government funding.

411. The Act itself provided for the evaluation of its application one year after its entry into force, in July 2005. In this respect, the fears that some young women might be expelled from the educational system have proved in fact to be groundless. During the school year 2004/05, only 39 students, of which 36 were girls, were definitively expelled, other cases having been solved through dialogue.

412. Since 2005, the Act has been applied without difficulty: the regional education authorities (académies) have reported only a few isolated of students who arrived wearing a conspicuous religious symbol. At the beginning of the school year in 2008 and in 2009, no disciplinary procedures were necessary, and no new disputes were reported at the beginning of the school year 2009/10.

413. These figures demonstrate that the principles of the Act have been accepted by students and their families.

414. That the vast majority of families understand the reason for the Act and wish to comply with it is apparent from the fact that the ombudsman for the Ministry of Education has never been seized of such cases.

415. Since the entry into force of the Act, administrative tribunals have issued 31 rulings, all of which have rejected appeals for the revocation of final decisions to exclude pupils pursuant to the Act. There are no other rulings currently pending before the administrative tribunals.

416. The European Court of Human Rights delivered a decision on 30 (case No. 14208/08 *Bayrak v. France*) on the ban on wearing conspicuous religious symbols in French schools, in a case on the expulsion of French pupils of the Sikh faith. It confirmed that the restrictions provided by the Act of 15 March 2004 were justified by the constitutional principle of secularism and in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

417. The Act of 15 March 2004, intended above all to promote the neutrality and secularism of educational institutions, is thus entirely compatible with article 18 of the Covenant.

B. Presentation of the Act of 11 October 2010 prohibiting the concealment of the face in public areas

418. Act No. 2010-1192 of 11 October 2010 prohibiting the concealment of the face in public areas demonstrates the desire of the national parliament to reassert solemnly the values of the Republic and the requirements of living together. The values of the Republic – liberty, equality, fraternity – form the basis of the Social Pact; they guarantee the cohesion of the Nation; they are the basis of the respect of human dignity and equality between men and women.

1. The provisions of the Act

419. Article 1 of the Act stipulates that “nobody may, in public, wear any apparel intended to conceal their face”. The Act also sanctions the act of forcing a third person to conceal their face.

420. Apparel intended to conceal the face means that which makes it impossible to identify someone. This means that the following is prohibited: the wearing of hoods, full veils (burka, niqab, etc.), masks or any other accessory or clothing that conceals the face.

421. Article 2 of the Act provides for several exceptions to the prohibition of concealment of the face. The following are authorized: face protection used for health reasons, face protection used professionally or for sporting activities, compulsory apparel (such as helmets for two-wheeler users), concealment of the face at traditional events such as carnivals or processions, and the wearing of clothing or accessories (sunglasses, hats, veils, etc.) not intended to mask the whole face remains possible.

422. “In public” refers to public thoroughfares and places open to the public or used for public services. The ban does not apply to places of worship open to the public. The Act does not therefore restrict religious freedom by regulating apparel at religious ceremonies in places of worship.

423. The Act created, on the one hand, a fine linked to the deliberate concealment of the face in public and, on the other, an offence of imposing on a person, owing to their sex, concealment of their face.

424. A person who conceals their face in public may be fined up to 150 euros. Instead of or in addition to this fine, the judge may impose the obligation to attend, possibly at their own expense, a citizenship course. A person who obliges another to conceal their face in public is committing an offence punishable by one year's imprisonment and a 30,000 euro fine. These penalties are doubled if the person thus obliged is a minor.

425. The Act of 11 October 2010 provided for a period of six months to elapse between the vote and its application, which has allowed for education and persuasion of those concerned, in order to promote adherence to the essential rules of the social compact, primarily equality and dignity.

426. Between 11 April 2011, when the Act entered into force, and 11 April 2012, 354 checks took place and led to 299 fines. The security forces are at pains to apply this Act humanely and professionally under court supervision, as it is the courts that decide on offences that have committed.

427. The Act prohibiting the concealment of the face in public areas is applied, in the overwhelming majority of cases and throughout French territory, without constraint and without disturbing public order. The police and gendarmerie, when applying the Act of 11 October 2010, have no powers to force offenders to remove their veil.

428. It is important to recall that the Act of 11 October 2010 does not prohibit manifestations of religious faith, including in public, by any other means, including clothing. The ban concerns only full concealment of the face in public.

2. Reasons leading to the adoption of this Act

429. If the voluntary and systematic concealment of the face is problematic, it is because it is simply contrary to the fundamental requirements of "living together" in French society. Defence of public order is not limited to maintaining the peace, health or security. It also allows for the prohibition of any behaviour that runs directly counter to the essential rules of the French social compact, the basis of French society.

430. The minimum requirements of life in society imply that, when individuals are in a public place in the widest sense, in other words where they are likely to come across others fortuitously, they cannot deny that they belong to society, nor can they have it denied them, by concealing their face from others to the point of making it fully impossible to be recognized. No exchange between persons, no social life is really possible, in public, unless citizens can see each other. Life in society implies forms of interaction and exchange that allow other people's faces to be seen and make it possible for them to be addressed in their specific and recognizable identity. Various current practices call for individuals to be identified, for example, when parents go to fetch their children at school, when people send a parcel at a post office, at polling stations or when making a purchase in a shop.

431. Those concerned [by the legislation] are placed in a situation of exclusion that is incompatible with the principles of freedom, gender equality and human dignity as they are conceived in the French Republic. The wearing of a full veil prevents women from exercising certain activities as equals with men. In French society seeking and exercising employment requires showing one's face in order to be identified by one's employer, customers or the public. All employment in the civil service is out of the question for any woman who refuses to show her face for religious reasons.

432. Consequently, the wearing of a full veil leads to social exclusion of women, whether they wear it voluntarily or not, and creates a situation of inequality with men. The Act aims

at restoring de facto equality between men and women. Moreover, the draft legislation was supported by numerous associations that defend women's rights when it was discussed in the national Parliament.

433. The ban on the wearing of a full veil is also justified by considerations of public order. Public security requirements justify obligations to wear, in public, apparel that enables the wearer to be identified. All citizens, in French society, must be able to be identified if need be, in order to prevent, for example, unlawful behaviour.

XV. Recommendation in paragraph 24 of the Committee's concluding observations

434. The fight against racism and anti-Semitism is a constant objective of the French Government.

435. Under Act No. 90-615 of 13 July 1990 providing for the punishment of all racist, anti-Semitic or xenophobic acts CNCDH is required to submit an annual report on the fight against racism. These reports²⁵ are a veritable tool for methodology and for capitalizing on good practices in the fight against racism and monitoring the policy conducted since 1990.

436. In 2003 the Interministerial Committee for Combating Racism and Anti-Semitism²⁶ was established, with the Prime Minister in the chair and comprising the minister for internal security, minister of justice, minister of foreign affairs, minister of social affairs, minister for youth, minister of national education and minister for cities. This Committee is responsible for drawing up the guidelines for the policy on combating acts and conduct inspired by racism or anti-Semitism. It sees to the coherence and effectiveness of steps taken by the different ministries, either to prevent such acts and conduct or to ensure that exemplary punishments are handed down when they occur. This structure was strengthened in 2012 by the establishment of an interministerial delegate for combating racism and anti-Semitism.²⁷

437. In terms of *prévention*, school is the place where republican values are taught, through school life or specific educational activities.

438. In terms of punishment, France has an extensive criminal arsenal and racist or anti-Semitic language or acts are subject to a strict criminal policy.

439. The Defender of Rights, an independent administrative authority, which succeeded HALDE, plays a central role in the fight against all forms of discrimination, including those based on xenophobia.

440. France committed itself for 2012–2014 to a wide-ranging plan to combat racism and anti-Semitism.

A. Educational activities

441. The combat for the values of equality, liberty and respect for others lies at the heart of the commitment of the Republican State.

²⁵ These reports may be consulted at: http://www.cncdh.fr/rubrique70f8.html?id_rubrique=27.

²⁶ Decree No. 2003-1164 of 8 December 2003.

²⁷ Decree No. 2012-221 of 16 February 2012.

442. Article 2 of the Act on the orientation and programming of the future of schools of 23 April 2005 recalls that: “in addition to imparting knowledge, the Nation shall set schools the prime task of ensuring that pupils share the values of the Republic. The right to education is guaranteed to all in order to permit them to [...] exercise their civic rights and obligations.”

443. Transmission through the education system of the values of the Republic (liberty, equality, fraternity, secularism, rejection of all forms of discrimination, etc.) by means of the major founding texts and civics to overcome prejudice and favour the independence of future citizens.

444. This is done at all levels of schooling:

- At primary school, pupils are called on to reflect upon self-esteem, and the absolute prohibition of attacking others;
- At lower secondary school, civics focuses on the notions of humanity and citizenship, to prepare pupils to behave responsibly. In the fifth grade, for example, the theme “different but equal, equal rights and discrimination” helps students identify different forms of discrimination and demonstrate their consequences; and
- At upper secondary school, civics, law and social studies address the notions that constitute human rights.

445. Education in citizenship also entails educational and preventive measures to raise pupils’ awareness and the condemnation and strict and systematic punishment of all acts of racism, anti-Semitism and xenophobia.

446. Action taken in the académies and schools is mainly taken in partnership with local and regional authorities and authorized associations.

447. An agreement along these lines between the International League against Racism and Anti-Semitism (LICRA) and the Ministry of National Education was signed and it was renewed in July 2011.²⁸ The new three-year agreement is an opportunity for LICRA to commit to three new areas:

- The execution of new measures to make pupils who commit racist, anti-Semitic or discriminatory acts feel responsible;
- Mediation in schools that request it when they face situations of racism, anti-Semitism or discrimination;
- The preparation and testing of a module on the risks of the Internet in terms of incitement to racial hatred.

448. The brochure “Acting against racism and anti-Semitism”²⁹ has been distributed to all schools. It explains numerous initiatives, resources and mechanisms to assist those involved in education in the fight against racism and anti-Semitism. It gives specific examples of possible action.

²⁸ The text of the Convention can be found at: http://media.eduscol.education.fr/file/Valeurs_republicaines/03/9/Convention_LICRA_2011_185039.pdf.

²⁹ The brochure “Acting against racism” can be found at: http://media.eduscol.education.fr/file/Europe_et_international/35/8/agir_racisme_109358.pdf.

449. HALDE, whose tasks are now undertaken by the Defender of Rights, has posted online a training tool, in partnership with the Ministry of National Education. The HALDE online teaching site allows, with regard to all forms of discrimination, for:

- Testing of knowledge in a virtual school; and
- Finding the appropriate resources.

450. Selective measures are taken in schools in cooperation with human rights organizations. One example is on awareness-raising days on specific themes: Universal Children's Day (20 November), International Day for the Abolition of Slavery (2 December), International Human Rights Day (10 December), International Women's Day (8 March) and International Day against Racism (21 March). "Weeks for education against racism" are organized by a grouping of 24 organizations³⁰ with a view to involving children and young adults in the fight against racism. A competition (René Cassin human rights prize), open to all secondary school pupils, organized by the Ministry of National Education and CNCDH, rewards the best projects for education in citizenship. As part of the "Citizenship itineraries", the association Citizenship and democracy (CIDEM) also organizes awareness-raising activities and puts teaching resources at the disposal of teachers and pupils who invest in these events.³¹

B. Criminal sanctions against racist or anti-Semitic language or acts

451. France has an extensive legal arsenal and it has gradually been strengthened with a view to punishing racist or anti-Semitic acts and language:

- Act No. 72-546 of 1 July 1972 on action to prevent racism sanctions incitement to hatred or violence against a person or group of persons on account of their origin or membership or non-membership of a particular ethnic group, nation, race or religion;
- Act No. 90-615 of 13 July 1990, providing for the punishment of all racist, anti-Semitic or xenophobic acts, created the offence of disputing crimes against humanity;
- The new Criminal Code, in effect since 1 March 1994, created new offences and strengthened the punishment of racist offences (legal persons may be declared criminally liable);
- The Act of 16 November 2001 on action to combat racial discrimination extend the right to non-discrimination to all working relations, including in the civil service, while enhancing the possibilities for legal action by trade unions and associations;
- Act No. 2003-88 of 3 February 2003 establishing harsher penalties for racist, anti-Semitic and xenophobic offences;
- Act No. 2004-204 of 9 March 2004 on the adaptation of the judicial system to developments in criminality specifies this aggravating circumstance if an offence is "preceded, accompanied or followed by spoken or written words, images, items or acts" that are racist or anti-Semitic;
- the Equal Opportunities Act of 31 March 2006 provided a legal basis for the spot checks already admitted by case law, and strengthened the powers of HALDE;

³⁰ <http://semaines.cidem.org/>.

³¹ <http://www.cidem.org/>.

- The Act of 27 May 2008 introducing various steps to bring French law into line with European Union law in the field of efforts to combat discrimination specifies the notions of direct and indirect discrimination and extends to all areas of discrimination the procedure according to which it is for the defendant, accused on the basis of evidence substantiating the existence of such discrimination, to prove that the measure at issue is justified on the basis of objective factors that do not involve discrimination.

452. Implementation of these laws is subject to the directives of the Minister of Justice.

453. By dispatch of 5 March 2009, the Minister of Justice asked the public prosecutors to extend the competence of the anti-discrimination focal points to all acts committed because of the victim's membership of a given ethnic group, nation, race or religion or his or her sexual orientation. The objective was two-fold: on the one hand, to entrust a specialized judge with dealing with all racist or xenophobic offences, as some of them entails procedural specificities requiring special expertise. On the other, it was intended to promote exchanges between the prosecution services, associations and representatives of the religious communities, essential if pertinent responses are to be made to racist and xenophobic acts.

454. By dispatch of 27 June 2012, the Minister of Justice reminded public prosecutors' offices of the importance of combating racist and anti-Semitic acts, inviting them to:

- Give the investigation services all necessary instructions for identifying and questioning the perpetrators;
- Complete the statistical questionnaires prepared in 2007 by the Ministry of Justice, and send those for the first half of 2012 by 20 July;
- Inform the victims of the legal action to be taken in response to the procedure;
- Strengthen relations between the contact judge at the prosecutor's office and Jewish and Muslim association.

455. The statistical data show that since 2007 the number of convictions for racial offences has been fairly steady.

Number of convictions for offences related to racism, anti-Semitism or discrimination

	2007	2008	2009	2010*
Number of convictions including a racism-related offence	577	682	579	567
Number of convictions primarily for a racism-related offence	423	469	397	397
Number of convictions only for offences related to racism	306	344	288	298

* Data for 2010 are provisional

C. The Defender of Rights

456. This independent institution was presented in the introduction to this report. With the power to receive individual complaints, it makes a practical contribution to the fight against discriminatory measures and to creating the conditions for real equality, not merely fighting discrimination after the event but also taking preventive action to identify and stop such acts from taking place.

457. A total of 450 delegates of the Defender of Rights, present throughout French territory, are at the public's disposition to receive their complaints. In 2010, 12,467 complaints were submitted³² to HALDE, 27 per cent of which concerned alleged discrimination based on origin. In 2011,³³ HALDE, and later the Defender of Rights, received 8,503 complaints, 23.5 per cent of which concerned alleged acts of discrimination based on origin.

458. The Defender of Rights may also, on its own initiative, take up cases of discrimination brought to its notice. To put an end to any discrimination that it identifies, the Defender of Rights may resort to mediation, but also has the power to assist complainants before the courts, intervene in disputes already before the courts and inform the State Prosecutor of acts that constitute crimes or offences.

459. The Defender of Rights also acts to promote equality in the fields of employment, housing, education and access to goods services, both public and private, raising awareness of the players (employers, housing authorities, etc.). It proposes legislative and regulatory amendments and makes recommendations to public and private authorities. It also conducts and coordinates studies and research.

D. National action plan to combat racism and anti-Semitism 2012–2014

460. On 15 February 2012 France published its “National Action Plan to combat racism and anti-Semitism 2012–2014,”³⁴ which translated the Government's determination to combat all forms of discrimination based on origin. The Plan provides in particular for:

- Stronger repressive measures on the basis of the tough penalties available in France;
- Improved knowledge of these phenomena, in particular on the Internet;
- More account taken of these phenomena in social, educational, cultural and sports policies;
- Improved integration of immigrants and equal opportunities for the disadvantaged.

461. To ensure that government action in the fight against racism and anti-Semitism is consistent, an interministerial delegate on the fight against racism and anti-Semitism, entrusted with implementing the action plan, has been entrusted with the task of overseeing interministerial work on a daily basis and ensuring that State action on the ground is consistent. The delegate is also meant to take the lead in promoting, proposing and assessing actions.

462. In a letter of 9 March 2012 the United Nations Committee on the Elimination of Racial Discrimination congratulated France on the adoption of this plan.

³² Data resulting from the HALDE 2010 report – This document may be consulted at: <http://halde.defenseurdesdroits.fr/-Rapports-annuels-.html>.

³³ Data resulting from the 2011 report of the Defender of Rights – this document may be consulted at the following address: http://defenseurdesdroits.fr/sites/default/files/upload/ddd_raq_2011.pdf.

³⁴ The plan, 140 pages long, can be downloaded from the French Government website: <http://www.gouvernement.fr/gouvernement/plan-national-d-action-contre-le-racisme-et-l-antisemitisme-2012-2014>.

XVI. Recommendation in paragraph 25 of the Committee's concluding observations

463. The questions of the fight against racial discrimination in employment and equal access to employment regardless of national, racial or ethnic origins remain a concern for the French authorities, with regard to both private and public sector employment.

464. Numerous laws are designed to punish discrimination of all kinds in employment (art. 225-1 and 2 of the Criminal Code, arts. L. 1132-1 et seq. of the Labour Code, arts. 6 and seq. of Act No. 83-634 on the civil service and Act No. 2008-496 of 27 May 2008 introducing various steps to bring French law into line with European Union law in the field of efforts to combat discrimination).

465. Specific actions have been undertaken to facilitate access to employment by all with regard to private and public sector employers alike.

A. Making CVs anonymous

466. Following the adoption of article 24 of Act No. 2006-396 of 31 March 2006 on equal opportunities, the Labour Code gained a new article L. 1221-7, which provides that, in enterprises with 50 employees and more, information communicated in writing by a candidate for a job must be examined in conditions that preserve his or her anonymity.

467. An experiment, introduced at the beginning of 2009 in about 100 large enterprises, came up against numerous practical difficulties, and the report³⁵ produced by a team of researchers at the Centre de Recherche en Economie et Statistique/J-PAL Europe/École d'économie de Paris, in cooperation with "Pôle emploi", following this experiment, stated that "while anonymous CVs counter the tendency of recruiters to select candidates of their own sex or age since there are recruiters of both sexes and different ages, the phenomenon of favouring candidates similar to oneself is offset by the differences between recruiters and making CVs anonymous does not, on average, improve the chances of women or older people. Above all, anonymous CVs worsen the prospects of candidates with immigrant origins or residents of ZUS [sensitive urban zones] or [people living in a zone covered by an Urban Social Cohesion Contract] (CUCS). The widespread use of anonymous CVs does not therefore seem justifiable. On the other hand, the findings on the phenomenon of favouring candidates similar to oneself opens avenues for enterprises to raise the awareness of their recruiters of this form of hidden discrimination and to ensure wide diversity of those selecting CVs".

468. This review, of which the Government has taken note, confirms the difficulties of implementing the provisions of article L. 1221-7 of the Labour Code. A further period of reflexion and consultation has begun on that basis to throw light on the choices to be made so that the tool provided by anonymous CVs is fully adapted to its purpose.

B. The "diversity label"

469. The creation of the "diversity label", announced by the President of the Republic in an address at the École Polytechnique on 17 December 2008, was intended to promote diversity and prevent discrimination in human resource management. To that end, it is intended to promote best recruitment practices and professional advancement not only in

³⁵ Report available at: <http://www.crest.fr/images/CV anonyme/rapport.pdf>.

enterprises, but also in public services, local communities and associations voluntarily and actively involved in the promotion of diversity.

470. It applies to all employers, both public and private, regardless of size. It concerns their recruitment policy and career management. It also concerns the prevention of all kinds of discrimination recognized by the Act, in particular with regard to a person's origins or religion.

471. The label is State property and is delivered on the State's behalf by a third party, AFNOR-Certification, on the advice of a 20-member label commission (representatives of the State, employers, trade unions, and experts appointed by the national association of directors of human resources) chaired by the director of reception, integration and citizenship.

472. In March 2011, after two years of existence, the results show how much interest there is in the "diversity label". In all, 255 labels have been awarded to private and public enterprises or public bodies. They affect more than 15,000 workplaces and almost 770,000 employees.

C. The Charter for the promotion of equality and diversity

473. Moves to promote equality and social diversity in the civil service are best illustrated by the signing of the Charter for the promotion of equality and diversity in the civil service, on 2 December 2008, by the ministers responsible for the civil service and the President of HALDE, which became the Defender of Rights following the adoption of Organic Law No. 2011-334 of 29 March 2011.

474. This Charter, applicable to the three sectors of the civil service (State, regional and hospital), is a strong moral commitment to the sense of the guiding values of administrations and their staff: equality, secularism, impartiality and neutrality, the principle of non-discrimination. The content of the text is set around five main themes covering the principal fields of careers, recruitment to professional careers and training. In each field, the Charter sets out the commitments requiring specific action, some of which correspond to the guidelines already defined or being prepared. For example, ministers have been called upon to include, in training courses designed to make entrance competition juries professional, additional modules to raise awareness of questions relating to the fight against discrimination and the promotion of equality.

475. The Charter also provides that it must be applied in social dialogue bodies such as the joint civil service council. Three reports have been produced:³⁶ they include a summary of good ministerial practices and ways of improving the promotion of equality. Updates are made at the annual conferences on human resource planning and at meetings of the government network of "equal opportunities" focal points. Training on the prevention of discrimination and the promotion of equality, organized jointly by the Government and the Defender of Rights, for "equal opportunities" focal points and ministerial human resources practitioners, was given in 2010 and 2011.

³⁶ The 2011 report can be consulted at the following website: http://www.fonction-publique.gouv.fr/files/files/carrieres_et_parours_professionnel/egalite_des_chances/Suivi_charte_egalite_13March2012.pdf.

D. PACTE (means of entry to regional, hospital and State civil service posts)

476. PACTE (“Parcours d’accès aux carrières de la fonction publique territoriale, de la fonction publique hospitalière et de la fonction publique de l’État”, or means of entry to regional, hospital and State civil service posts), a work-study scheme, enables young people between the ages of 16 and 25 who have no qualifications, including the baccalaureate, to be recruited into category C jobs, by means of a contract governed by public law with the possibility of a civil service contract later. Targeting young people who have left the education system, it is intended to combat the phenomenon of overqualification and achieve the best match between the young participants and the jobs on offer. Since it began implementation (early 2006), it has led to some 3000 recruitments, representing, depending on the year, 8 to 16 per cent of external recruitment offers in category C (administrative and technical corps) in the State civil service. The appointment rate is 70 to 75 per cent on average.

E. Specific support for the preparation of competitions and exams for access to the civil service

477. Diversity allowances are paid to students and job-seekers to help them prepare for civil service entrance competitions. Since this mechanism was introduced, a total of 5,500 such allowances of 2000 euros have been paid (September 2007/September 2011). Following the address by the President of the Republic at the École Polytechnique on 17 December 2008, several ministers decided to introduce integrated preparatory classes (classes préparatoires intégrées (CPI)) at their entrance schools. These classes currently number 26 (École nationale supérieure de police [national police academy], École nationale de la magistrature [national college of judges and magistrates], École nationale d’administration [national administration college], regional administration institutes, École des hautes études de santé publique [national public health college], National College of Registrars, etc.) and their success rates in civil service entrance competitions exceed 50 per cent (regardless of school or administration). Good progress is being made in comprehensively reviewing the content of competitions in order to modernize, simplify and improve the civil service recruitment mechanism and allow for a less academic selection of candidates, that is more knowledge-oriented, laying more emphasis on skills and aptitudes and more open to a diversity of profiles. Since 2008, 420 recruitment paths have been reformed.

478. At the same time, the creation and development of the recognition of professional experience, instituted by the Act of 2 February 2007 on modernization of the civil service, allows a civil servant’s experience to be taken into account in his or her professional advancement. Under this mechanism an examination test may be replaced by new selection methods allowing the candidate to assert his or her professional skills and know-how. This has been introduced in 128 tests (fig. at end of 2011).

479. Jointly these measures reflect the French Government’s proactive stance on ensuring that job applicants enjoy equal opportunities and promoting diversity in private enterprises and the State civil service alike.

F. Methodological guide to help enterprises pinpoint discrimination

480. The CNIL and the Defender of Rights, independent public administrative authorities, have produced a methodological guide³⁷ to help private and public employers pinpoint discrimination with regard to legislation on data processing and article 17 of the Covenant. This guide, disseminated since 11 May 2012, is a tool for all employers wishing to take part in the application of reliable indicators for the prevention of discrimination and assess their actions in favour of equal treatment without infringing the rules on the collection and processing of sensitive data.

XVII. Recommendation in paragraph 26 of the Committee's concluding observations

A. The representation of diversity in politics

481. Pursuant to articles 3 and 88-4 of the Constitution, those elected by universal suffrage are French citizens or, in some cases, nationals of the Member States of the European Union, enjoying their civil and political rights, and whose origin is not a relevant qualifying criterion. One and indivisible, the French Republic recognizes these elements alone and allows universal suffrage to determine which citizens will be called on to sit in the National Assembly. There exists no measure likely to favour access by any religious or ethnic category. Executing such measures would be a break with the constitutional tradition of France and the positive constitutional law recalled above, since ethnic origins and religion give way to citizenship.

482. The main political parties report on measures that they have taken to put up candidates in elections representing the diversity of French society.

483. Although no statistical measure relating to the representation of minorities has been taken in France for the reasons explained earlier (see above, the response to the recommendation in paragraph 11 of the Committee's concluding observations), the High Council on Integration, established in 1989,³⁸ and whose mission is above all to "give its opinion and make useful proposals, at the request of the Prime Minister, on all questions relating to the integration of foreign residents or those of foreign origin", has conducted two studies³⁹ on the basis of the family names of elected municipal and regional officials in order to gauge the diversity of their geographical origins. It found that albeit low, the proportion of elected officials from outside Europe had risen sharply between 2001 and 2008 in the case of municipal elections and between 2004 and 2010 in the case of regional elections. This trend shows that French citizens of immigrant origin are gradually finding their place in politics.

³⁷ This guide can be found at: http://defenseurdesdroits.fr/sites/default/files/upload/promotion_de_%20legalite/progress/fiches/ldd_cnil_interactif.pdf.

³⁸ Decree No. 89-912 of 19 December 1989.

³⁹ The study *Les élus issus de l'immigration dans les conseils régionaux (2004–2010)* is available at: <http://www.hci.gouv.fr/Les-elus-issus-de-l-immigration.html> while *Les élus issus de l'immigration dans les conseils municipaux (2001–2008)*, September 2009, is available at: <http://www.hci.gouv.fr/Les-elus-issus-de-l-immigration.html>.

<i>Percentage of elected officials of immigrant origin, from outside Europe</i>		
Municipal elections	2001	3.2%
	2008	6.7%
	Change 2001–2008	+110%
Regional elections	2004	2.8%
	2010	5%
	Change 2004–2010	+79%

Source: High Council on Integration – Study: elected councillors of immigrant origin in regional councils (2004–2010).

B. The representation of diversity in law enforcement and departments of the Ministry of Justice

484. Apart from the general measures outlined above (see response to the recommendation contained in paragraph 25 of the Committee’s concluding observations) with a view to guaranteeing equal access to employment, specific actions have been taken to diversify the recruitment of law enforcement officials. These actions are designed to help those with the requisite motivation and qualities to become members of the law enforcement services or of staff of the Ministry of Justice, but have neither the connections nor the financial means to be able to prepare for the entrance competitions by themselves.

1. Law enforcement officials

(a) Assistant security staff

485. In 1997, the notion of assistant security staff was introduced; these are young people, aged 18 to 25 years, admitted to the national police force by decision of the prefects on the advice of a selection board (based on file and interview). Assistant security staff are recruited on a five-year non-renewable contract governed by public law and remunerated at the index-linked guaranteed minimum wage (SMIC) plus an allowance. They are assistant judicial police officers on general missions to protect the population or sensitive locations, receive the public or offer support. They may assist judicial police officers by taking part in investigations and establishing certain criminal offences.

486. They are encouraged to sit the second-level constable exam, a competition set up specially for candidates without a baccalaureate, with emphasis on motivation and professional experience. Provisions are taken to facilitate the professional integration of those not wishing to join the police at the end of their contract.

487. Between 1997 and the end of 2010, more than 50,000 assistant security staff were recruited. Of the 40,000 assistant security staff leaving the scheme, 71 per cent were found a lasting job: 54 per cent in the police, mainly as constables, 7 per cent in other civil service sectors and 10 per cent in the private sector. This scheme is very efficient when it comes to receiving persons of all social origins and poorly qualified at the outset. It should be noted that 10 per cent of the assistant security staff come from sensitive urban zones (ZUS), home to only 7 per cent of the population, and 36 per cent are women whereas they account for only 17 per cent of constables and sergeants (including constables and non-commissioned officers).

(b) Police cadets

488. The Cadets of the Republic are an institution established in 2004 with the aim of improving young people's knowledge of the national police and to diversify recruitment among young people of all origins, who are less qualified but highly motivated. Aged 18 to 25 years, the cadets are selected, regardless of qualification, by a joint national police/national education commission. They have the status of assistant security staff and receive a study allowance of 600 € a month. For 12 months they attend work-study training. At the end, they sit the second-level constable exam and, if they fail, they retain their status of assistant security staff, which enables them to resit the exam. Between 900 and 1,000 cadets are recruited a year, with 4,000 candidatures. In a total of five classes, 4,952 cadets began the schooling and 4,080 stayed until the end. For the first three, the only ones during which a second-level constable exam took place before they completed their schooling, 57.2 per cent of the cadets passed the exam, 12 per cent of them from neighbourhoods considered to be an urban policy priority.

(c) Integrated preparatory classes (CPI).

489. These were established in September 2005 at the École Nationale supérieure de police (ENSP, Higher National Police Academy), where chiefs receive their training, and the École nationale supérieure des officiers de police (ENSOP, Higher National Police Officers Academy), where officers are trained. Students must meet the conditions of physical aptitude, morality and academic qualification and have a family or personal income lower than 30,000 euros a year: pre-selection takes into account university careers and place of residence, with priority given to the ZUS and highly rural zones. Selection depends on appearance before a jury. The classes take place at the school, with accommodation, for eight months. The training is essentially method-based. At the end, pupils (12 to 15 in CPI at ENSP and 20 in CPI at ENSOP) set several exams, in the police and other institutions. The results in September 2010 were as follows: of the 129 pupils out of 171, or about three quarters, who passed a competition:

- 101 (59%) are in the national police force: 10 chiefs, 27 officers and 64 constables (who can sit internal exams later on);
- 28 are in other public administrative authorities.

(d) Volunteer assistant gendarmes (GAV)

490. For 12 years the national gendarmerie has been recruiting young people, without the need for qualifications, for a maximum period of five years: as GAV. At the end of 2010 they numbered 13,899 in total, 31 per cent of them women. The training combines three months at school and three months in service. It leads to a diploma equivalent to level V. Those GAV who so wish may benefit from preparation for the tests to become non-commissioned officer in the gendarmerie (in 2010, 56% of the non-commissioned officers recruited were former GAV). GAV are the subject of an action plan (information, guidance, professional passport, project assistance and reclassification assistance) for assistance with finding employment, or retraining after four years. The reclassification rate at the end of contracts was 85 per cent.

(e) Volunteer gendarmerie cadets (AGIV)

491. AGIV are recruited among young people aged 18 to 26 years who have a higher diploma or the school-leaving certificate plus two years of further study (Bac +2), or who have undergone higher military preparation, or who have been selected from GAV with the grade of sergeant. They attend three months' training at the École des officiers de la national gendarmerie (EOGN, college for national gendarmerie officers). They numbered 164 at the

end of 2010, 35 per cent of them women. A total of 37 AGIV were recruited in 2010, 51 per cent of them women. In order to facilitate access to public employment by young disadvantaged people, the gendarmerie supports those AGIV who wish to sit the entrance exam for the EOGN.

(f) *The integrated preparatory class (CPI) of the EOGN*

492. The national gendarmerie has established an integrated preparatory class to prepare for the university entrance exam to the EOGN (Order of 5 May 2010). This class, numbering 15 or so students, takes in young people with the requisite diplomas, selected on the basis of motivation and social criteria. The students are volunteers in the gendarmerie with the corresponding remuneration and housing. Following written tests, eight of the 13 students registered were allowed to sit one or more category A exams. Three became gendarmerie officers, two became officers of the technical and administrative corps of the gendarmerie and one became a customs inspector. Four pupils also passed the tests to become non-commissioned officers in the gendarmerie.

2. Departments of the Ministry of Justice

(a) *The integrated preparatory class of the National College of the Judiciary*

493. An integrated preparatory class has also been established to improve equal opportunities and the diversity of origin of magistrates and registrars. The selection of students for taking part in this scheme is based on personal motivation and social criteria (financial resources and geographical origin).

494. With regard to the National College of the Judiciary (ENM), the first preparatory class was opened in 2007. Currently there are three, in Paris, Douai and Bordeaux. These classes have proved highly successful and the results are encouraging.

<i>Year</i>	<i>Number of students in preparatory classes</i>	<i>Number admitted to exam</i>	<i>Number admitted to ENM</i>
Start of school year 2007			3
ENM exam 2008	15	6	(class of 2009)
Start of school year 2008			6 + 1 = 7
ENM exam 2009	41	21	(class of 2010)
Start of school year 2009			8
ENM exam 2010			(class of 2011)
	45	19	4 (class of 2012)
Start of school year 2010			11
ENM exam 2011	45	15	(class of 2012)

(b) *Integrated preparatory class of the National College of Registrars*

495. With regard to the National College of Registrars, since 2007 there has existed a preparatory class taking in 20 students. Its results are also highly satisfactory as eight of them passed the exam in 2008, nine in 2009, 11 in 2010, 17 in 2011 and 14 in 2012.

Annex

Presentation of the institutions of the overseas departments and territories

The French Constitution of 4 October 1958 makes a distinction between:

1. The overseas departments and territories under article 73 of the Constitution

Since Mayotte became a department, on 31 March 2011, France now has five departments and territories governed by article 73 of the Constitution:

- Four overseas departments and regions (DROM) in the Caribbean (Guadeloupe, Martinique and French Guiana) and the southern Indian Ocean (Réunion);

Each of these single department regions has a regional council and a general council. The administrative organization is similar to that in metropolitan France. Its statutes and regulations are applicable *ipso jure*, sometimes subject to certain adjustments “dictated by their special situation”. Moreover, parliament may enable these territories to make those adjustments themselves or (with the exception of Réunion) to establish their own regulations in certain domains.

The Act of 27 July 2011 provides that as of 2014 French Guiana and Martinique will become single territories exercising powers that were previously devolved to the department and region: as of the elections of 2014, a single assembly will replace the general council and regional council in Martinique and French Guiana (Act No. 2011-884 of 27 July 2011).

- The Department of Mayotte, with a single assembly exercising the powers of an overseas department and region. Newly adopted statutes and regulations are applicable *ipso jure*, whereas texts that are exceptions to ordinary law, specifically in force in Mayotte, will remain applicable there until they are expressly repealed.

2. The overseas territories governed by article 74 of the Constitution.

In these overseas territories, the organic statutory laws determine the organization of institutions and the legal system and define the conditions in which statutes and regulations are applicable.

The overseas territories are:

- Those where the legislative identity system applies, sometimes with exceptions: Saint-Barthélemy and Saint-Martin, transformed into overseas territories by Organic Law No. 2007-223 of 21 February 2007, with statutory and institutional provisions relating to the overseas territories, and Saint-Pierre and Miquelon;
- Those where the legislative speciality system applies, in other words where, to be applicable, the statutes and regulations must be expressly extended: French Polynesia and Wallis and Futuna.

3. New Caledonia: one of a kind

Its status is determined by article 77 of the Constitution, which refers to the Nouméa Accord (whose guidelines carry constitutional weight). New Caledonia is governed by the Statutory Act of 19 March 1999.

The main specific components of the statute of New Caledonia are:

- A local “citizenship”, based on a restricted electorate for elections to the provincial congress and assemblies;
- A legislative authority, with “local laws” that may be deferred to the Constitutional Council;
- Local preference for employment, benefiting the local “citizens”;
- An irreversible transfer of powers from the State to New Caledonia (which may, every five years, “appeal” State powers without the State being able to oppose it);
- Self-determination scheduled for the period 2014–2018.

4. The French Southern and Antarctic Territories (Terres australes et antarctiques françaises – TAAF)

The status of these territories with no permanent population is governed by the Act of 6 August 1955. They are directly administered by the State, which appoints a prefect.

5. Clipperton and the Scattered Islands in the Indian Ocean (Juan de Nova, Bassa da India, Tromelin, Europa and the Glorioso islands)

These uninhabited islands are subject to the “legislative assimilation” system. The Scattered Islands are now administered by the prefect of TAAF, while Clipperton is governed by the High Commissioner in French Polynesia.

The French Constitution establishes the indivisibility of the Republic. It recognizes one single French nationality, to which rights are attached. There is no legal distinction between nationals of metropolitan and overseas France. The latter, who possess French nationality, enjoy the right to vote in all elections, are represented in Parliament and are free to move and reside anywhere on French. They also have European citizenship.
