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**NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH  
PARAGRAPH 15 (A) OF THE ANNEX TO HUMAN RIGHTS  
COUNCIL RESOLUTION 5/1\***

**France**

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\* The present document was not edited before being sent to the United Nations translation services.

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## I. PREPARATION OF THE REPORT: METHODOLOGY

1. The report of France under the Universal Periodic Review was prepared in two stages:

(a) Phase 1: a tentative framework was developed by the Ministry of Foreign Affairs, based on the information and recommendations received from the international human rights mechanisms and the input provided by the National Consultative Commission for Human Rights (CNCDH); interministerial consultations were carried out, and independent agencies and institutions responsible for monitoring observance of human rights were also consulted; meetings were held with the main civil society organizations and associations, trade unions and representatives of religious movements involved in promoting and protecting human rights; and a contribution was submitted by CNCDH;

(b) Phase 2: the report was compiled by the Ministry of Foreign Affairs, in liaison with the competent ministries; a formal consultation was held with CNCDH; and the final version of the report was validated by the Office of the Prime Minister.

## II. DOMESTIC POLICY ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

2. *Human rights are among the founding values of the French Republic. Respect for human rights is central to the exercise of democracy in France and to our commitment as a member of the European Union.* France's tradition of commitment to human rights dates back to the philosophy of the Enlightenment and the Declaration of the Rights of Man and of the Citizen adopted on 26 August 1789. France was one of the first nations to draft a declaration of universal rights.

3. It was also in Paris, at the Palais de Chaillot where the General Assembly of the United Nations was being held in 1948, that the Universal Declaration of Human Rights was adopted. One of the main architects of the Declaration was an eminent French jurist, René Cassin, who would go on to become Chairperson of the United Nations Commission on Human Rights, President of the European Court of Human Rights and a Nobel Peace Prize Laureate. France was also actively involved in drafting international instruments on human rights and international humanitarian law, as well as those adopted by ILO and UNESCO in their areas of specialization, and at the regional level by the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE). In keeping with the spirit of the World Conference on Human Rights held in Vienna in 1993, France considers that the promotion and protection of all human rights are a legitimate concern of the international community, and gives equal consideration to civil and political rights and to economic, social and cultural rights.

4. France's political commitment to human rights is reflected in the appointment in 2007 of a Minister of State for Foreign Affairs and Human Rights and a High Commissioner on Active Solidarity against Poverty, whose tasks include combating extreme poverty, and in its creation of the post of Human Rights Ambassador in 2000.

### A. National framework for the protection of human rights

#### 1. General description

5. *The Constitution of the Fifth Republic, adopted in 1958, emphasizes the importance of human rights by incorporating the Declaration of the Rights of Man and of the Citizen of 1789 and the*

*preamble to the Constitution of 1946*. With the amendment of 24 February 2007, the principle of abolition of the death penalty in all circumstances was enshrined in the Constitution (new article 66-1).

6. The French institutional framework is designed to protect human rights within a pluralistic democracy and a State based on the rule of law and the separation of powers. Under the Constitution, only the parliament is competent to lay down rules relating to fundamental guarantees. The Constitutional Council verifies the constitutionality of laws. The two types of court - the ordinary courts and the administrative courts - ensure that legal principles and France's international obligations are complied with at all levels. In accordance with the principle of separation of powers, the judicial authority is the "*guardian of individual liberty*".<sup>1</sup>

7. "Independent administrative authorities" or other independent bodies have been set up in France to protect citizens' rights. These include the Ombudsman of the Republic,<sup>2</sup> the National Consultative Ethics Committee (CCNE), the National Commission on Information Technology and Civil Liberties (CNIL),<sup>3</sup> the National Security Ethics Committee (CNDS) and the Children's Ombudsman.<sup>4</sup> The establishment of the High Authority against Discrimination and for Equality (HALDE) in 2006 was an important step forward, as was the Act of 2007 establishing the office of controller-general of places of deprivation of liberty. Other institutions have been set up in France to protect people in vulnerable situations from infringements of their rights; these include the Inter-ministerial Mission to monitor and combat abuse by sects (MIVILUDES).<sup>5</sup>

8. The Act of 5 March 2007 and its implementing decree strengthened the status of the *National Consultative Commission for Human Rights (CNCDH)*, which was involved in setting up most of the specialized bodies referred to above, and works closely with those with similar areas of competence to its own. In 2007 it obtained re-accreditation in accordance with the Paris Principles from the International Coordinating Committee of National Human Rights Institutions (ICC). The Commission is tasked with submitting initiatives and proposals and carrying out monitoring, follow-up and awareness-raising activities with regard to both the public authorities - Government and parliament - and the public.

9. *Human rights education is vital if citizens are to be aware of their rights*. It is dispensed through curricula and educational activities based on the Universal Declaration of Human Rights and the fundamental treaties. For example, civics is taught in the primary and middle school curricula, and civics, law and social studies are taught in high school.

10. These are supplemented by other educational activities organized on an occasional basis. Since 1988, the René Cassin Human Rights Prize has been awarded by the CNCDH and the Directorate of School Education for the best projects on a human rights theme submitted by middle and high school pupils. The prize may also be awarded for projects on the memory of the slave trade and slavery. To mark the sixtieth anniversary of the Universal Declaration of Human Rights, the subject of the prize for 2008 is "1948-2008: the Universal Declaration of Human Rights today". As part of the planned programme of educational activities for 2007-2008, schools are encouraged to take part in national and international awareness days on human rights. This year, awareness-raising activities in schools have focused on the sixtieth anniversary of the Universal Declaration of Human Rights. Lastly, CNIL has worked closely with the Ministry of National Education and the Children's Ombudsman to plan human rights awareness activities in schools on the subject of protection of personal data.

## **2. International obligations of France**

11. *France has ratified the main international legal instruments on human rights:* the International Covenant on Civil and Political Rights and its two Optional Protocols; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the Convention on the Rights of the Child and its two Protocols; the Geneva Conventions and their additional Protocols; the Convention relating to the Status of Refugees; the Convention on the Prevention and Punishment of the Crime of Genocide; and the Rome Statute of the International Criminal Court. It has also ratified many of the fundamental international labour conventions, as well as those adopted under the auspices of UNESCO. Representatives of civil society and CNCDH have drawn attention to the length of time taken for ratification or transposition of certain treaties.

12. France signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2005, and the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities in 2007.

13. Protection of migrant workers is a legitimate concern to which the French Government is attentive. During its presidency of the European Union, France will push for a European covenant on immigration to remedy the differences in treatment between countries while ensuring respect for human rights. However, at this stage France is not in a position to envisage adhering to the relevant United Nations Convention, for two reasons: (a) the Convention does not draw a distinction between regular and irregular migrant workers; this does not encourage legal residence; and (b) France can only sign the Convention jointly with its European partners.

14. *In addition, France is a party to regional legal instruments.* These include the European Convention for the Protection of Human Rights and Fundamental Freedoms and numerous additional Protocols, as well as specialized treaties, such as the European Social Charter and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In accordance with the European Convention on Human Rights, France is subject to the jurisdiction of the European Court of Human Rights in Strasbourg, which is competent to examine individual applications. As a member State of the European Union, France is also subject to the jurisdiction of the Court of Justice of the European Communities in Luxembourg.

15. Respect for human rights and fundamental freedoms is one of the commitments that France has accepted under the Helsinki Final Act of 1975 and the Charter of Paris for a New Europe adopted in 1990.

## **3. Transposition of international commitments on human rights**

16. *As regards France's implementation of its international obligations,* at the time of writing the following legal instruments were in the process of ratification: the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance. Having worked for the adoption of the latter Convention for nearly 30 years in the United Nations, France has promoted the creation of a Group of Friends of the Convention.

17. The French authorities regularly review the French Government's reservations and declarations regarding international human rights instruments in order to determine whether they should be withdrawn or amended.

18. *France cooperates fully with international procedures and mechanisms for the promotion and protection of human rights.* In that spirit, it has issued a standing invitation to the United Nations special procedures. France was recently visited by the Special Rapporteur on the sale of children, child prostitution and child pornography (2002), the Special Rapporteur on freedom of religion or belief (2005) and the Independent expert on minority issues (2007). In 2008, it submitted a national report to the Committee on the Elimination of All Forms of Discrimination against Women, and will present reports to the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee. It also replies to requests for additional information from the treaty bodies under their follow-up procedures. According to CNCDH, more systematic follow-up to the recommendations made by these bodies should be assured.

19. France has also received visits from independent institutions of the regional organizations of which it is a member: the Commissioner for Human Rights of the Council of Europe (visit report issued in 2006, ad hoc visit in January 2008); the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (end of 2006); the three representatives of the Chairman-in-Office of OSCE on combating anti-Semitism and intolerance and discrimination against Muslims and Christians (2005); and the OSCE High Commissioner on National Minorities. France also recently welcomed an election observation mission of the Office for Democratic Institutions and Human Rights (May 2007 presidential elections).

20. *At the national level*, parliament adopted the Act of 30 October 2007 creating the office of controller-general of places of deprivation of liberty, in accordance with the requirements of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed by France on 16 September 2006. The controller-general of places of deprivation of liberty is tasked with "supervising the conditions in which persons deprived of their liberty are held" in order to ensure that their fundamental rights are respected. Such supervision is carried out in prisons, police custody facilities, administrative holding centres and facilities for foreigners, holding areas and psychiatric hospitals. The decree implementing the Act was published in March 2008, and a controller should be appointed soon.

21. Lastly, it should be noted that CNCDH and the Ombudsman of the Republic are members of the network of national correspondents of the Council of Europe, which promotes cooperation between national institutions and the Commissioner for Human Rights on issues within the latter's remit. A pilot project on improving the execution of the judgements of the European Court of Human Rights is currently being carried out within this framework.

## **B. Achievements, best practices, challenges and constraints: thematic analysis**

22. The Constitution of France is founded on human rights and the principles of national sovereignty. Thus, "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. It shall be organized on a decentralized basis" (art. 1). The French concept of fundamental rights fully embodies the freedom and equality of every man and woman, while recognizing individual and universal rights that are the same for everyone, without distinction or discrimination of any kind. Accordingly, France has always held that members of

minorities should enjoy all human rights fully, but that collective rights should not be granted to groups or communities identified as such along ethnic, cultural or religious lines. For over a century, secularism - that is, the separation of Church and State - has been the best guarantor of religious concord and civil peace, allowing each individual freedom of conscience, the freedom to believe or not to believe, while ensuring “respect for all beliefs” in a spirit of pluralism and tolerance.

### **1. Freedom of religion or belief**

23. Freedom of religion or belief has been legally recognized in France since the Declaration of the Rights of Man and of the Citizen was adopted in 1789. The French Republic guarantees the free practice of religion, but does not recognize any religion in particular. French secularism does not mean indifference or abstention, as freedom of conscience is recognized and must be ensured by the Republic: the administration is responsible for the practical implementation of the rights and freedoms granted by the law. 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 practise of religion, subject only to restrictions imposed in the interests of public order”. The Act recognizes the right of each individual to practise a religion and form religious associations to cover the costs of maintaining religious life and ensuring the public practice of religion.

24. The French authorities maintain regular dialogue at all levels with the institutions representing religious communities. The Prime Minister, in his official capacity, regularly receives representatives of religious communities. In 2004 the French Council for the Muslim Faith (CFCM) was established, as an association under private law whose officers are elected by places of worship. The public authorities do not interfere in the organization of religious communities, but they do need representatives with whom to engage in effective dialogue on matters of common interest. It should be noted that, owing to particular historical circumstances, the system was adapted to preserve the special status of religions in Alsace-Moselle.

25. The Act of 15 March 2004 prohibiting the wearing of conspicuous religious symbols in State schools - primary and secondary - was intended to reaffirm the principle of secularism, which guarantees freedom of conscience and protects the freedom to believe or not to believe, while ensuring that all individuals are free to express and peacefully live their faith and to practise their religion. It is also aimed at avoiding any discrimination, in particular against girls, in all school activities. The Act was adopted after wide-scale public debate led in particular by an independent commission. “Conspicuous religious symbols” means symbols and dress the wearing of which is tantamount to excessive religious proselytizing. Discreet signs of religious affiliation, however, are authorized. The Act provides for a phase of dialogue, as the President of the Republic recalled in 2003: “In the implementation of the Act, dialogue and concertation should systematically be pursued before taking any decision.” Priority is thus given to dialogue and a pedagogical approach. In extreme cases, exclusion does not deprive the persons concerned of the right to education, since they still have the option of distance learning or enrolment in private religious or non-religious education.

26. The main provisions of the Act are now applied consistently across the country and have met with broad consensus, leading to the conclusion that they have not resulted in an increase in Islamophobia or stigmatization of the headscarf. 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. The application of the Act was accompanied by a wide-scale

information, discussion and mediation campaign, which explains the small number of court cases. The Council of State upheld the administration's interpretation of the Act of 15 March 2004, to the effect that dress that is not in itself religious may nonetheless conspicuously manifest religious affiliation if such dress is not discreet and the pupil always wears it and obstinately refuses to relinquish wearing it.

## **2. Combating all forms of discrimination and associated intolerance<sup>6</sup>**

27. France is committed to combating all forms of discrimination. Article 21 of the Charter of Fundamental Rights of the European Union enshrines the prohibition of any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

28. The CNCDH submits a report on efforts to combat racism and xenophobia to the Prime Minister each year on the occasion of the International Day for the Elimination of Racial Discrimination, in accordance with the Act of 13 July 1990 providing for the punishment of all racist, anti-Semitic or xenophobic acts.

29. In recent years France has passed legislation aimed at stepping up efforts to combat racial discrimination (including the Act of 16 November 2001 concerning measures to combat discrimination, the Social Modernization Act of 17 January 2002, the Act of 9 March 2004 on the adaptation of the system of justice to developments in the area of crime, and the Act of 21 June 2004 on confidence in the digital economy).

30. The High Authority against Discrimination and for Equality (HALDE), established by the Act of 30 December 2004, has been given a remit to: tackle acts of direct or indirect discrimination prohibited by law; provide all necessary information; support victims; and identify and promote good practices to give effect to the principle of equality. It may examine issues on its own initiative, or at the request of any citizen or association, and has investigative powers.

31. The National Agency for Social Cohesion and Equal Opportunities (Acsé), established by the Act of 31 March 2006 on equal opportunities, for which the Ministry of Immigration, Integration, National Identity and Co-Development and the Ministry of Housing and Municipal Affairs have joint responsibility, works to support the implementation of public policies to prevent racial discrimination and promote equal treatment. Its objective is to increase the effectiveness of: State measures to support the inhabitants of priority areas identified in municipal policies; integration of immigrants and persons of immigrant origin; and efforts to combat discrimination.

32. Discrimination testing has been given legislative backing,<sup>7</sup> after the Criminal Division of the Court of Cassation ruled that it could be admitted as evidence in regard to racial discrimination.

### **(a) Combating all forms of discrimination**

33. Legislation was strengthened by the Act of 9 March 2004 on combating all forms of discrimination and by more severe punishment of racist crimes and offences, and discrimination, especially when committed by persons vested with public authority. Racist, xenophobic or anti-Semitic motives have been established as an aggravating circumstance for certain crimes and offences.<sup>8</sup> The time limits for prosecution of offences of a racist or anti-Semitic nature carried out in the press have been extended in order to facilitate prosecution.

34. A draft law bringing a number of provisions into line with Community law on discrimination was submitted to the National Assembly on 19 December 2007 and will be examined in 2008. For civil cases, the text is innovative in that it shifts the burden of proof in a way that is more favourable to persons claiming that they have been subjected to discrimination.

35. Several bulletins and circulars<sup>9</sup> have been sent to public prosecutors' offices, instructing them to deal with these claims severely and swiftly, and the Ministry of Justice has given instructions for the inclusion of anti-discrimination principles in criminal policies. To this end they have been asked to raise the awareness of senior law enforcement officers and to cooperate with stakeholders from associations.<sup>10</sup> As a result, the judicial response rate for racist crimes or acts of discrimination has risen.

36. In order to boost efforts to combat racism and discrimination, the Minister of Justice requested anti-discrimination units to be set up within each regional court (*tribunal de grande instance*), to be headed by a "reference officer" (*magistrat référent*)<sup>11</sup> with responsibility for carrying out initiatives at grass-roots level in close coordination with the various associations with expertise in this area. The Minister of Justice also requested that a representative of the public prosecutor, with specialist knowledge of anti-discrimination issues, should be appointed in each unit, where possible in conjunction with the local network of associations.

**(b) The establishment of structures to improve monitoring of the judicial system**

37. A bulletin dated 18 November 2003 requested each public prosecutor (*procureur général*) to designate a reference officer (*magistrat référent*) in each public prosecutor's office for racism and xenophobia, with responsibility for monitoring the consistency of local policies on crime and maintaining regular contact with the local network of associations, particularly cultural associations.

38. On 14 December 2007 the Minister of Justice signed two framework-agreements<sup>12</sup> in order to step up efforts to combat discrimination. They provide for stronger partnerships between stakeholders from institutions and associations and the development of training in this area. The Ministry of Justice issued practical guides on criminal provisions designed to combat racism, anti-Semitism and discrimination.

39. For initial training of trainee judges, the Legal Service Training College (ENM) is developing a number of training activities that are linked, directly or indirectly, to measures to combat racism and anti-Semitism. In December 2006 the College held a seminar in Paris on the subject of racism and anti-Semitism in France, focusing in particular on their contemporary manifestations.

**(c) Prevention of discrimination in the labour market, promotion of diversity and prevention of discrimination in the areas of employment and access to housing**

40. The problems that immigrants and persons of immigrant origin experience in gaining access to employment are often a result of direct or indirect discrimination, meaning that candidates with the same qualifications are not given equal consideration, and illegal practices or factors determine the choice that is made, thus sidelining immigrants or persons of immigrant origin. In 2008 the Government, through the National Agency for Social Cohesion and Equal Opportunities (Acsé), will continue its work of developing measures aimed at improving access to civil-service posts and supporting development of the diversity charter,<sup>13</sup> in conjunction with enterprises, professional associations, trade unions and consular offices. In regard to access to housing, Acsé has signed

agreements and framework-agreements with key national figures with the aim of preventing and combating discrimination, by establishing local action plans and regional plans for preventing and combating discrimination.

**(d) Combating discrimination against “travellers”**

41. In line with the recommendations made to the Government by national or international institutions pointing to the difficult situation faced by “travellers”, France is endeavouring to provide better protection to “travellers”. Travellers’ consultative commissions have been established at national and departmental level,<sup>14</sup> made up of representatives of the authorities and civil society, in particular travellers. There are still problems with the implementation of existing instruments, arising in particular from the insufficient application at local level of the Act of 5 July 2000 on the reception and housing of travellers.

42. With regard to the right to education, a Ministry of Education circular dated 25 April 2002 recalled that ordinary law applied to all travellers’ children. They are required to attend school, regardless of the length of stay and location where they are living, and must comply with the same rules on attendance as other pupils. A national survey (2003) showed an increase in school attendance, which varied according to regional education authority, and was especially marked at lower secondary school level. Children whose families have set up their quarters a long way from any school structure, or who travel a great deal, may benefit from 1 of the 42 mobile school units. Intermediary mechanisms exist to provide a “bridge” to the standard curriculum. In each regional education authority an inspector/coordinator is tasked with facilitating, at local level, the enforcement of legal instruments and there are special teachers and special posts to support travellers in many regional educational authorities.

**3. Freedom of expression, freedom of information, freedom of the press**

43. The principle of freedom of expression is established in French law, under article 11 of the Declaration of the Rights of Man and of the Citizen of 1789, and included in the preamble to the Constitution. The Act of 29 July 1881 on freedom of the press, which is an essential component of freedom of expression, protects the exercise of this freedom. In the same way as any public freedom, freedom of expression and freedom of the press are unlimited, except where they constitute abuse, which is defined explicitly in legislation (defamation and insults; invasion of privacy; violation of the presumption of innocence; protection of victims of offences and minors; incitement to commit certain offences; denying the existence of crimes against humanity; protection of the judiciary and of national defence.

44. The right of journalists not to reveal their sources is necessary to guarantee citizens’ freedom of information. On 12 March 2008 the Minister of Justice submitted draft legislation to protect the confidentiality of journalists’ sources, which will supplement the Freedom of the Press Act of 1881 and firmly enshrine this principle in French law: it is now officially linked to the constitutional principle of freedom of the press and provides guarantees in the framework of legal proceedings likely to undermine the confidentiality of sources.

**4. Women’s rights**

45. Since 1965 French legislation has included gender equality in all principles governing marriage, divorce and the exercise of parental authority: elimination of inequalities affecting women in matrimonial regimes; complete equality between fathers and mothers in bringing up their children; Act of 6 June 2000 on promoting equal access of women and men to electoral mandates

and elected office boosted by the Acts of 11 April 2003 and 31 January 2007; Acts of 4 March 2002 and 18 June 2003 amending the system for passing on the family name in order to facilitate transmission of the mother's name;<sup>15</sup> order of 4 July 2005 reforming the system of filiation.

46. On 8 March 2004 the Minister for Parity submitted to the Prime Minister the Charter on the Equality of Men and Women. This initiative involves close to 100 public and private actors in the promotion of an integrated approach to equality in all activities undertaken. The Charter, which has five main themes,<sup>16</sup> provides a basis for the Government's work to achieve real equality between men and women. National information campaigns on contraception and spousal violence have been conducted within this framework. The results for 2007 show that 75 per cent of commitments were met.

47. Acsé (see above) contributes to the promotion of gender equality and the prevention of multiple, interlinked forms of discrimination against women. The Government considers this to be a cross-cutting concern in all its areas of work and, in order to achieve real results, is developing an integrated approach through Acsé. In 2008 the agency will implement the framework agreement for immigrant women and women of immigrant origin to facilitate integration and prevent and combat discrimination.

#### **(a) Political parity**

48. Since 1945 women have had the right to vote and to be elected, and have had access to all public-sector competitions and posts. The constitutional amendment of 28 June 1999 recognized the principle of equal access to electoral mandates and elected office. The Act of 6 June 2000 on promoting equal access of women and men to electoral mandates and elected office introduced the requirement of parity in the fielding of candidates of each sex.

49. In the 2007 parliamentary elections, 107 women were elected to represent French citizens in the National Assembly out of a total of 577 members: this represents an increase from 12.3 per cent in 2002 to 18.5 per cent. These results do not yet meet the objectives of the legislation, not to mention the ideal of parity-based democracy. It would therefore appear necessary to take measures aimed at improving the representation of women in elected office.<sup>17</sup>

#### **(b) Spousal violence and combating forced marriages - judicial treatment**

50. In order to provide victims of spousal violence with the means for a legal defence, France is committed to guaranteeing the real application of the existing provisions of the Act of 10 July 1991 on legal aid. Full legal aid, regardless of income, may be granted in any case that appears worthy of special attention in view of the subject of the dispute or the probable costs of the proceedings. In addition, the Act on legal aid allows foreign women - even those in an irregular situation - who are victims of violence to benefit from legal aid to bring charges before criminal courts.

51. At the national level, the number of proceedings involving spousal violence recorded by public prosecutors' offices is increasing, as is the judicial response rate. In order to improve the effectiveness of the judicial response to acts of spousal violence, a circular of 19 April 2006 advocates dealing with cases on the spot and sets out the most appropriate methods of prosecution for this type of case, in a partnership framework with actors from associations.

52. In 2007 France acceded to the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, signed in New York on 10 December 1962. The Act of 4 April 2006 ended a difference that had existed since 1804 between men and women with regard to

marriage, by raising the minimum age for marriage for women from 15 to 18 years, as was already the case for men. The purpose of aligning the legal marrying age for women with the age of majority, as is the case for men, is to combat the forced marriage of minors more effectively. The difficulty of introducing into French law of an offence of arranging a forced marriage, with specific rules of international competence,<sup>18</sup> is one of criminalizing forced marriages while respecting the practice of arranged marriages which exist in certain cultures and may be entered into by individuals.

**(c) Combating trafficking in persons**

53. In France, efforts to strengthen the battery of legal measures for combating modern forms of slavery in general, and trafficking in persons in particular, are rooted in a strong political desire to reaffirm the fundamental importance of respect for human dignity, against a background of spreading criminal networks. Most of the criminal provisions punishing modern forms of slavery are found in Chapter 5 of the Criminal Code, on offences against human dignity, which was considerably revised by the Act of 18 March 2003 on internal security, one of the aims of which was to transpose into French law the Protocol supplementing the United Nations Convention against Transnational Organized Crime of 15 December 2000, concerning the trafficking in persons, procuring and similar crimes.

54. The decree of 12 May 2005 established the Central Office for the Repression of Human Trafficking (OCRTEH) and the Central Office for Combating Illegal Employment (OCLTI), central police units whose mission is to combat trafficking or its consequences. The decree of 13 September 2007 on the granting of residence to, and protection, hosting and housing of foreign victims of trafficking in persons and of procuring, which amended the Code governing the Entry and Stay of Aliens and the Right to Asylum, allows trafficked foreigners not to be sent back to their country of origin if they agree to cooperate with the courts by providing information about the individuals who participated in the crimes of trafficking in persons of which they were victims. Lastly, France recently ratified the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May, which will enter into force on 1 May 2008.

55. The legislature attaches special importance to combating the prostitution of minors. The Act of 4 March 2002 provided, for the first time, for punishment under criminal law of the offence of prostitution of a child, whether committed in France or abroad. The Act of 18 March 2003 provides that victims of exploitation of prostitution shall receive protection and assistance, and may be granted the right to stay in the country and work. In the event of the conviction of the accused pursuant to a final judgement, the foreigner may be granted a residence permit. This system was supplemented by the Act of 9 March 2004 on adapting the justice system to new developments in crime.

56. Lastly, victims of trafficking have access to the telephone hotline “08VICTIMES”, a service set up by the Ministry of Justice in April 2005 to improve information and facilitate victims’ access to their rights. Also, the Ministry of Justice funds the development of a network of victim-support associations which provide services that are always free and confidential.

**(d) The situation of women in the labour market**

57. The situation of women in the Civil Service and political life has improved, but more progress remains to be made in the senior ranks of the Civil Service. Work is being carried out in order to obtain results that can be quantified and assessed in the framework of long-term plans to improve

women's access to supervisory jobs and positions in the senior ranks of the Civil Service, and to involve more women in boards of examiners for competitive and vocational examinations. The Act of 2 February 2007 on modernization of the Civil Service and the agreement of 21 November 2006 on lifelong vocational training provide for measures designed to improve organization of women's careers. Annual reports are submitted to parliament on the implementation of the principle of gender equality in the Civil Service. Several proposals are being considered by the Ministry for the Civil Service to promote a practical approach aimed at facilitating women's access to posts of responsibility.

58. On 7 March 2007 a Charter on the Equality of Men and Women was adopted by the Government. France has developed tools to improve the situation of women in public, professional and private life with, for example, a new inter-ministerial convention for the equality of boys and girls in the education system (2007-2011), the Act of 23 March 2006 on equal pay and the "equality label".<sup>19</sup>

59. The offences of sexual and psychological harassment are punished under the Criminal Code, and offences concerning discrimination related to such behaviour are covered under the Labour Code. Acts that would constitute psychological harassment may legitimately be considered as coming under the category of violence in the workplace.

**(e) The situation of women in overseas territorial units**

60. Special measures are being taken in overseas territorial units, where there is sometimes a substantial gender gap, especially with regard to economic status. The incidence of spousal violence against women of all ages is higher in overseas territorial units than in metropolitan France.

61. In Mayotte, New Caledonia and the Wallis and Futuna Islands rules on personal status are drawn from two coexisting legal systems, one deriving from general law governed by the French Civil Code, the other from local or customary law. The laws applicable in these units do not permit any discrimination between men and women. In Mayotte two legislative reforms have ushered in some far-reaching changes in civil status under local law, which are paving the way for improvements in women's standing in Mahoran society, without calling into question the actual existence of the personal status guaranteed by the Constitution.

62. A variety of circumstances have led both the national and local authorities to introduce economic policies, as well as policies to combat violence against women and to facilitate equal access to elected office, all of which are tailored to the local context.

**5. Rights of the child**

63. The Government created the post of Children's Ombudsperson by the Act of 6 March 2000.

64. In order to foil child abductions, on 28 February 2006 France introduced a media alert system for cases in which it is certain that a child has been abducted. When a minor is abducted, provided that the victim is not put at risk by broadcasting appeals for witnesses on radio and television and provided that such a step helps the inquiry, a message containing the child's description and a freephone telephone number is circulated on all radio and television channels by order of the public prosecutor. In order to avoid any panic reactions or unjustified accusations, the message makes it clear that the general public must not intervene, but must simply contact the police.

65. The Court of Cassation, which traditionally refused to recognize the direct applicability of the Convention on the Rights of the Child in domestic law, on the grounds that its provisions were too broadly worded, has made a marked shift in its position. In two seminal decisions of 18 May 2005, which constituted a significant step forward and which have since become final, it recognized the direct applicability of articles 3 (1) and 12 (2) of the Convention. The Council of State had declared certain articles to be directly applicable, depending on whether the provisions of the Convention were self-executing.<sup>20</sup>

**(a) Implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

66. The National Observatory for Children at Risk was set up in 2004 to compile and circulate statistics providing a clearer picture of the subject matter of the Optional Protocol.

67. In an effort to combat “sex tourism”, consultations with 20 tour operators culminated in a national ethical charter to promote tourism that respects children’s rights. The aim of this action is to target potential crimes more precisely, for example by having videos warning passengers of the penalties for child exploitation shown on the aircraft of certain “sensitive” airlines.

**(b) Measures applying the Convention on the Rights of the Child to asylum-seekers and their children**

68. The treatment of unaccompanied foreign minors depends on how they enter French territory. Minors arriving by air are kept in a holding area of the airport if they are not immediately admitted to French territory. An agreement of 5 March 2004 authorizes member associations of the National Association for Assistance to Foreigners on the Borders to enter the holding area in order to meet the minors and assess their situation. Efforts must still be made to protect minors in these holding areas.

69. For minors arriving by land, some departments have set up innovative arrangements, like those put in place in Paris in 2003, which are backed by the national Government and which rely on the coordinated action of associations. Closer coordination among associations and administrative departments dealing with foreign minors is still necessary, for example within departmental or regional common platforms.

70. If the unaccompanied foreign minor does not have a legal representative, the public prosecutor appoints an ad hoc administrator (Act of 4 March 2002), who is responsible for assisting and representing the minor in judicial and administrative proceedings. The Minister of Labour, Social Relations and Solidarity has set up a working party to monitor the application of the law on child welfare, especially with regard to the rights and duties, remuneration and training of these administrators. A draft decree increasing their remuneration is being considered by the Council of State.

**(c) The Act of 5 March 2007 reforming child welfare: improved arrangements**

71. The aim of the Prevention of Cruelty to Children and Child Welfare Act of 10 July 1989 is to improve child welfare arrangements within a decentralized policy framework. The Act introduces departmental “cells” to improve the circulation of information about children at risk. It promotes linkage between the various actors by providing for the sharing of worrying information, while at the same time respecting individual freedoms, and for feedback from departmental administrative units and the courts. It makes it possible to evaluate the coherence of measures applied to young

persons being monitored, as well as the efficiency of public policies, through the setting up of departmental observatories. The text provides for alternative care formulas for minors who are between institutional placement and open educational support. It lays down that unaccompanied foreign minors are covered by ordinary child welfare provisions.

72. The Act of 5 March 2007 makes it obligatory for the courts to hear any minor who asks to be heard. The new wording also requires the courts to ensure that minors have been informed of their right to be heard and to be assisted by counsel. Henceforth a court may not dismiss a child's application for a hearing, unless the child is not capable of discernment or is not concerned by the proceedings.

#### **(d) Responses to juvenile delinquency**

73. Unless they come within the jurisdiction of a specialized court, juvenile delinquents, on account of their age, are deemed to have diminished criminal responsibility and thus educational measures are given priority over sentences proper. Recent reforms have made substantial changes to the existing set-up in order to improve the efficiency of juvenile criminal justice, while preserving specific features of the applicable criminal law. In particular developments have made it possible to speed up judicial responses by strengthening the role of the public prosecutor and the effectiveness of criminal investigations, while at the same time streamlining judicial responses and diversifying methods of custody during investigations and before and after sentencing. Since the aim is to secure the minor's rehabilitation, each response is built around a personalized plan.

74. In addition, in order to supplement the measures resulting from the Act of 9 September 2002, the Act of 5 March 2007 brought in four new educational penalties designed to diversify the responses to acts of delinquency committed by the youngest minors. The programme setting up closed educational centres, which reflects the wishes of the legislature, is being continued. The Act of 9 March 2004 established the general principle that the public juvenile judicial welfare sector is responsible for the enforcement of sentences, so as to ensure the specialization of services responsible for looking after juvenile delinquents, including in the context of the execution of custodial sentences.

### **6. Sound administration of justice**

#### **(a) Reform of the judicial map and the National School for the Judiciary (Ecole nationale de la magistrature)**

75. Since June 2007, the judicial map has been reformed in order to improve the administration of justice. The reform is based on two principles, namely, the quality of justice and the real situation on the ground. Consolidation of the courts will allow for more specialization among judges and greater continuity of public service. Some cases could be dealt with outside the judicial sphere, so that judges could redirect their energies to dealing with cases that must be handled according to legal norms. A committee, chaired by a renowned academic, Rector Guinchard, was established to consider these matters and is due to submit its report on 30 June 2008.

76. On 22 February 2008, the Minister of Justice launched the reform of the National School for the Judiciary. The training provided to law officers is being updated and the recruitment base will be expanded. With the reinstatement of the equal opportunities policy, the new preparatory classes will better reflect the diversity of society. The in-service training provided to law officers will give more space to European and international law and, in particular, that pertaining to human rights.

**(b) The right of persons held in police custody to the assistance of legal counsel**

77. Any person deprived of freedom of movement by virtue of being held in police custody for the purposes of an investigation is immediately informed of the nature of the offence with which the investigation is dealing and the provisions concerning the duration of custody and related rights, including the right to the assistance of legal counsel. A lawyer who intervenes at this stage is informed by a police officer, prior to meeting with his client, of the nature of the offence under investigation, and the date on which it occurred.

78. For offences to which the ordinary law system of detention in police custody applies, a person in custody has the right to meet with a lawyer from the beginning of the measure and from the twenty-fourth hour after any extension. At the same time, the Act of 9 March 2004, in a bid to adapt the justice system to developments in crime, introduced provisions derogating from the right to immediate access to a lawyer, where detention in police custody is imposed in cases of organized crime and delinquency and the offences committed have caused serious injury to persons or even damaged higher national interests. The difference in treatment provided for by the legislator with respect to the system of detention in police custody under ordinary law reflects differences of context linked to the nature of the offences involved. Moreover, it should be noted that this form of detention in police custody, which is necessarily an exceptional measure, is subject to appropriate controls by the judicial authority, which is the guarantor of individual liberty. The Constitutional Court has made it clear that such encroachments upon ordinary law rights must be necessary in order to establish the truth and must be proportionate to the gravity of the acts and the complexity of the offences committed.

**(c) The Act of 10 August 2007 strengthening measures to counter recidivism among adults and minors**

79. This Act was introduced in response to a desire to combat recidivism more effectively by imposing harsher sentences on adult and juvenile repeat offenders and by tightening up mandatory treatment measures for perpetrators of certain offences, in particular those of a sexual nature. With regard to repeat offences, the Act states that a sentence of deprivation of liberty cannot be lower than thresholds that correspond to set fractions of the maximum sentences. While minimum sentences are the general rule, it should be borne in mind that minimum sentences can always be suspended. A sentence can also be replaced with other measures, provided that the mandatory part is less than one year. Specialized juvenile courts can still impose measures that are primarily educational. When the issue was referred to the Constitutional Court, the Court stressed that the Act should be implemented subject to the principles of strict necessity and the proportionality of penalties, taking into account the specific issues involved in dealing with minors.

80. In addition to the possibility of adjusting a sentence, the criminal courts retain the right to impose a lower sentence than the minimum sentence, depending on the type of repeat offence and the acts committed. Minimum sentences are imposed in approximately 53.4 per cent of cases at present, which demonstrates the real discretionary power of the courts.

**7. Conditions of detention and the prevention of torture**

81. The National Commission on Security Ethics (Commission Nationale de deontologie de la securite) (CNDS) is an independent administrative authority created by the Act of 6 June 2000. It is responsible for ensuring that persons providing security services in the French Republic comply with professional ethical rules, and it drafts exhaustive reports on the conduct of law enforcement personnel.

82. Awareness campaigns on torture have been conducted and a manual for the medical profession has been published on identifying the effects of torture. The manual was compiled by the Ministry of Health in collaboration with the Association for the Victims of Repression in Exile (Association pour les victimes de la repression en exil).

83. Pursuant to an agreement signed in 2005 by the Ombudsman of the Republic (Mediateur de la République) and the Minister of Justice, offices of the delegates of the Ombudsman have been set up on a trial basis, in prisons. In 2010, all prisoners will have direct access to the Ombudsman's services.

84. Based on the circular issued by the Minister for Internal Affairs on 11 May 2003 on "guaranteeing the dignity of persons held in police custody", efforts are under way to improve the infrastructure and physical conditions of police custody, as well as to improve legal standards and professional practices with regard to compliance with ethical requirements.

85. With regard to placement of foreigners in holding facilities and holding areas, for foreigners, the decree of 30 May 2005 seeks to improve accommodation facilities and budgetary resources have been allocated for this purpose. Moreover, the Act of 26 November 2003 established a national commission to monitor holding centres and facilities, and holding areas.

**(a) Effectiveness of investigations and prosecutions in cases of deliberate violence committed by law enforcement officials**

86. Judicial investigations into acts of deliberate violence committed by law enforcement officials are conducted, as are all procedures, under the direction and supervision of members of the judicial authority (a public prosecutor or an investigating judge), who ensure that the investigations are conducted properly and thoroughly. After the investigation is closed, the public prosecutor will decide whether a prosecution should be brought in accordance with article 40 of the Code of Criminal Procedure. This general principle of French criminal procedure allows for an individual approach to be taken to the judicial conduct of cases. The principle of discretionary prosecution is not an absolute one; the public prosecutor can reverse his decision, which is not final. Moreover, victims can appeal against the dismissal of a case with the office of the competent public prosecutor. Furthermore, they can bring a private prosecution by having the alleged offender brought directly before the competent court, or, can sue for damages in civil proceedings before the senior investigating judge. Lastly, the fact that the members of the public prosecutor's office are law officers and not State officials guarantees objectivity in the manner in which they discharge their tasks.

87. Moreover, where police officers or gendarmes commit acts that constitute criminal offences or violations of professional ethics, the judicial or administrative authority can refer the matter to the national police and gendarmerie inspectorate for investigation. The office of the General Inspector of Judicial Services can take part in such investigations.

88. The commission of acts of deliberate violence by a person in a position of public authority in the course of his duties constitutes an aggravating circumstance under French law.

89. In addition to the vigilance demonstrated in investigations and the penalties imposed for abuses by law enforcement officials, a proactive policy to prevent unlawful violence is in place. Under the Domestic Security Framework Act of 29 August 2002, issues of professional ethics have been made one of the main components of police training and, in this regard, considerable attention is given to the conduct of, and security arrangements for, difficult police operations.

**(b) Definition of torture**

90. French criminal legislation includes a specific offence relating to “torture and acts of barbarity”. Torture is defined in case law as follows: “Torture or acts of barbarity require the demonstration of a material element, involving the commission of an act or a number of acts of exceptional seriousness, which exceed simple violence and cause the victim acute pain or suffering, and a moral element involving the desire to deny the victim human dignity.”<sup>21</sup> This definition of torture is consistent with the definition contained in article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 10 December 1984.

91. Under the Criminal Code, acts of torture which officials in positions of public authority commit in the course of their duties incur a penalty of 20 years’ imprisonment. Moreover, in conformity with the universal applicability of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, any person present in France who has committed abroad acts of torture, barbarity, violence or sexual assault of a minor can be brought to trial in France.

**(c) Conditions of detention**

92. The observations of the treaty bodies and the European Committee for the Prevention of Torture and the advice given by the National Advisory Commission on Human Rights (CNCDH) emphasize the unsatisfactory nature of conditions of detention in France, in particular prison overcrowding. Steps have been taken to try to remedy the most critical situations and the efforts of the Government will be followed up.

93. The prisons bill currently being drafted is largely inspired by United Nations norms, such as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, in addition to the European Prison Rules established by the Council of Europe.

94. As at 1 January 2008, the prison population had increased by 4.6 per cent compared to 2007.<sup>22</sup> Since 2004, there has been a marked increase in the number of persons placed under electronic surveillance, the most common alternative to a prison sentence. Lastly, it should be emphasized that a proactive policy on alternative sentencing reduction has been put in place, in particular through a ministerial circular of 27 June 2007 which establishes the Regional Conference on Alternative Sentencing, and through the Decree of 16 November 2007. The total number of prisoners serving an alternative sentence increased markedly between 2007 and 2008, reaching 4,943 by 1 January 2008.

95. The Framework Act on the Justice System of 9 September 2002 has improved education for young offenders in detention by ensuring the continuous involvement of educators from the Youth Judicial Protection Service in juvenile facilities and by establishing juvenile detention facilities which only take in young offenders. Moreover, juveniles are allocated individual cells<sup>23</sup> and thus are spared the problems of prison overcrowding. The first five juvenile detention facilities (autonomous structures with 60 places) were opened in June 2007, allowing for interdisciplinary care to be provided to young persons in accordance with the European Prison Rules.

96. The mental health of detainees represents a major problem, in view of the proportion of persons suffering from mental disorders and the impact that this has on the management of the prison population concerned. A total of 16 per cent of the prison population under the age of 18 has

been hospitalized for psychiatric reasons prior to imprisonment. Psychiatric care is provided to detainees by the regional mental health services established in 1986 under the responsibility of the public hospitals service. At the same time, general psychiatric sectors and, as appropriate, infant and child psychiatric sectors, may provide treatment in prisons. The Framework for the Justice System of 9 September 2002 altered the conditions under which detainees suffering from mental problems could be hospitalized, establishing specially-equipped hospital wards where they can receive a full package of hospital care.

**(d) Act of 25 February 2008 on extended confinement and supervision and declarations of lack of criminal responsibility by reason of mental disorder**

97. With regard to extended confinement and supervision of persons sentenced to over 15 years' imprisonment for the crimes of unlawful killing, premeditated murder, acts of barbarity, rape or abduction perpetrated against a child victim, or, with an aggravating circumstance, against an adult, the new Act makes it possible to prevent repeat offending by ensuring that the most dangerous convicted offenders are not released or are closely monitored and supervised after release. Where the crimes are committed after the publication of the Act, offenders may be placed, at the end of their sentence, in supervised confinement in a socio-medical-custodial facility, if there is evidence that they are particularly dangerous, meaning that they are highly likely to re-offend because they suffer from a grave personality disorder. Supervised confinement, which, as the Constitutional Council has acknowledged, is neither a penalty nor a punishment, will be imposed for a renewable term of one year. All procedural guarantees are afforded to ensure that a term of confinement is only imposed and extended in cases of absolute necessity. When the confinement comes to end, the person may be subject to close supervision, required to follow a course of treatment and placed under electronic surveillance for a period of one year, renewable indefinitely, depending on the gravity of the threat that the person represents.

98. In general terms, the Act enhances the effectiveness of any treatment that may be offered to these offenders during the execution of their sentence by making them subject to mandatory assessment, tailoring the execution of the sentence to the individual and limiting sentence reduction credits or additional credits for refusing treatment. The time served in execution of the sentence will be used to provide the offender with treatment suited to his or her personality.

99. With regard to declarations of lack of criminal responsibility, the Act introduces greater coherence, effectiveness and transparency into the procedures followed by the judicial authority in dealing with criminals suffering from a mental disorder that impairs their capacity for judgement. Decisions to dismiss a case or discharge or acquit the defendant, which constituted a denial of a crime, will no longer be handed down in respect of these persons and will be replaced instead by decisions on declarations of lack of criminal responsibility by reason of a mental disorder. After a public hearing in which both parties have been heard and the person will appear, if his condition allows it, the court will therefore be able to: rule on the actual commission of the offence; order supervision measures in order to prevent their recurrence; and send the case to the criminal court hearing the civil action. The court, rather than the prefect, may issue an order on its own motion for hospitalization of a person, taking into account the nature of the danger that the person represents, and may also issue supervision orders.

**(e) Solitary confinement**

100. A wide-ranging reform introduced in March 2006 has provided a better guarantee of rights and greater legal certainty for prisoners. Prisoners can now be assisted or represented by a lawyer or an official representative, and have the right to discover what is in their files before any decision is

taken by the prison administration on placement in, or extension of, solitary confinement. Between 1 January 2006 and 1 January 2008, the number of prisoners placed in solitary confinement fell by 23 per cent (and by 49 per cent for prisoners in solitary confinement for more than one year). Since the passing of the Act of 19 February 2007 on reform of legal protection insurance and its implementing decree of 26 July 2007, prisoners have been able to apply for legal aid to have their lawyer's costs paid by the State. The courts have been given a greater role in monitoring solitary confinement. Efforts to raise awareness among all the authorities competent for decisions on placement in solitary confinement and a tighter framework for the procedure have brought about a sharp reduction in the number of prisoners in solitary confinement. Moreover, all administrative decisions that can be contested, such as decisions on solitary confinement, disciplinary measures, withholding of correspondence, etc., can be appealed before the administrative courts (in conformity with article 24 of the Act of 12 June 2000).

### **8. Respect for human rights while countering terrorism**

101. With each wave of attacks, France has perfected the instruments at its disposal to prevent and suppress terrorism: the Acts of 1986, 1990 and 2006, as supplemented by the Act of 23 January 2006 on counter-terrorism, which contains various provisions on border security and controls.

102. The French system relies on the establishment of a specific set of arrangements to deal with terrorism cases in a way that avoids the introduction of an emergency-based system. In France, terrorism cases are dealt with under the supervision of a judge and in the ordinary law courts. The French system not only attests to a desire to reconcile the effectiveness of counter-terrorism with respect for human rights but more specifically stresses the need to ensure that repressive measures, which are indispensable, are coupled with a political approach, the only one capable of helping us to win a fight that must be waged over the long term.

103. France attaches particular importance to victims' rights. Hence, a compensation scheme for victims of terrorist acts, consisting of a guarantee fund for victims of terrorism and other offences, was established by article 9 of the Act of 9 September 1986 on measures to counter terrorism and attacks upon State security. The victims of attacks carried out in France, whatever their nationality, are eligible for compensation; French citizens who are customarily resident in France or who live abroad and are formally registered with the consular authorities are also covered in respect of acts of terrorism carried out abroad.

104. Lastly, the authorities, in the best interests of children whose parents have irregular status and are subject to a removal order, make sure to provide alternatives to confinement for families accompanied by children: the assignment of a home for the duration of the administrative procedure helps, for example, to ensure the well-being of children and could be exploited more fully.

### **9. Rights of asylum-seekers and refugees**

105. The Act of 10 December 2003, which entered into force on 1 January 2004, introduced profound changes to the right to asylum in France. In this connection, the provisions on persecution by non-State actors, which are in keeping with the doctrine of the Office of the United Nations High Commissioner for Refugees, and the creation of a form of protection supplementing that provided under the Convention relating to the Status of Refugees of 1951, represent real steps forward. Moreover, a single body, the *Office français de protection des réfugiés et apatrides*

(French Office for the Protection of Refugees and Stateless Persons) (OFPRA) is competent for asylum issues, i.e. for granting asylum status under the Convention, as appropriate, or providing subsidiary protection, while a single court, the *Cour nationale du droit d'asile* (the National Asylum Court - formerly the Refugee Appeals Board) has authority to decide on appeals against asylum decisions. Save for the exceptions stipulated by law, these appeals have suspensive effect.

106. A form of subsidiary protection supplementing that granted under the 1951 Convention has been introduced. It is aimed at persons who can show that they are at risk in their country of being subject to a death sentence, torture or other treatment that contravenes article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This protection is also intended, in situations of armed conflict or civil war, for civilians who face a grave, direct and personal threat. The provision of subsidiary protection is mandatory when the relevant criteria are met.

107. The Act of 20 November 2007 introduced a suspensive appeal for persons refused entry to France on grounds of asylum, in conformity with the ruling of the European Court of Human Rights of 26 April 2007 in the case of *Gebremedhin v. France*.

108. The authorities, in the best interests of children whose parents have irregular status and are subject to a removal order, make sure to provide alternatives to confinement for families accompanied by children: the assignment of a home for the duration of the administrative procedure helps, for example, to ensure the well-being of children and could be exploited more fully.

### **Refugee facilities**

109. The lengthiness of family reunification procedures is an issue that the Children's Ombudsperson continues to raise. The problem is one of personnel shortages in consular posts and a certain lack of coherence in administrative practices to which improvements could be made.

110. OFPRA deals with persons seeking protection against many different kinds of risks that can only be recognized as such after an investigation has been carried out. This procedure is consistent with the general trend in European law towards the establishment of a common European asylum system with a single procedure which ensures that applications from anyone who alleges that his life, security or liberty would be at risk were he to return to his country of origin are examined fully and that the administration - or the competent court - will decide on the correct form of protection, having due regard to the applicable laws. Under this procedure, the risks that a person might face vis-à-vis the public authorities and third parties are taken into account.

111. As with any French administrative department to which a matter is referred using an official form, the working language must be French, although in a large number of interviews to which asylum-seekers are convoked applicants can now explain the reasons for their application in a language that they know well. At the border, OFPRA, which must be consulted before the Minister can take a decision on whether to grant or refuse a foreigner leave to enter France on grounds of asylum, examines the case in order to ensure that the asylum request is not manifestly unfounded. To that end, it conducts a formal interview, in a language that the applicant understands, and the administration provides an interpreter, at the State's expense, for foreigners in holding areas who do not understand French. When proper communication with an asylum-seeker cannot be assured during an interview without the services of an interpreter, these services will be provided.

## **10. Countering exclusion**

112. The policy on countering exclusion is based on the conduct of many activities, including under the auspices of the Economic and Social Committee, for the purpose of devising a general action programme for key sectors, based on the effective enjoyment of fundamental rights. According to the Framework Act of 29 July 1998 on countering exclusion “measures against exclusion ... are designed to guarantee everyone in France effective access to all fundamental rights in the areas of employment, housing, health protection, justice, education, training, culture and family and child protection”. This is “a national imperative and a priority in every sphere of national policy”. The Act of 2007 on the enforceability of the right to housing is part of the same proactive government policy. Lastly, in October 2007, the Government established a national goal for poverty reduction: to reduce poverty by one third within five years.

### **(a) Housing policy**

113. Article 55 of the Urban Solidarity and Renewal Act is a mechanism for applying the principle of social diversity to housing policy. It requires municipalities with over 3,500 inhabitants (1,500 in Ile-de-France), in agglomerations with over 50,000 inhabitants, to allocate at least 20 per cent of their housing stock for social rental housing. A proportion of the tax revenue of municipalities with less than 20 per cent of social rental housing must be earmarked for the purchase of real estate and property for the creation of such housing. Article 11 of the Act of 5 March 2007 establishing the enforceable right to housing has de facto expanded the criteria for the application of article 55 of the Urban Solidarity and Renewal Act to include a further 258 municipalities.

114. With regard to access to social housing for individuals and families of immigrant origin, foreigners legally present in France have access to social housing under the same conditions as French citizens; indeed, they tend to account for a higher proportion of the inhabitants of such housing.

115. For several years the Government has been engaged in important initiatives to deal with poor quality housing, as seen in the adoption respectively of the Act of 18 January 2005 on planning for social cohesion, the Act of 13 July 2006 on national action for housing and the Act of 5 March 2007 establishing the enforceable right to housing and adopting various measures to promote social cohesion.

### **(b) Employment support**

116. If necessary income supplements should be provided to increase the resources of persons in employment, while a dignified existence should be guaranteed to persons who are unable to work. In this light, employment support, which is currently being piloted in many French departments with a view to its general application, was designed both to help recipients of basic social benefits to get back to work, by providing them with an income supplement conditional upon their return to employment, and to support workers who are poor. This reform should help to bring about a marked reduction in poverty.

## **III. FRANCE’S INTERNATIONAL POLICY ON THE PROTECTION AND PROMOTION OF HUMAN RIGHTS**

117. Since France attaches particular importance to the international system for the promotion and protection of human rights, it has contributed actively, since the very outset, to the work of the Commission on Human Rights and later the Human Rights Council. France supported the

establishment of an effective Human Rights Council that is exacting in its standards, to boosting the authority and resources of the Office of the United Nations High Commissioner for Human Rights and to the promotion of human rights throughout the United Nations system. In addition to a major event scheduled for December 2008, France will host several major commemorative events to mark the sixtieth anniversary of the Universal Declaration of Human Rights.

118. France has introduced, at the Commission and now the Human Rights Council, consensus resolutions on arbitrary detention, enforced disappearances and extreme poverty. In keeping with its vision of the indivisibility and interdependence of all human rights, as well as its desire for equitable and regulated globalization, France supports the promotion and defence of economic, social and cultural rights. Its commitment to the realization of the right to development can be seen in the partnerships for co-development and cooperation agreements that it has established. France and other partners sponsored the international air-ticket solidarity contribution, to which nearly 30 countries have pledged support and which has generated additional funds of US\$ 300 million for development.

119. France accords considerable importance to the right of non-governmental organizations and national human rights institutions to address the Human Rights Council, and makes sure that this right is respected. It supports human rights defenders throughout the world, through the presentation of an annual human rights award of the French Republic, but also on the ground, through constant dialogue with civil society and the promotion of justice and the rule of law.

120. France is committed to respecting and ensuring respect for international humanitarian law during armed conflicts and promotes in particular compliance with the obligation of parties to a conflict to protect civilians, prisoners of war and the wounded. It supports the work of the International Committee of the Red Cross, and has taken measures to protect journalists and other media professionals in conflict situations in conformity with Security Council resolution 1738 (2006) which France co-sponsored.

121. In keeping with its commitment to combat impunity for perpetrators of human rights violations, France has been particularly active in promoting international criminal justice and the role of the International Criminal Court. It supported an international seminar on the link between international justice and transitional justice that was organized by the United Nations Centre in Yaoundé. France has contributed to the dissemination of the guidelines against impunity. Moreover, it supports victims of violations and, in that spirit, has followed through on the commitment that it made in 2006 by doubling its contribution to the United Nations Voluntary Fund for Victims of Torture.

122. In February 2007, France held a conference in Paris entitled “Let’s liberate children from war”, which was co-chaired by the Minister for Foreign Affairs and the Director-General of UNICEF. At the conference, the revised principles on children and armed conflict, known as the “Paris Principles”, were presented. France is committed to continuing its efforts to combat the use of children in armed conflict, in particular through the Security Council Working Group that was established at its urging.

123. France has mainstreamed gender issues as a separate goal into its international cooperation and development activities in order to improve the effectiveness and the range of its activities in pursuit of the Millennium Development Goals. France furthermore attaches great importance to the elimination of violence against women, as its introduction of a resolution on this subject two years ago at the General Assembly of the United Nations can attest.

124. Lastly, France is actively involved in the dialogue between cultures and the promotion of a spirit of tolerance and respect for individual freedoms. In this connection, it launched the Mediterranean Cultural Workshop and supports initiatives such as the Alliance of Civilizations.

#### **IV. ADDITIONAL PLEDGES**

125. With regard to the above analysis and the pledges undertaken, France makes the following additional pledges:

- To submit to Parliament for ratification at the earliest opportunity the International Convention on the Rights of Persons with Disabilities, the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to transpose in 2008 the provisions of the Rome Statute of the International Criminal Court;
- To favour actively the rapid completion of negotiations on an optional protocol to the International Covenant on Economic, Social and Cultural Rights so that all the rights recognized by the Covenant may be included in individual communications;
- To examine the possibility of withdrawing or modifying the reservations entered by the Government regarding articles 14 (2) and 16 of the Convention on the Elimination of All Forms of Discrimination against Women;
- To examine the possibility of modifying the declarations made by the French Government on articles 13 and 14 (5) of the International Covenant on Civil and Political Rights;
- To inform CNCDH, as often as possible in advance, of the preparation of draft laws where the Commission could usefully play its role of providing advice on all matters relating to its area of competence;
- To consider without delay the possibility of establishing an interministerial mechanism to hold regular meetings on the preparation of reports on the human rights situation in France for submission to international bodies, and to examine, in conjunction with the Advisory Commission, modalities for follow-up on recommendations made by those bodies and by the competent national institutions, including the Commission;
- To publish regularly, on the site of the Ministry of Foreign and European Affairs, the concluding observations of the treaty bodies;
- To strengthen the ongoing dialogue between the Ministry of Foreign and European Affairs, the Ministry of the Interior, the Overseas Territories and Territorial Units and the Ministry of Immigration, Integration, National Identity and Co-Development, on the consideration, on a case-by-case basis, of returns of persons to their country which could place those persons "at risk", in conformity with France's obligations in this regard, in particular in the framework of requests for interim measures from the treaty bodies;
- To examine the feasibility of conducting a national consultative exercise on a national plan of action to follow up on the Vienna Conference on Human Rights and the Durban Conference on Racism;

- To boost the financial support that the Ministry of Foreign Affairs gives to French non-governmental organizations that promote human rights throughout the world, in particular through a “call for human rights projects”.

*Notes*

<sup>1</sup> Article 66 de la Constitution.

<sup>2</sup> Le Médiateur de la République reçoit les réclamations des administrés dans leurs relations avec les administrations publiques. Depuis 2005, le Médiateur de la République dispose, d'une part, d'un délégué dans les maisons départementales du handicap et, d'autre part, de délégués dans les établissements pénitentiaires.

<sup>3</sup> La CNIL a pour mission de veiller à ce que les modalités de mise en oeuvre du droit d'accès aux données contenues dans les traitements n'entravent pas le libre exercice de ce droit. Pour ce faire, elle use de pouvoirs de vérification et d'investigation, instruit les plaintes, peut prononcer des sanctions et établit des normes simplifiées.

<sup>4</sup> Le défenseur des enfants est chargé de défendre et de promouvoir les droits de l'enfant tels qu'ils ont été définis par la loi ou par un engagement international régulièrement ratifié ou approuvé par la France. Il reçoit les réclamations, cherche à résoudre la situation et fait intervenir les autorités compétentes. Il assure la promotion des droits de l'enfant et organise des actions d'information sur ces droits.

<sup>5</sup> La MIVILUDES est chargée d'observer le développement des dérives sectaires, autrement dit des infractions pénales commises par des organisations sous un prétexte d'aide au développement personnel ou spirituel et contre des personnes vulnérables. La MIVILUDES a pour mission de dresser un bilan des nouvelles atteintes privilégiées par certaines de ces organisations (ex : blanchiment de capitaux) et de faire rapport aux pouvoirs publics.

<sup>6</sup> La lutte contre la discrimination à l'égard des femmes est traitée en section II.3.

<sup>7</sup> Article 225-3-1 du code pénal.

<sup>8</sup> Lois du 3 février 2003 et du 9 mars 2004.

<sup>9</sup> Notamment celle du 18 novembre 2003 relative à la réponse judiciaire devant être apportée aux actes à connotation antisémite et celle du 13 août 2004 relative aux dégradations, violations et profanations de sépultures ou de monuments édifés à la mémoire des morts à raison de l'ethnie, de la nation, de la race ou de la religion des défunts.

<sup>10</sup> Dans le cadre des Commissions pour la Promotion de l'Egalité des Chances et de la Citoyenneté (COPEC).

<sup>11</sup> Au niveau des cours d'appel, les compétences dévolues aux magistrats référents en matière de lutte contre le racisme et l'antisémitisme ont été élargies à la lutte contre les discriminations.

<sup>12</sup> Avec la Ligue internationale contre le racisme et l'antisémitisme (LICRA) et avec SOS Racisme.

<sup>13</sup> La charte de la diversité lancée en 2004 est une initiative du monde économique et d'organisations proches du monde de l'entreprise ; elle compte plus de 1500 signataires.

<sup>14</sup> Décret n° 2001-540 du 25 juin 2001 relatif à la composition et au fonctionnement de la Commission départementale consultative des Gens du Voyage ; Décret n° 2003-1120 du 24 novembre 2003 relatif à la Commission nationale consultative des gens du voyage.

<sup>15</sup> Cette législation permet dorénavant aux parents de choisir librement le nom à transmettre par déclaration conjointe. En l'absence d'une telle déclaration, le nom est dévolu selon l'ordre d'établissement du lien de filiation : l'enfant prend le nom du parent à l'égard duquel ce lien est établi en premier ; en cas d'établissement simultané, l'enfant prend le nom du père.

<sup>16</sup> La parité politique et l'accès à la prise de décision ; l'égalité professionnelle ; le respect de la dignité de la personne ; l'articulation des temps de vie - professionnelle, personnelle familiale, sociale et civique ; la solidarité européenne et internationale.

<sup>17</sup> Développement d'une culture paritaire dans l'ensemble de la société, en particulier dans les secteurs économiques et sociaux, mesures visant à concilier l'exercice d'un mandat électoral ou d'une fonction élective avec la vie familiale, poursuite de la réflexion sur le cumul des mandats et sur le statut de l'élu.

<sup>18</sup> Le code pénal ne prévoit de dérogation à ces règles de compétence que pour la répression des violences commises sur des mineurs, notamment des mutilations sexuelles, lorsque les faits sont commis à l'étranger sur une victime mineure résidant habituellement sur le territoire français.

<sup>19</sup> Décerné à des entreprises qui montrent comment elles améliorent leur organisation et leur gestion des ressources humaines en développant en leur sein la culture de l'égalité.

<sup>20</sup> Articles 3-1 ((intérêt supérieur de l'enfant), 10-2, 16 et 37 b) et c).

<sup>21</sup> Lyon, chambre d'accusation, 19 janvier 1996.

<sup>22</sup> 61 076 détenus au 1<sup>er</sup> janvier 2008.

<sup>23</sup> L'objectif fixé par le Parlement en 2000 puis 2003 de l'encellulement individuel des prévenus ne pourra être atteint à l'échéance du juin 2008.

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