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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture
Forty-fourth session

Summary record of the 931st meeting
Held at the Palais Wilson, Geneva, on Wednesday, 28 April 2010, at 3 p.m.

Chairperson: Mr. Grossman

Contents

The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Fourth to sixth periodic reports of France (continued) (CAT/C/FRA/4-6; CAT/C/FRA/Q/4-6 and Add.1; HRI/CORE/1/Add.17/Rev.1)

1. *At the invitation of the Chairperson, the delegation of France took places at the Committee table.*

2. **Ms. Tissier** (France) said that enforcement measures in France guaranteed full respect for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that there were no legal loopholes that might allow torturers to escape punishment by the French courts. Domestic courts directly applied article 1 of the Convention in accordance with articles 689-1 and 689-2 of the Code of Criminal Procedure, which provided that, in application of the Convention against Torture, any person who was guilty of torture outside French territory within the meaning of article 1 of the Convention could be prosecuted and tried by French courts. Two decisions of the Court of Cassation, dating from 3 May 1995 and 10 January 2007, set precedents in that area.

3. French law also stated that any person exercising public authority or performing a public service who committed an act of torture in the exercise of their duties was liable to a prison term of 20 years. Other forms of unlawful violence were subject to various punishments, depending on their effect on the victim, and the punishment incurred was always aggravated if the perpetrator was a public official. While it was not expressly defined in French law, the term “torture” had been enshrined in legislation for a very long time, and there was consensus on its judicial definition. The term was thus meaningful in French criminal law. The division of what the Convention referred to as torture into various offences was explained by the need to establish gradations of punishment, depending on the severity of the act.

4. The Committee had recommended that France should make torture an imprescriptible offence. In that regard, it should be pointed out that in French law the principle of prescription took precedence, apart from in exceptional cases. The French Government understood the Committee’s wishes, but had no immediate plans to introduce different statutes of limitations that would make the system as a whole less coherent. Regarding the case of Ricardo Cavallo, as mentioned by Ms. Belmir and Mr. Gallegos Chiriboga, the French authorities had been dismayed to realize that it was currently impossible under French law to rescind an honour awarded to a foreigner. The authorities had started the process of amending the Legion of Honour Code and the National Order of Merit Code so as to make it possible to initiate such a procedure. The French embassy in Argentina was closely following the court proceedings in that country, and if Mr. Cavallo was convicted, the amendment that was being introduced would likely make it possible to rescind the Order of Merit awarded to him 30 years earlier. Regarding the consequences of the wave of suicides at France Télécom, various investigations were under way, including two judicial inquiries, to bring to light any psychological harassment that might be classified as unintentional homicide.

5. **Ms. Doublet** (France) said that the procedure for applying for asylum through an embassy, mentioned by Mr. Mariño Menéndez, was a distinctive feature of the French system. In 2009, 99 applications for asylum had been submitted in that way – a modest number that varied little from year to year. Eighty individuals had obtained a visa to enter France through that procedure. They were mainly individuals who had been persecuted for their pursuit of freedom in their countries. With regard to applications for asylum at the border, of which 93 per cent were submitted at Roissy Charles de Gaulle airport, it should

be noted that applying for asylum at the border did not automatically give an individual the right to enter the country, as was the case in most countries of the world. As noted by the Committee, the treatment of that type of application was subject to specific regulations, although with important guarantees. The applications were examined by the French Office for the Protection of Refugees and Stateless Persons (OFPRA), an independent and specialized public institution, and applicants had the right to assistance from an interpreter. Only applications that were "manifestly unfounded" and that were clearly unrelated to any protection issues could be rejected. Since the law of 20 November 2007 had entered into force, decisions to refuse asylum at the border could be set aside by an administrative judge, with full suspensive effect. In 2009, some 3,260 people had applied for asylum at the border; in 27 per cent of those cases the individuals had been admitted to the country. Applications for asylum could also be submitted at any time from within the country, and in no case could an asylum-seeker's irregular entry or stay in the country be held against them.

6. The so-called "fast track" asylum procedure sought to reconcile the need to ensure respect for the right to asylum in all cases with the need for France, like all other countries, to have suitable procedures for handling applications that were manifestly unrelated to protection. The procedure was exceptional and could only be applied in three cases: when the asylum-seeker was from a safe country of origin; when his or her presence constituted a serious threat to public security; or when the application was fraudulent, an abuse of procedure or solely aimed at preventing execution of a deportation order. All applications submitted through the fast track procedure were reviewed individually by OFPRA; the quality of the review and the guarantees offered were the same as for all asylum applications. As far as the burden of evidence was concerned, the standards were no higher than for any other case. The sole objective of the system was to prioritize applications for asylum and to obtain a decision from OFPRA as quickly as possible – within 15 days, or 96 hours if the foreigner was subject to a deportation order and was placed under administrative detention. Appeals lodged before the National Court on the Right of Asylum against the rejection by OFPRA of an application under the fast track procedure did not have suspensive effect. It was important to note, however, that it was not the rejection by OFPRA that led to the deportation of the foreigner, but rather a decision by the prefect. That decision was subject to an appeal with full suspensive effect before the administrative judge, who could also look into whether or not the applicant was at risk of being tortured if returned to their country of origin. Thus, it could not be said that the fast track procedure exposed foreigners to being returned to a country where they risked being subjected to treatment banned by the Convention. In 2009, France had received 8,632 applications — 30 per cent less than in 2008 — under that procedure, which represented 22 per cent of applications for asylum submitted in the country.

7. The inclusion of a country in the list of safe countries of origin was very carefully regulated. It was only allowed if respect for individual rights and freedoms in the country was effective or sustained and if people were protected against violations of their rights. The list was drawn up by the OFPRA governing body, not by a government authority. Any decision to add, maintain or remove a country from the list was made on the basis of information communicated by diplomatic or consular missions abroad or contained in reports prepared by the Office of the United Nations High Commissioner for Refugees or by non-governmental organizations. Any inclusion of a country was subject to appeal before the Council of State, which had removed the Niger and Albania from the list of safe countries in 2008 and was currently considering an appeal against the inclusion in November 2009 of three new countries.

8. Deportation to Greece was governed by the European Union's Council Regulation (EC) No. 343/2003, known as the Dublin II Regulation, which established the criteria and mechanisms for determining the member State responsible for examining an asylum

application lodged in one of the member States by a third-country national. If it was established that an asylum-seeker would be at risk of suffering ill-treatment if returned to Greece, then in accordance with the aforementioned regulation the French authorities would not seek the individual's readmission to that country. Furthermore, under no circumstances could minors be readmitted or returned under the Dublin II Regulation. In 2009, 81 individuals had been deported to Greece in compliance with that regulation.

9. With regard to women and asylum, the latest annual report from OFPRA indicated that, in 2009, 34 per cent of asylum-seekers and 49 per cent of individuals granted international protection were women. Women also represented 75 per cent of beneficiaries of subsidiary protection. That was because various forms of ill-treatment specifically affecting women, such as trafficking, forced marriage and genital mutilation, entitled the victim to subsidiary protection in France. In particular, individuals who had publicly opposed the practice of genital mutilation in their country of origin and who had refused to subject their children to it were entitled to refugee status under the Geneva Convention. If the children were born in France, they would be granted subsidiary protection, and would thus be safe from deportation. Protection was also granted to the mother to avoid separation.

10. Unaccompanied minors detained in waiting zones benefited from the same rights and guarantees granted to all foreigners held in those zones, as well as special guarantees. Thus, they were always given one clear day before any onward transport and were assisted by an ad hoc guardian responsible for representing them in all administrative and judicial proceedings. The problems affecting the representation of minors in the past had been resolved; ad hoc guardians were now appointed in 100 per cent of cases. If, at the end of a thorough investigation, it appeared that an unaccompanied minor could not be granted entry into France, every precaution was taken during deportation, and measures were taken to ensure that someone would be there to take charge of the minor in the country of origin. It would therefore be wrong to say that minors in waiting zones did not have rights. The Ministry for Immigration, Integration, National Identity and Development Solidarity was taking measures to further improve the conditions for ad hoc guardians in the waiting zones. Special accommodation for minors under 16 years of age was currently under construction. The French authorities sought to provide particular protection to unaccompanied minors, who, more than anyone else, were in a vulnerable situation.

11. **Mr. Dumand** (France) provided details on the situation of Mr. Daoudi, an Algerian national sentenced in 2005 to imprisonment for a term of six years and a permanent ban from French territory for his involvement in terrorist activity. On 31 July 2009, the National Court on the Right of Asylum had recognized that his fear of being subjected to torture or ill-treatment if returned to his country of origin was well founded. The European Court of Human Rights had also ruled, in a decision of 3 December 2009, that the implementation of the decision to return Mr. Daoudi to Algeria would constitute a violation of article 3 of the European Convention on Human Rights. Consequently, Mr. Daoudi, who could not be returned to his country of origin, was subject to a compulsory residence order and was required to report regularly to the gendarmerie.

12. As for Mr. Ferchichi, a Tunisian national sentenced in 2008 to imprisonment for a term of six years and a permanent ban from French territory for his involvement in terrorist activity, in a decision of 22 December 2009 OFPRA had recognized that his fear of the risks he would face if returned to his country of origin was well founded. Steps had been taken to find another host country, so that the relevant judicial decision could be implemented. He had thus been removed to Senegal on 24 December, before the Ministry of the Interior received the request from the European Court of Human Rights to suspend the removal. However, the Court had decided to lift the interim measure on 4 March 2010,

considering that Mr. Ferchichi's fears of ill-treatment in Senegal or of being transferred to his country of origin appeared to be unfounded.

13. Regarding the French authorities' response to the Committee's requests for interim measures, he emphasized that, given that its cooperation with the Committee was based on mutual good faith, France was bound to examine very thoroughly all measures of that kind and to attempt as far as possible to implement them. The French Government was well aware of that obligation, and only in two very particular cases of a serious threat to public order had it not followed up on the Committee's requests for interim measures. However, far from ignoring those requests, the authorities had postponed the deportations — after they had already undergone numerous effective internal administrative and judicial controls — in order to carry out a supplementary in-depth examination of the situation of the two individuals concerned. As the alleged risks had appeared to be completely unfounded, the deportation measures had been implemented. According to the latest information received, the two individuals were both living with their families and had not been disturbed since their return.

14. The number of patients committed to psychiatric hospitals without their consent had fallen steadily since 2003, decreasing by 7 per cent from 2003 to 2007 after a substantial rise from 1993 to 2003. However, the percentage of individuals hospitalized without their consent had remained stable at around 12 per cent of all those admitted to psychiatric hospitals. Such measures were taken on the basis of a medical certificate, either automatically by the prefect in the event of a serious disturbance of public order, or by the director of the institution at the request of a third party. Given the risks it posed to individual freedoms, hospitalization without consent was strictly controlled, especially in cases of involuntary hospitalization and committal to a mental institution. In such cases, the administrative, medical and judicial authorities were brought in on a regular basis to ensure that the rights of the individual concerned were respected. Individuals hospitalized without their consent could contest the measure before the administration and before the psychiatric hospitalization committee of the department in question, which comprised psychiatrists, representatives of patients' associations, a judge and a general medical practitioner. They could also lodge a legal appeal. The rights of individuals undergoing medical treatment without consent would be protected by a bill that would soon be submitted to Parliament. The bill proposed that full hospitalization should be only one of the approaches to providing treatment without consent, along with the less restrictive measures of outpatient care and home care. The bill would also strengthen the guarantees offered to individuals hospitalized without their consent.

15. **Ms. Dubrocard** (France) said that, under French law, persons suspected of acts of terrorism or organized crime were held in police custody under a special regime, but their rights were not infringed. They were immediately informed of their rights and of the duration of custody, and they could ask to notify a family member and to be examined by a doctor within three hours. A systematic medical examination was carried out if custody was extended, and the individuals were advised that further medical examinations were available to them "by right" under the Code of Criminal Procedure.

16. In cases of terrorism or organized crime, however, detainees could not see a lawyer until they had been in custody for 72 hours, and no recordings were made of the detainees, unless the State prosecutor decided otherwise. Those restrictions were due to both the seriousness of the suspected offences and the requirements of the investigation. Because those types of offences typically involved a network, additional precautions were necessary to prevent any communication with other members of the network. Other offences that were governed by the special regime because of the threat they posed to society included the crime of torture and barbaric acts committed by an organized group, abduction and illegal confinement committed by an organized group, and human trafficking.

17. The use of police custody in France was monitored in three ways: by public prosecutors, whose annual reports were available to the public; by parliamentarians, who were authorized to visit detention facilities; and by the Inspector-General of Places of Deprivation of Liberty. The fact that those facilities could be visited by various bodies was an additional guarantee. Furthermore, the law establishing the office of Inspector-General provided for a coordinating body and required the Inspector-General to inform the State prosecutor without delay of any evidence that a criminal offence had been committed.

18. In answer to the questions about the complaint filed by the family of Mr. Abou Bakari Tandia, she indicated that the investigation was still under way, following the conclusions of the latest expert assessments.

19. The final version of the bill designed to bring French criminal legislation into line with the Rome Statute of the International Criminal Court was not yet known, as the bill had not yet been considered by the National Assembly. However, it would not affect the rules governing jurisdiction in the prosecution of acts of torture, because article 689-2 of the Code of Criminal Procedure would remain in force and provided for any person in French territory to be tried in France for acts of torture within the meaning of the Convention. The Committee might like to note that the foreign affairs committee of the National Assembly had considered the bill and had adopted a report that drew essentially the same conclusions as the National Consultative Commission for Human Rights. More generally, the concept of universal jurisdiction was widely debated in legal circles, notably because of the difficulty of implementing it, and few States had adopted it unconditionally.

20. French criminal procedure included a whole series of measures to prevent any conflict of interest in investigations by the police or gendarmes of complaints of torture or ill-treatment involving police officers. First of all, judicial investigations were carried out under the supervision of the State prosecutor, the public prosecutor in the jurisdiction of each court of appeal, and the Investigations Division. Furthermore, in 2009 the State prosecutor had been given the power to assign the investigation to whichever legal investigation service seemed most appropriate in the circumstances, thus making it possible to assign investigations to a service other than the one to which the officer in question belonged. The judicial or administrative authority could also enlist the internal oversight bodies concerned to carry out a judicial investigation whenever a police officer or gendarme was suspected of committing a criminal offence. At the same time, administrative investigations could be ordered by the superiors of the police officers or gendarmes concerned.

21. Decisions to discontinue proceedings could be contested by the individuals who had reported the incidents, either by lodging an appeal with the public prosecutor or by suing for damages in criminal proceedings and filing a complaint directly with the investigating judge. Officers accused of acts of torture or ill-treatment were sometimes criticized for filing a complaint themselves for false accusations or libel. However, to forbid them from reacting to such serious accusations would be an infringement of their right to access to justice. With regard to the complaint filed by Ms. Albertine Sow, the proceedings were still under way.

22. The law of 10 March 2010 aiming to reduce the risk of reoffending complemented the law of 2008 on preventive detention and declarations of lack of criminal responsibility by reason of mental disorder. While it did expand the scope of preventive surveillance, which concerned individuals who had already served their sentence, it also included provisions designed to clarify the previous law by providing a new guarantee for individuals facing preventive detention. It also aimed to further protect victims. Thus, preventive detention in a socio-medical-judicial centre implied that the individual had already received personalized medical, social and psychological support while in detention. The law also clearly affirmed that internment was a last resort, in cases where security

measures appeared insufficient to prevent further serious offences from being committed. Individuals in preventive detention could benefit from legal assistance. Finally, the law established a new index for expert assessments, which was maintained by the Ministry of Justice and Liberties and supervised by a judge. The index was used to evaluate the danger posed by individuals likely to be placed under socio-judicial supervision.

23. She assured the Committee that in no case could evidence obtained under torture in a foreign country be used in a French court. In the case of Djamel Beghal, the Paris Court of Appeal had based its conviction on evidence gathered during the investigation by French judges, not on the statement Mr. Beghal had made to the investigators of the United Arab Emirates, which had been obtained under conditions that were incompatible with the rights of the defence. More generally, the Court of Cassation, which dealt with procedural matters in French law, had ruled that the judicial authorities in France must respect principles that could be said to transcend countries' laws, including those enshrined in the Convention against Torture.

24. **Mr. Combettes** (France) said that tasers were only used in prisons on an experimental basis, and that the Prison Administration Directorate did not intend to expand their use without a thorough assessment. To date, their limited use by a restricted number of officers within a very restrictive framework had not resulted in any injuries. The European Prison Rules, which were an integral part of the initial and in-service training for prison staff, set out principles consistent with the Convention and stated in particular that force was to be used only in cases of extreme necessity. Also, the Inspector-General of Places of Deprivation of Liberty drew heavily on the Optional Protocol to the Convention. To date, the Inspector-General had made 66 visits and published 38 reports on those visits, which had been brought to the attention of the prison administration. The latter had already followed up on 102 of the Inspector-General's observations, for example by renovating visiting rooms, bringing cells for persons with disabilities up to standard, making cleaning products available and reducing the waiting period for visit authorizations.

25. The Prisons Act of 24 November 2009 had introduced a code of ethics for the prison system, which required every individual hired to work in any capacity for the prison administration to take an oath. With regard to "differentiated regimes", they had been established as part of an effort to personalize penalties and could be monitored by the administrative judge.

26. Suicide in prisons was a major concern for the Minister of Justice. The June 2009 action plan to prevent prison suicides had been reinforced and a special task force on that issue had been established in December 2009 within the prison administration. It was true that placement in the punishment wing increased the risk of suicide. In that regard, the Prisons Act had reduced the maximum stay in the punishment wing from 45 to 20 days, or 30 days for the punishment of violent acts. The reinforced action plan called for special measures to be taken in punishment wings to cut the risk of suicide, notably by establishing local multidisciplinary commissions to better identify individuals at risk and provide more effective care for them. Experimental measures, such as assigning a fellow prisoner to provide support, had also been implemented in cooperation with the French Red Cross.

27. The primary purpose of searches was to guarantee the security not only of prison staff and prisoners, but also of all other individuals, such as doctors, teachers and visitors, who participated in prison life. The procedure for body searches was the same for prisoners of either sex, apart from the fact that women could only be searched by female staff members. There were several types of search, and it was worth explaining the differences. Pat-down searches were by definition a superficial check because the prisoner remained clothed. Body searches involved a more thorough inspection, including an examination of the prisoner's clothes, which were handed over to the prison guard beforehand, but in no case did they include body cavity searches. Body cavity searches were prohibited in

principle, unless there was good cause, in which case they must be requested by the judicial authority and performed by a doctor. It was true that previously, by virtue of the Code of Criminal Procedure, the prison administration had enjoyed great latitude in the use of the different types of searches, but since 1986 a circular had provided a framework for the use of searches, emphasizing the need to respect human dignity while maintaining order and security in prisons. The Prisons Act of 24 November 2009 set out very precise rules on the subject, stating that the use of searches must be justified by suspicion of an offence or by the existence of risks related to the prisoner's behaviour, that the nature and frequency of searches must be determined strictly on a needs-only basis and must take into account the prisoner's personality, and that body searches could only be performed if pat-down searches or electronic means of detection were insufficient. Millimetre wave scanners, already in use in some airports, were being trialled in certain prisons.

28. Regarding prison overcrowding, as of 1 April 2010 there were 61,706 individuals detained in prisons in France, which had a capacity of 56,324 places, and thus a prison occupancy rate of 109.5 per cent. That figure had been 120.5 per cent in 2008, so there had been a significant improvement, made possible by a large-scale building development project and the use of alternatives to detention and the adjustment of sentences.

29. By 2012, 23 new prisons offering optimum accommodation conditions, including cells equipped for persons with disabilities, would be operational. That would bring the total capacity of the prison system up to 64,000 places. Twelve new prisons were already operational. Meanwhile, the Minister of Justice, by agreement with the President of the Republic and the Prime Minister, had begun a new building programme that would affect nearly 10,000 places by 2017, replacing old prisons with new ones and creating 5,000 additional places. The overseas territories, where the prison occupancy rate was as high as 123 per cent, had not been forgotten. Renovation and construction were under way and had already increased the capacity of several establishments.

30. The Prisons Act reaffirmed the subsidiarity principle for imprisonment, whereby deprivation of liberty should only be used as a last resort. The Act provided for various alternatives, including house arrest under electronic surveillance, and encouraged the adjustment of prison sentences. Currently, 8,328 individuals were benefiting from such adjustments, which was three times more than five years earlier. The use of house arrest under electronic surveillance had increased substantially, by 25 per cent in one year.

31. **Ms. Morize-Rabaux** (France) said that, as with all international instruments ratified by France, the Convention against Torture was applicable in all overseas territories. The same was true for the Criminal Code, the Code of Criminal Procedure and the Prisons Act. The Inspector-General of Places of Deprivation of Liberty had the authority to make visits overseas, and had visited Guyana in the autumn of 2008 and Mayotte in May 2009. Parliament could, however, make adjustments in the application of the law to take into account the geographical, cultural and economic differences of those territories. Thus, the particular situation in certain territories had led the Government to adjust the legislation applicable to foreigners. Migratory flows could have really serious effects on the economy and environment of those already fragile societies, particularly in Guyana, Guadeloupe and Mayotte, and could even compromise their economic and social development. That risk was real and must be considered.

32. Concerns had been raised about the administrative detention centre in Mayotte. Renovations had been carried out in 2008 and the opening of a new centre had been announced for the end of 2011. That opening would likely be postponed for a year, however, due to construction setbacks. France had begun negotiations with the Comoros to set up a cooperation agreement similar to the very effective one that France had established with Brazil concerning Guyana. The discussions had been suspended because of domestic political events in the Comoros, but they should recommence shortly. Regarding the

situation of foreign unaccompanied minors in Mayotte, a distinction should be made between minors detained upon arrival in Mayotte and minors whose parents had been deported and who were thus left on their own. The Government was concerned about that situation; it wanted to protect those children and was under an obligation to do so, and was seeking solutions to the problem.

33. **Mr. Petraz** (France) said that large-scale work, estimated to cost several hundred million Euros, had been started to renovate some 3,600 detention cells used by the national police. Given the budget constraints, priorities had been established, centred mainly on the effort to guarantee the security of persons held in custody and to provide them with decent living conditions. Equipping all places of detention with video surveillance systems, including in the hallways, had not been considered a priority in that regard.

34. Any individual for whom the police had responsibility under the rules on custody or some other regulation could ask to be examined by a doctor at the time they were notified of their rights or at any point during their detention. The officer responsible could also make the request if the person had an obvious injury or illness or claimed to be injured or ill. Police officers were strongly urged to request a medical examination along with a certificate, which often served as evidence of the reality and severity of the alleged injuries.

35. The use of tasers was strictly controlled by general legislation and by regulations applicable to the national police and the gendarmerie. The instructions given to the national police informed them that tasers were on the European list of equipment which, if misused or abused, might lead to cases of cruel, inhuman or degrading treatment. The principles of necessity and proportionality set out in article 3 of the United Nations Code of Conduct for Law Enforcement Officials were fully incorporated into the initial and in-service training for police officers and gendarmes and in all training on the use of force. Only those who had been trained in the use of tasers were allowed to carry them. They must also attend compulsory periodic training courses, which included instructions on proper use and specific precautions to be taken, as well as on what to do after use. In addition to the principles of proportionality and necessity, the decision to use a taser should take into account the local environment and the apparent or known vulnerability of the person to be subdued. A single pulse was to be used for a maximum of five seconds, apart from in exceptional circumstances, where a maximum of two pulses was authorized. A medical examination was systematically performed if the person subdued appeared to need one or requested one. In 2008 and 2009, respectively, 390 and 401 cases of taser use by the national police had been recorded, as compared to 450 and 420 for the gendarmerie. In no case had the consequences been lethal. The tasers were equipped with an electronic chip and a camera that recorded each use. The recordings were archived in a secure manner and, if needed, were made available to the judicial and administrative supervisory authorities. A ruling of 2 September 2009 by the Council of State had repealed the decree authorizing the use of tasers by municipal police officers because it had not provided for training in the use of the weapon or for any monitoring of its use by such officers.

36. The so-called “ventral decubitus” (face down) immobilization technique was used strictly within the bounds of the laws on the use of force and was therefore subject to the principles of necessity and proportionality. A memo from the Inspectorate-General of the National Police dated 8 October 2008 had specified that when immobilization was necessary, compression, especially of the thorax or abdomen, should be as brief as possible and should be released once the person had been restrained by suitable regulatory means. Similar techniques were used in most European States. The Directorate-General of the National Police had, however, considered the possibility of developing technical equipment that would enable officers to immobilize individuals in a state of paroxysmal overexcitement without needing to use the ventral decubitus technique, thus avoiding any risk of accident.

37. **Mr. Masselin** (France) said that French legislation guaranteed the right of all members of the police or Armed Forces to refuse to carry out an illegal order. In fact, the Defence Code stipulated that a soldier could not be ordered to commit acts that were contrary to the law, the customs of war or international conventions. Furthermore, the National Police Force Code of Ethics affirmed that a police officer who witnessed prohibited behaviour, particularly illegal violence or inhuman or degrading treatment, would be liable to disciplinary measures if they did nothing to stop it or failed to inform the competent authority. Finally, article 40 of the Criminal Code said that any public servant who had knowledge of an offence or crime was required to inform the competent judicial authority. Thus, failure to report an offence was punishable by law and the ability to refuse to carry out an illegal order was guaranteed by law. The relevant provisions were included in the training given to public servants, as well as in in-service or specialized training.

38. **Ms. Tissier** (France) said that the office of the Defender of Rights had been established in accordance with a new constitutional provision, which bestowed the utmost legitimacy on that office. The establishment of that institution had followed from the need to regroup the various structures in place to defend human rights, which had proliferated, and to better respond to the needs of the public. Lively debates were under way in Parliament, which had yet to define the exact parameters of the institution. It was possible that the Inspector-General of Places of Deprivation of Liberty might eventually be absorbed into the office of the Defender of Rights, but for the moment the Government did not intend to submit any proposal to that effect.

39. The Inspector-General was authorized to monitor the situation in all places where individuals were kept against their will by the public authorities, including police cells, detention centres and psychiatric hospitals. Following his visits, he engaged in dialogue with the administrations concerned on how to improve the situation. The Constitution specified that the Inspector-General could only visit establishments located within French territory, because if, hypothetically speaking, there were places of deprivation of liberty that were under the jurisdiction of France but were located outside French territory, then that would create an extremely complex legal situation and the monitoring of those places would pose major problems. Parliament had thus deemed it prudent to rule out that hypothesis, considering that such complex and essentially international situations should be handled by the competent international organizations.

40. **The Chairperson** (Country Rapporteur), returning to the issue of incorporating into domestic legislation the definition of torture given in article 1 of the Convention, said he was surprised that, as a civil law country with such a well-established tradition, France was content with a definition drawn from case law to fill a gap in its criminal law. Furthermore, the terms used in the decision of the Indictment Division of Lyon of 19 January 1996 (CAT/C/FRA/4-6, para. 7) which currently served as a reference within the State party were not in accordance with those used in article 1 of the Convention. He wished to know how practice in domestic courts had changed since 1996 and what jurisprudential reasoning had been followed.

41. According to the State party’s reply to question 2 of the list of issues (CAT/C/FRA/Q/4-6/Add.1), torture must be carried out for ideological motives for it to qualify as a crime against humanity, which in French law was the only way it could be considered an imprescriptible offence. That argument was open to interpretation, and the State party made no mention of the provisions of the Convention, including article 4, requiring the State party to take the necessary measures to classify torture as a criminal offence and to prosecute persons suspected of having committed such acts. The Committee deemed it necessary for the State party to ensure that articles 1 and 4 of the Convention were incorporated as they stood into its domestic law.

42. As for the suspensive effect of an appeal against a deportation decision, only 14.3 per cent of applications for asylum had been accepted by the French Office for the Protection of Refugees and Stateless Persons (OFPRA), which implied that appeals against the decisions of OFPRA did not in fact have suspensive effect. For that reason, he did not find the French delegation's statements very convincing when it said that the guarantees enjoyed by asylum-seekers applying through the new fast-track procedure were no different from those provided under the normal asylum procedure. He wondered what the purpose of that new procedure was and whether the State party was aware of the dangers it entailed: namely, that individuals facing a real risk of torture in their country could be returned to that country because they did not have access to an effective suspensive appeal.

43. He emphasized that the decisions taken by the Committee under article 22 of the Convention were not simply recommendations and that they were of a binding nature. Otherwise, article 22 would not include a paragraph enabling States parties to withdraw at any time the declaration by which they had recognized the competence of the Committee to consider individual communications.

44. He said he was surprised that the State party had gone ahead with the introduction of the taser, before deciding to remove it from the list of equipment to be used by municipal police officers (CAT/C/Q/4-6/Add.1, para. 116) and before organizing courses on how to operate it. While those corrective measures were commendable, it would have been better to be proactive by adopting measures before the introduction of the weapon rather than afterwards. He was convinced that that type of weapon was potentially very dangerous and that time would prove him right.

45. **Ms. Belmir** (Alternate Rapporteur) supported the Chairperson's comments, adding that the use of tasers could threaten the fundamental right to life, which was an extremely serious matter. One day the State party would have to face the consequences.

46. Returning to the statement by the delegation that the national courts had not considered any cases of violations of article 3 of the Convention, she noted that the exact subject of a complaint could be determined by the judge and that a complaint could be based on article 3 of the Convention without that article being expressly named.

47. She said that the legal fiction fabricated by the State party to define the status of waiting zones left her puzzled, and, while taking note of the delegation's assurances about the current treatment of minor asylum-seekers transiting through those zones, she hoped that the authorities would conduct the necessary investigations to verify whether the allegations of irregularities in the treatment of those minors' applications were well founded. Also, while recognizing that police officers had the right to defend themselves if assaulted, she emphasized that when a person filed a complaint against a police officer for torture or ill-treatment, and that officer defended the accusation by filing a complaint against the person for insulting or obstructing a police officer, the courts should treat the two cases equally rather than close the first and consider only the second.

48. She noted with concern that the Prisons Act gave the competent administration the discretion to restrict the rights of prisoners. It was unacceptable for an administrative authority to be given a free hand to legislate by regulation on an issue affecting fundamental rights. Finally, she requested clarification on the amount of time granted to asylum-seekers facing a deportation order to file an appeal, on the nature of the court competent to examine those appeals, and on the consideration by that court of the risk of torture in case of return.

49. **Mr. Mattéi** (France) said that the seriousness with which the report, the written replies and the oral replies had been prepared testified to the importance his Government attached to honouring its obligations under the Convention. He hoped that the Committee would consider the information provided in all its complexity and that the information met

the Committee's expectations. While many challenges remained, he was certain that progress had been made since the Committee's consideration of the previous report in 2005, and he assured the Committee that all due consideration would be given to its upcoming concluding observations.

The meeting rose at 5.25 p.m.