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**REPLIES OF THE GOVERNMENT OF FRANCE TO THE LIST OF
ISSUES (CCPR/C/FRA/Q/4) TO BE TAKEN UP IN CONNECTION
WITH THE CONSIDERATION OF THE FOURTH PERIODIC
REPORT OF FRANCE (CCPR/C/FRA/4)* ****

[19 June 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

** The annexes to the list of issues (CCPR/C/FRA/Q/4) may be consulted in the files of the secretariat.

Human Rights Committee

Replies to the questions elicited by the fourth periodic report of France

Question 1

1. As they indicated in the report they submitted to the Committee, the French authorities believe that the reservation and declaration made in respect of **article 4, paragraph 1, and article 27** of the Covenant have to do with the need to align the provisions of those articles with the provisions of the French Constitution. Similarly, the **general reservation** to the Charter of the United Nations and the declaration concerning **articles 19, 20 and 21**, citing the European Convention for the Protection of Human Rights and Fundamental Freedoms, make it possible to ensure consistency among France's treaty obligations.
2. Furthermore, following an in-depth review by the services concerned, it would appear that the declaration in respect of **article 13**, concerning expulsion, cannot be withdrawn. This declaration is in fact justified by the state of the law in certain overseas territorial communities. It will nevertheless be recalled that expulsion is always accompanied by many substantive and procedural guarantees, and that the regime of expulsion is fully consistent with the requirements of Protocol No. 7 to the European Convention (see the reply to question 13 below).
3. It would also appear that the reservation formulated by France to **articles 9 and 14** of the Covenant must be maintained because of the rules governing the disciplinary regime applicable to members of the armed forces. These articles concern the need to inform any person of the reason for his or her arrest and to bring persons who have been arrested or detained before a judge. Anyone who is deprived of liberty through arrest or detention must be able to bring an appeal before a court that will hear the person's case fairly and publicly.
4. France's reservation concerning articles 9 and 14, which was deposited on 4 November 1980, stipulates that "these articles cannot impede enforcement of the rules pertaining to the disciplinary regime in the armies". For example, one of the disciplinary sanctions applicable to members of the military, sanctions that are restrictively enumerated in article L.4137.2 of the Defence Code, is arrest. Owing to the specific nature of defence force missions, hierarchical superiors have the right and the duty to request that soldiers under their command be so punished for acts or omissions they have committed.¹
5. It should be recalled in this connection that disciplinary sanctions are viewed under international humanitarian law as a tool for ensuring respect of this body of law. For example, the International Criminal Tribunal for Rwanda has held that "in the case of failure to punish, a superior's responsibility may arise from his or her failure to create or sustain among the persons

¹ Decree No. 2005-794 of 15 July 2005 concerning disciplinary sanctions and suspension from duty in respect of military personnel.

under his or her control, an environment of discipline and respect for the law”.² Moreover, article 87 of the First Protocol Additional to the Geneva Conventions of 1949 requires that States that impose certain duties on commanders, including the duty set out in paragraph (3) “to initiate disciplinary or penal action” against subordinates or other persons under their authority who violate the Convention or the Protocol.³ The existence of this obligation is confirmed by the case law of the international criminal tribunals⁴ and the International Committee of the Red Cross (ICRC).⁵ The reservation formulated on these grounds must therefore be maintained to ensure consistency between this disciplinary regime and the provisions of the Covenant.

6. Conversely, and as announced in the fourth periodic report, the Government has undertaken to amend the **declaration concerning article 14, paragraph 5**, of the Covenant in the wake of the legislative reform which introduced a criminal appeal in 2000. The new wording will illustrate the existing scope of the restriction, which is now limited to police tribunals: “The Government of the Republic interprets article 14, paragraph 5, as stating a general principle to which the law may make limited exceptions, for example, in the case of certain offences subject to the initial and final adjudication of a police court. However, an appeal against a final decision may be made to the Court of Cassation which rules on the legality of the decision concerned.” Notification of this amendment should be communicated to the Secretary-General of the United Nations in the near future.

Question 2

7. Except in the case of grounds relating to public order, the courts may rule only on grounds that have been raised by the parties. In this connection, the provisions of the Covenant are regularly invoked before national courts.

² *The Prosecutor v. Ignace Bagilishema*, ICTR-95-1A-T, Judgement, 7 June 2001, para. 50.

³ Article 87, paragraph 3, stipulates: “The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.”

⁴ See *The Prosecutor v. Enver Hadžihasanović*, IT-01-47-T, Judgement, 15 March 2006, para. 176; *The Prosecutor v. Dario Kordić and Mario Čerkez*, IT-95-14/2-T, Judgement, 26 February 2001, para. 441; *The Prosecutor v. Pavle Strugar*, IT-01-42-T, Judgement, 31 January 2005, para. 377; and *The Prosecutor v. Tihomir Blaškić*, IT-95-14-A, Judgement, 29 July 2004, para. 83, based on article 87, paragraph 3, of Protocol I and article 7, paragraph 3, of the Statute of the International Criminal Tribunal for the former Yugoslavia.

⁵ Commentary by ICRC on article 87, paragraph 3, of Protocol I.

8. There are also many cases in which the provisions of the Covenant have been invoked before the **ordinary courts**, most often from the standpoint of procedural law. **Article 14 of the Covenant**, which concerns the functioning of tribunals and courts, is the most frequently cited. In this connection, the rights that have been invoked before the Court of Cassation include the right of any person not to be compelled to testify against himself or herself (Criminal Division, 23 February 2005, and Criminal Division, 28 April 2004), the right to be heard (Social Division, 30 March 1994), the right to a public hearing (Second Civil Division, 20 November 1991, and Criminal Division, 16 February 2005), the right to a trial within a reasonable period of time (Social Division, 6 June 1991 and 6 July 1994; Criminal Division, 29 May 2002) and the right to review by a higher tribunal in criminal cases (Criminal Division, 28 January 2004, and Criminal Division, 29 June 1999). Reference to the principle of non-retroactivity of criminal law established in **article 15** of the Covenant is also frequent (e.g. Criminal Division, 17 June 2003).

9. The articles invoked in the area of substantive rights include **article 12**, on freedom of movement (First Civil Division, 28 November 1984), **article 7**, prohibiting torture and inhuman and degrading treatment (in support of an appeal relating to a sentence denying permission to enter French territory (Criminal Division, 6 January 2004), and **article 26**, on the principle of non-discrimination (e.g. in a case of a deposit demanded by a landlord of a tenant who was not a national of the European Union: Third Civil Division, 19 March 2003).

10. **Administrative judges** have also recognized the direct effect of several articles of the Covenant, pointing out, for example, that under the combined provisions of the Public Health Code, article 5 of the European Convention and **article 9, paragraph 2, of the Covenant**, an administrative authority, when officially committing an individual to psychiatric care, must indicate in the decision the legal and factual considerations that justify the measure and notify them to the person concerned as quickly as possible (State Council, *M.E.A.*, section 28, 28 July 2000, No. 151068, published in the *Recueil*). Case law also indicates that the provisions of **article 10, paragraph 1, of the Covenant** have direct effect in the French legal order: there has been a ruling with regard to the compatibility with article 10 of an extradition decree (State Council, *Deville*, 24 October 2005, No. 276685, published in the *Tables*).

11. The highest administrative court has also had occasion to recognize implicitly the direct effect of **article 14 of the Covenant** (e.g. *Barque et Melki*, 6 May 1988, No. 57594) and of **article 18** (*Mme. Godard*, 22 February 1995, No. 120407), **article 22** (*Fédération nationale des syndicats autonomes FNSA PTT*, 15 March 2002, No. 225275) and **article 26** (*M. Lefebvre*, 26 November 2007, No. 272704).

Question 3

12. The Government would recall first of all that the establishment of a specific mechanism to follow up the Committee's Views with regard to individual communications does not constitute an obligation under the Covenant.

13. The Government nevertheless wishes to state that an ad hoc mechanism designed to ensure follow-up to the Committee's observations exists within the Ministry of Foreign Affairs that involves the Department of the United Nations and International Organizations, the Department of Judicial Affairs and, when necessary, the technical ministries concerned. Every time an individual communication submitted against France has resulted in a finding of a violation, the Government has provided all relevant follow-up information to the Committee, which thus far has always been pleased with the Committee's cooperation.

Question 4

14. At the Committee's request, the Government is prepared to provide the following information regarding the legislation applicable to terrorist acts.

Police custody

15. With regard to the provision of the Act of 23 January 2006 that allows persons to be held in custody for **six days**, it will be recalled that this provision is applicable in two exceptional cases only:

- If there is a serious risk of imminent terrorist action in France or abroad
- If the requirements of international cooperation make it essential

16. Apart from these two cases, police custody in matters relating to terrorism, as in matters relating to organized crime, may not exceed **four days** (48 hours followed, on an exceptional basis, by a further period of 24 hours and then a second 24-hour period, or a single additional extension of 48 hours).

17. It will also be recalled that such prolongations of custody are accompanied by procedural guarantees, as indicated in the report. Above all, it should be emphasized that to date the six-day period of custody has been applied only once, in respect of a single individual, when international cooperation required it. This shows that judges apply such custody only in the most exceptional circumstances.

18. These exceptional custodial regimes have been upheld by the Constitutional Council, which recalled that such exceptions to ordinary law must be essential to ascertaining the truth and must be proportional to the gravity of the circumstances and the complexity of the offences committed. Indeed, such regimes, which fall within the context of efforts to combat organized crime in general and which are established and strictly circumscribed by law, are entirely proportional to the legitimate objectives sought. French legislation would thus appear to be fully compatible with the provisions of the Covenant, provided that it is applied on the basis of a thorough review of each case, a fact borne out by the figures.

Pretrial detention

19. By way of introduction, the Government would like to provide some detailed information regarding pretrial detention, which must not be confused with police custody. Pretrial detention can only be determined in the context of an investigation and can be applied to only one person under investigation, i.e. an individual in respect of whom there exists serious or corroborating evidence that render his or her participation likely, either as author or as accomplice, in the commission of an offence (article 81-1 of the Code of Criminal Procedure). Placement in pretrial detention, which is considered exceptional, is determined by the *juge des libertés et de la détention*, the sitting magistrate, whom the trial judge must approach by means of a reasoned order if he or she considers the detention to be indispensable. Pretrial detention is thus possible only in the cases set out in article 143 of the Code of Criminal Procedure (entailing a criminal sentence or a correctional sentence of no less than one year) and for the reasons set out in article 144.⁶ Placement in pretrial detention may, obviously, be appealed, and the detainee may, throughout the period of detention, request to be set at liberty, a request on which the judge is required to rule within three days. In the event the request is denied, the individual may submit an application to the appeals court.

20. To take account of the complex nature of terrorism-related offences (staggered interrogations owing to the existence of several perpetrators, international ramifications), the duration of pretrial detention may be extended to **four years** in cases involving terrorist crimes (Code of Criminal Procedure, art. 145-2).

21. This four-year period is also applicable when an individual is being prosecuted for more than one of the crimes listed in Book II (attacks on persons) and Book IV (attacks on the Nation, the State and public peace) of the Criminal Code, or for trafficking in narcotic drugs, procuring, extortion or crimes committed by an organized group. If the leader of a criminal group is under investigation, the total duration of pretrial detention may extend to three years (Code of Criminal Procedure, art. 706-24-3).

22. Each successive extension of pretrial detention (annual and subsequently semi-annual) is considered in a debate involving both the prosecution and defence conducted before the *juge des libertés et de la détention* and in the presence of the person under investigation, aided by

⁶ It will be recalled that under article 144 of the Code of Criminal Procedure, pretrial detention may be ordered only if it constitutes the sole means of preserving material evidence or clues needed to ascertain the truth, of preventing witnesses or victims from being pressurized, of preventing fraudulent conspiracy between persons under judicial investigation and any possible accomplices, of protecting the person under judicial investigation or guaranteeing that he or she remains at the disposal of the law, of putting an end to the offence or preventing its renewal or, lastly, of putting an end to an exceptional disruption of public order (in criminal matters only).

counsel. Any decision to extend the period of pretrial detention must be motivated and have its basis in one of the grounds established in the aforementioned article 144 of the Code of Criminal Procedure; such a decision may also be appealed. The procedures and the remedies provided in this regard thus ensure that French legislation is compatible with the rights guaranteed in articles 9 and 14 of the Covenant.

Legal aid

23. Act No. 91-647 of 10 July 1991, concerning legal aid, and its implementing decree of 19 December 1991 establish that the expenses incurred by lawyers who assist persons suspected of terrorist crimes shall be covered.

24. **During the preliminary investigation**, under article 63-4 of the Code of Criminal Procedure, any person may, from the outset of police custody, request to meet with a lawyer. If the individual cannot designate a lawyer, or if the lawyer chosen cannot be contacted, the detainee may request that a lawyer be appointed by the chairman of the bar. However, when the individual is being held in custody for an offence that constitutes an act of terrorism under articles 421-1 to 421-6 of the Code of Criminal Procedure, and taking into account the specific nature of terrorist crime and the need for effectiveness in combating such offences, the meeting with the lawyer may not take place until 72 hours have elapsed.

25. In all cases, and in order to ensure that the person held in custody enjoys the effective assistance of a lawyer, article 64-1 of the Act of 10 July 1991 provides that a court-appointed lawyer who enters the case during the custodial period under the conditions established in article 63-4 of the Code of Criminal Procedure is entitled to remuneration by the State. The right to assistance recognized in the aforementioned article 64-1 is not contingent upon any provision of resources by the detainee. The right is exercised whenever the detainee is not in a position, in the sense of article 63-4 of the Code of Criminal Procedure, to designate a lawyer, or if the lawyer selected cannot be contacted.

26. **During the court proceedings** (investigation and trial), any person being tried for a terrorist offence is entitled to legal aid in accordance with his or her level of resources. The granting of legal aid gives the beneficiary the right to the assistance of a lawyer or other legal officer (bailiff, lawyer at the Court of Cassation, etc.) and exemption from any honoraria or fees that he or she would normally have had to bear, such as witness fees. When full legal aid is provided, such expenses are borne entirely by the State.

Scope of the definition of terrorism and terrorist acts

27. The law, and particularly article 421-1 of the Criminal Code, defines the notion of terrorist act as combining two elements:

- The existence of an offence under ordinary law that is qualified as a crime in the Criminal Code

- The linkage of such offences under ordinary law, restrictively enumerated, with an individual or collective enterprise having as its purpose the serious disruption of public order by means of intimidation or terror, which characterizes the circumstance of terrorism

28. In addition, terrorist offences that have or may have the following characteristics are specifically defined as crimes: acts of environmental terrorism (Criminal Code, arts. 421-2 and 421-4), conspiracy with terrorist criminals (Criminal Code, arts. 421-2-1, 421-5 and 421-6), direction and organization of a criminal conspiracy with a view to preparing terrorist acts (Criminal Code, art. 421-5, para. 2), financing of a terrorist enterprise (Criminal Code, art. 421-2-2),⁷ the failure to justify resources on the part of any person having habitual relations with one or more persons engaging in terrorist acts (Criminal Code, art. 421-2-3) and incitement and justification of terrorism (Act of 29 July 1881, art. 24).

29. The classification of terrorism as an offence not only entails an aggravation of penalties (Criminal Code, arts. 421-3 ff.) but also allows for the use of special investigative techniques and special treatment by the courts in addition to the specific custody and pretrial detention regimes described above.

30. The **special investigative techniques** make it possible to conduct seizures and searches outside the legal hours which are subject to special permission (Code of Criminal Procedure, arts. 706-89 to 706-94), to hear witnesses anonymously and to carry out infiltration operations authorized by the public prosecutor or the investigating judge in order to facilitate the detection of criminal acts without committing any offences while enjoying immunity from criminal prosecution for the activities carried out (Code of Criminal Procedure, arts. 706-81 to 706-87), or to make audio or video recordings on the instructions of the investigating judge, subject to the approval of the public prosecutor, without the consent of the parties concerned, in vehicles or in any public or private place (Code of Criminal Procedure, arts 706-96 to 706-102).

31. **Special treatment by the courts** refers to the quasi-universal jurisdiction of French courts (pursuant to the anti-terrorism conventions ratified by France and cited in articles 689-1 to 689-10 of the Code of Criminal Procedure) if the person accused of terrorist acts is in France, and the exclusive jurisdiction of the Paris regional court and court of appeal where the enforcement of penalties in cases involving terrorism is concerned (Code of Criminal Procedure, art. 706-22-1). Furthermore, terrorist crimes are tried by an assize court specially constituted of professional magistrates in the case of accused persons who are majors or minors over the age of 16 (Code of Criminal Procedure, art. 706-25), and provision exists for an extension of the

⁷ In addition, provision is made for the freezing of assets and for an additional penalty entailing the confiscation of all property of terrorist criminals and the allocation of the proceeds of such sanctions to a compensation fund for terrorist acts (Criminal Code, arts. 422-6 and 422-7).

prescription periods for prosecution and the enforcement of sentences: 30 years (instead of 10 years) for crimes and 20 years (instead of 3 years) for misdemeanours (Code of Criminal Procedure, art. 706-25-1).

Question 5

Women's access to executive posts (statistics for public and private sectors)

32. The following figures relate to the **private sector**:

| 2005 | Women (percentage) | Men (percentage) |
|---|-----------------------|---------------------|
| Heads of enterprise | 17.2 | 82.8 |
| Proportion of women in executive posts in private and semi-public enterprises | 25 | 75 |
| Proportion of women in executive posts in industrial enterprises | 19.2 | 80.8 |
| Proportion of women in executive posts in service enterprises | 29.6 | 70.4 |
| Proportion of women elected to boards of enterprises | 35 | 65 |
| Proportion of women represented on industrial relations tribunals (2002) | 24.3 | 75.7 |

Source: INSEE - IRES.

33. The Committee will note that annex 1 contains additional statistics on the proportion of women heads of corporation (1998-2005). Annex 2 contains, inter alia, the latest figures available (2000-2005) on the number of women in senior **administrative** (State civil service) posts. (*Source:* Department of Administration and the Civil Service (DGAFP), Bureau of Statistics, Studies and Evaluation; Ministry of the Budget, Public Accounts and the Civil Service).

34. By the end of 2005 women accounted for 59 per cent of all persons working in the three civil service groups, although they accounted for only 15 per cent of the 7,362 senior posts. In the **State civil service** the proportion of women leaders remains quite low (16.1 per cent) as compared with their majority ranking among officials (58 per cent of all category A posts are occupied by women). Women occupy only 11 per cent of the 561 posts which are filled by direct government appointment, 17 per cent of the remaining 3,065 senior posts and 15 per cent of the 534 court management posts. The majority of employees in the **territorial civil service** are women (61 per cent), with many occupying category A posts, from which leadership posts are filled (56 per cent); however, at the end of 2005 women comprised only 14 per cent of all directors-general of regional or departmental councils, 18 per cent of such posts in communities with more than 40,000 inhabitants and 16 per cent on intercommunal bodies. Lastly, in the **hospital civil service** women account for 88 per cent of all administrative personnel but only 38 per cent of all director-level positions, from among which heads of hospital are chosen. At the end of 2005 only 18 per cent of senior heads of hospital were women.

Measures taken to improve the situation of women in the civil service

35. As noted in the report, multi-year plans to improve women's access to executive jobs and posts in the State civil service have, at the request of the Prime Minister, been signed by all ministries as from 2000. These plans set targets for the occupation of posts by women for each type of job and directorial and executive function. On 29 March 2004, the Ministry of the Civil Service and State Reform signed three circulars announcing that the progress achieved in the implementation of ministerial plans that were about to be completed or in progress was to be assessed, and requesting those ministries that had not prepared a plan to provide an account of their own situation. Pursuant to these circulars, ministries were requested to prepare a review of the implementation of their plans during 2008.

36. Age has been eliminated as a requirement for nearly all competitive examinations. This measure works to the particular benefit of women, owing to the greater frequency with which their careers are interrupted, although it is not yet possible to evaluate its impact. Career advancement for civil servants is now also facilitated by a simplified promotion procedure and a shortening of length-of-service requirements; this has made it possible to avoid penalizing women who have had their careers interrupted for family reasons.

37. Lastly, the network of gender-equality coordinators organized by the Department of Administration and the Civil Service promotes exchanges of good practice among administrations. Annual reports are also transmitted to Parliament on implementation of the principle of gender equality in the civil service (2007 saw the submission of the tenth report). The governing councils of the three civil services are consulted on the draft reports.

New incentives to promote career development for women*New tools for career development*

38. Under the second component of the agreement of 25 January 2006 concerning career development and social welfare action within the civil service, new arrangements have been introduced to help reconcile the demands of private and professional life. This is particularly the case with family assistance, the purpose of which is to help young working parents continue to work if they so wish by providing financial resources to help with the care of children aged 0 to 3 years (there were 45,000 applications for such assistance in 2007), supplemented by improved follow-up of applications for places in childcare facilities and encouragement for the provision of childcare services through the construction of facilities or the clustering of services.

39. This component was enhanced in 2007 with the introduction of two new measures: an expansion of the Universal Employment Services Cheque (CESU) to cover the care of children aged 3 to 6 years (21,000 applications in 2007) and the reactivation of the policy of reserving places in childcare facilities and housing.

40. The agreement of 21 November 2006, on lifelong vocational training, and Act No. 2007-148 of 2 February 2007, on modernization of the civil service, include provisions

instituting a number of arrangements. Recognition of professional experience (RAEP) is a new method of selection used in competitive examinations which allows women who have interrupted their careers to have their previous experience recognized more easily when rejoining the civil service or applying to sit for examinations. The establishment of an individual right to training within the civil service, similar to that which already exists in the private sector, will also promote better linkage between training schemes and employees' professional projects. The circular of 30 March 2007 concerning RAEP, two decrees dated 15 October 2007 and 26 December 2007 and two circulars issued on 19 December 2007 complete this picture.

A concrete approach to promoting women's access to executive posts

41. Several proposals in this area are under study in the Ministry of the Civil Service. The first seeks to promote a professional environment more suited to women's needs by taking a more flexible approach to the requirement of geographical mobility, which often penalizes women more heavily. Under draft legislation on mobility and career development currently under discussion in Parliament, statutory restrictions on functional mobility would be removed (generalization of temporary assignments, "banking" of credits from temporary assignments, etc.). In addition, mobility units should be expanded within ministries. Another avenue involves the adoption of time-management charts for senior staff so that work time and family and personal time can be reconciled more effectively.

42. The second aspect consists in enhancing women's access to positions of responsibility in the administration, which means modernizing supervisory staff management by strengthening job feminization goals through the use of an "equality module" attended by central government directors and secretaries-general of ministries, within six months of their appointment.

Sexual harassment

43. Article 222-33 of the Criminal Code penalizes harassment aimed at obtaining sexual favours. The penalties are one year of imprisonment and a fine of 15,000 euros. Act No. 2002-73 of 17 January 2002 eliminated the condition whereby a relationship of authority had to exist between the perpetrator and the victims. The offence of harassment may thus be reported when one is not the other's subordinate. It may also be committed between a teacher and a student.

| | 2004 | 2005 | 2006 |
|---------------------------------|------|------|---|
| Sexual harassment (convictions) | 47 | 53 | 64, including: - 49 prison sentences handed down (6 of which were firm sentences) - 13 fines issued (average amount: 1,125 euros) |

Source: Ministry of Justice (Chancellerie).

44. Such criminal measures are supplemented with social ones, and the same principles are included in the Labour Code. As in the case of protection against gender discrimination, there is a provision protecting workers against acts that may dissimulate sexual harassment, i.e. harassment “for the purpose of obtaining favours of a sexual nature for his or her own profit or for the profit of a third person” (article L1153-1 of the Labour Code).⁸
45. This text also protects candidates for internships, in-house training and recruitment against measures that may discriminate against them as a result of sexual harassment. Workers who give testimony or report on sexual harassment are also covered by the same protection (article L1153-3 of the Labour Code).
46. Any provision or measure taken as a result of sexual harassment is null and void (article L1153-4 of the Labour Code). Since the adoption of Act No. 2003-6 of 3 January 2003, workers have been protected by a redefinition of the burden of proof. Furthermore, when sexual harassment is carried out not by the employer but by a worker at the enterprise, the sexual harassment is subject not only to the criminal penalties mentioned above, but also to disciplinary action (article L1153-6 of the Labour Code).
47. The employer is obliged to take all necessary measures to prevent sexual harassment and measures stemming from such conduct (article L1153-5 of the Labour Code). Staff representatives may exercise their right to denounce sexual harassment and to bring legal action on that basis. Trade unions may also take legal action in such cases, provided they are able to demonstrate the written consent of the interested party.
48. Lastly, for the **civil service**, article 6 ter of Act No. 83-634 of 13 July 1983 as amended concerning the rights and obligations of civil servants provides the same penalties for sexual harassment. This instrument, established by Act No. 2001-397 of 9 May 2001 on gender equality at work, was amended on numerous occasions between 2002 and 2005 in order to bring it into line with the directives of the European Community.
49. It stipulates that “No action relating inter alia to the recruitment, assignment to grade, training, evaluation, discipline, promotion, posting or transfer of a civil servant may be taken in consideration of the fact that he or she:

⁸ Under article L1153-1 of the Labour Code, “Acts of harassment of any person for the purpose of obtaining favours of a sexual nature for his or her own profit or for the profit of a third person are prohibited.” Furthermore, under article L1153-2, “No employee, no candidate for recruitment, a training course or a company work placement may be dismissed or punished or face any discriminatory measure, whether direct or indirect, notably regarding pay, training, reassignment, appointment, qualifications, rank, professional promotion, or contract change or renewal, because he or she has been the victim of, or has refused to be the victim of actions of harassment taken by an employer, the employer’s representative, or any individual, for the purpose of obtaining favours of a sexual nature for his or her own profit or for the profit of a third person.”

1. Has been subjected to, or has refused to be subjected to, acts of harassment by any persons whose aim is to obtain favours of a sexual nature for themselves or for a third party;
2. Has appealed to a hierarchical superior or taken legal action to make such acts stop; or
3. Has attested to or given accounts of such conduct.

Any employee engaging in or condoning the conduct defined above shall be liable to disciplinary proceedings (...).”

Question 6

Violence against women - statistics

50. Data on violence against women are collected by various bodies (police and gendarme services, the courts), and are regularly the subject of studies. For example, according to a 2006 study by the Ministry of the Interior,⁹ 137 women had been killed as a result of spousal abuse.

51. Various general studies too have been conducted. After the national survey on violence against women in Metropolitan France (ENVEFF) was conducted in 2000, between November 2005 and February 2006 a survey known as Health and Life Events (EVS) was carried out on 10,000 people between the ages of 18 and 75 who were not living in institutions. The survey revealed large disparities in the number, frequency and gravity of physical attacks and of their psychological consequences on men and women victims of personal violence. Far more women than men reported having been seriously harmed as a result of personal violence in the previous two years.

52. More recently, a **Survey of Victimization (January-March 2007) by the National Crime Observatory (OND)** was carried out in cooperation with INSEE. A questionnaire on violent acts in 2005 and 2006 (including sexual abuse, domestic physical abuse and other forms of physical violence) was filled in by 11,249 people aged 18 to 60.

53. This study demonstrated that for all types of violent acts, the proportion of women victims is significantly higher (6.1 per cent) than for men (5.1 per cent). The most prevalent forms of violence to which women are subjected are physical domestic abuse (3 per cent) or violence outside the home (2.1 per cent), followed by sexual attacks outside the home (1.5 per cent) and in the home (0.6 per cent). The complete results of this study appear in annex III.

Violence against women - administration of justice

54. In the courts, the number of cases related to **spousal abuse** registered by the public prosecutor's office has been rising: there were 52,171 new cases in 2006, compared with 39,153 in 2003. The number of cases withdrawn, on the other hand, had decreased to 20.3 per cent

⁹ *Etude nationale des décès au sein du couple* (National study on death in marriage) (2006).

in 2006, from 23.6 per cent in 2005, and it even fell to 17 per cent for the first three quarters of 2007. The reasons for withdrawal are usually related to a decision to discontinue the case or a failure on the part of the victim.¹⁰

55. When the offence is not particularly serious, the prosecutor's offices give preference to alternative measures instead of prosecution. Thus, 42 per cent of cases were the subject of alternative procedures in 2006. The alternative measures chosen are mainly reminders of the law and mediation, depending on the gravity of the violence in question.

56. For more serious offences, preference is given to procedures involving attendance notices issued by criminal investigation officers, summonses with a statement of charges and immediate summary trials. The share of cases brought before correctional courts is rising in the Ile-de-France region: in 2006, 36.8 per cent of cases went before such courts, as against 35.3 per cent in 2005. In the first three months of 2007, 41.3 per cent of such cases were prosecuted.

57. For both serious and ordinary offences (*crimes* or *délits*), the number of convictions registered between 1994 and 2006 rose dramatically, from 656 to 12,584. Imprisonment is the sentence most invoked in cases of violence committed against spouses and cohabitants (living partners), and the share of firm prison sentences has risen. The largest number of convictions are handed down for abuse resulting in complete work disability of a week or less (7,866 cases in 2006). For that offence, 85 per cent of the perpetrators received prison sentences, and 21 per cent of them were firm sentences. The average length of a firm prison sentence is 4.5 months.

Measures taken to reduce such violence

58. The French authorities are constantly mobilized to prevent and combat violence against women, and make use of various kinds of measures.

Legislative measures

59. Several recent laws have made it possible to make both civil and criminal law more effective at preventing and combating spousal abuse. Firstly, **Act No. 2004-439 of 26 May 2004** stipulates that in the event of divorce, when such abuse occurs, the conjugal home is given to the person who is not the perpetrator (except in specific circumstances).

60. **Act No. 2006-99 of 4 April 2006** too strengthened the prevention and punishment of conjugal violence and child abuse:

- By extending the scope of aggravating circumstances to new perpetrators (partners in civil solidarity pacts and former partners) and to new offences (murder, rape, sexual assault), and by consolidating the jurisprudence that recognizes marital rape

¹⁰ Figures calculated on the basis of data from the seven court districts in the Ile-de-France region: Evry, Paris, Bobigny, Créteil, Nanterre, Pontoise and Versailles. In 2006 these seven districts dealt with 9,592 cases of spousal abuse, 8,244 of which were prosecutable.

- By supplementing and specifying provisions calling for the eviction of the violent spouse from the couple's home, through channels of criminal law
- By recognizing theft between spouses when such theft reflects a clear will on the part of the perpetrator to subjugate the victim

61. **Act No. 2007-297 of 5 March 2007**, for its part, extends the social and legal supervision of perpetrators of spousal abuse, calling for medical treatment orders for them. It also makes it clear when medical secrecy should be lifted in the event of abuse committed against minors or persons unable to defend themselves (including victims of abuse carried out by their spouses, cohabitees and partners). Furthermore, **Act No. 2007-1198 of 10 August 2007** establishes that any person sentenced to social and legal supervision shall be subject to a medical treatment order.

62. Lastly, **Act No. 2007-1631 of 20 November 2007** guarantees that foreign nationals who are victims of spousal abuse have the right to stay in the country; article 4 stipulates in particular that "In the event of abuse of a spouse committed after arrival in France but prior to the first issuance of the temporary residence permit, the spouse shall be issued with a temporary residence permit with the notation 'private and family life', except in cases where this constitutes a threat to public order."

Support and protection of victims

63. Care for women victims of abuse has improved thanks to the following:

- **Better reception of victims:** A national hotline has been set up at telephone number 3919 with the aim of providing the same high level of quality throughout the country; it is aimed at providing professional, anonymous and personalized service and appropriate guidance when necessary.
- **Better consideration of housing and accommodation needs:** Women victims of violence have been given priority in the assignment of State-funded housing, among the 19,500 housing units budgeted in 2007. There are now 115 shelters giving priority to women victims of violence. Since 2007, the regulations in this field have been amended so that only the income of the spouse or partner in the civil solidarity pact who is a victim is considered when State-subsidized housing is assigned.
- **New provisions for vocational integration:** Women victims may receive unemployment benefits when they have to change their place of residence as a result of the violence.

Awareness of professionals working with victims

64. A brochure for all professionals dealing with spousal abuse (police officers, gendarmes, health professionals) has been drawn up and distributed. Updated in 2006, it is aimed at explaining how abuse occurs and the seriousness of the violence, and at bringing professionals to

become more involved in this subject. Training programmes have also been developed for health staff, reception officers at police stations and gendarmes. Since 2005, an officer has been assigned in each gendarme unit as the departmental contact point for combating domestic violence.

65. In the police and gendarme services, there are also 150 duty offices for victim support, social workers and psychologists. Lastly, as part of the “violence and health” plan, an experiment was launched in January 2006 at eight hospitals to improve coordination between the health services (emergency services, forensic physicians in forensic medical units and doctors not working in hospitals).

Communication

66. The campaign against sexist stereotypes and the prevention of school violence is continuing. As part of an interministerial agreement signed with the Ministry of Education, several awareness tools have been developed (DVDs, teaching aids, theatrical productions), and teacher training has been developed in the Teacher Training Institutes (IUFM).

67. Public awareness campaigns have been conducted as well. A televised campaign was conducted at the end of 2006, using about a dozen short films. On 14 March 2007 a major national information campaign was launched under the title “Marital violence: Call 3919”, with TV advertisements and a brochure informing the public how the law deals with this problem. Lastly, an awareness campaign will be conducted in parallel with the **second three-year comprehensive plan** (2008-2010), which was rolled out on 21 November 2007 under the title “Twelve objectives to combat abuse of women” (this plan is founded on four main themes listed in annex IV).

Question 7

68. It is not possible, with the statistical systems available in France, to provide an overall figure for the number of law enforcement officers who have been convicted for offences against foreign citizens. The *Cassiopée* software described in the report should help to improve the system beginning in the first half of 2009. In any event, many actions are taken to combat any ill-treatment and discrimination that could arise in this domain.

Action taken against ill-treatment and discrimination

69. Members of the gendarmerie are trained and instructed to respect and ensure that others respect French legal norms and the fundamental principles embodied therein, particularly during the pretrial phase in criminal proceedings, beginning with remand in custody. In the context of initial training of gendarmerie officers and non-commissioned officers, a total of 25 hours of training are devoted to professional and personal ethics. Thereafter, frequent reminders are provided in the course of continuous training, whether delivered in-house in units or through additional training at training centres. The signing, in December 2007, of a protocol between the

High Authority to Combat Discrimination and Promote Equality (hereinafter HALDE) and the national gendarmerie, together with the distribution to all members of the gendarmerie of a document entitled “Punishing discrimination”, testify to a determination to combat this phenomenon.

70. All complaints received by gendarmerie units are transmitted to the judicial authority, which may also be seized directly by complainants. Where a member of the gendarmerie is accused of committing a criminal offence, the judge will select a different investigation service from that with jurisdiction over the person concerned. The gendarmerie makes available to members of the prosecution service investigators of the technical inspectorate specialized in dealing with cases where members of the gendarmerie are accused of serious and/or complex offences. In the past two years, these specialists have had no occasion to intervene in cases of ill-treatment or discrimination. Over the same period, no member of the gendarmerie has received a criminal conviction for any of the acts enumerated in the Committee’s question. The National Security Ethics Committee (hereinafter the CNDS), an independent administrative authority, has not received any complaints accusing members of the gendarmerie of such acts.

71. With regard to the national police, the French authorities pay close attention to the conditions of treatment which must be afforded to persons who are under arrest, in police custody or subject to any other measure of deprivation of liberty, as well as during the execution of a deportation order against a foreigner.

72. Considerable attention is paid to three key principles set out in the Code of Professional Ethics of 18 March 1986 and in the practical guide to professional ethics revised in 2001: absolute respect for individuals, whatever their nationality or origins; strictly necessary and proportionate use of force; protection of persons who are apprehended and respect for their dignity. The 2008-2013 national police master training plan emphasizes the importance of respecting these principles.

73. In this context, the French authorities organize special training, ensure that vigilance is exercised and rigorously punish all proven wrongdoing. Training modules include input from CNDS and HALDE. Practical applications of professional ethics principles are elucidated during various specific types of training, in particular during role playing exercises. In this regard, training modules on stress management are offered to the police at all levels. Considerable attention is paid to training in professional intervention techniques, integrating the above-mentioned principles. For example, there is a special seven-day training event devoted to the procedures for deportation of foreigners.

74. In parallel with training, an effort is made to provide instruction. The instruction that was provided on 28 July 2006 on the exercise of hierarchical authority emphasized the need for personnel investment by the hierarchy and for the assumption of responsibility at all levels of the hierarchy. In the Paris region and in the major urban centres of France a strengthened operational presence of superintendants and police officers has been established to improve the leadership and direction given to personnel on the ground. Lastly, a system piloted by the

Inspectorate-General of the National Police makes it possible to carry out impromptu checks in police departments. These checks are designed to assess the reception given to complainants and to verify the conditions in which persons are held.

75. Every police official who breaches the law and ethics rules is liable to a twofold penalty, one criminal and the other disciplinary. Hence, in 2006, out of 3,228 disciplinary measures imposed on police officers, 114 (3.5 per cent) were for proven acts of violence; 8 resulted in dismissal or a similar penalty for the officers involved. During the same year, the IGPN was seized of 1,519 cases (3.6 per cent fewer than in 2005), 639 of them involving allegations of violence. Over 85 per cent concerned lesser acts of violence. These figures need to be seen in the context of the 4 million interventions which the police make each year.

Prohibition of the practice of blindfolding persons in police custody

76. There have been no instances of the practice of obscuring the vision of persons in police custody, a fortiori during interview. Such a practice would be manifestly contrary to the principle of respect for individuals in police custody, as spelt out in the circular of the Minister for Internal Affairs issued on 11 March 2003.

77. It is only in exceptional cases that persons deprived of liberty may have their face covered up for a limited period of time, in order to ensure their own safety or that of the police. Hence, during transfers or travel from one place to another, some individuals may have their faces covered to prevent them from being identified by outsiders. These measures, which are one-off measures of a very short duration, in no way involve the use of cagoule or blindfold to prevent the individuals concerned from seeing. They are based on article 803 of the Code of Criminal Procedure, enacted by Act No. 2000-516 of 15 June 2000, to strengthen the protection of the principle of presumption of innocence and victims' rights. The article requires police officers and members of the national gendarmerie to take all effective measures, in conditions compatible with security, to avoid a person who is handcuffed or restrained from being photographed or filmed using an audio-visual device.

78. Furthermore, in exceptional circumstances involving persons accused of particularly serious criminal offences, protective measures may be taken during simultaneous transfers of prisoners for the requirements of a criminal investigation in order to ensure that the prisoners concerned do not identify one another. Also on an exceptional basis, in order to prevent certain persons in police custody who are familiar with police stations and the persons working there from providing a detailed account to their organization, a piece of clothing may be placed over their head during journeys from one place to another. In these different situations, it is never a case of completely obscuring the person's vision, and these measures are only taken for the length of time that is strictly necessary for the journey.

Question 8

79. The most recent in-depth studies on prisons were the parliamentary inquiries of 2000 (Senate and National Assembly). In addition, a non-governmental organization, with the assistance of the Office of the Ombudsman of the Republic, sent out a questionnaire to all

prisoners in 2006; out of 61,000 recipients, a total of 15,000 responded.¹¹ The Committee for the Prevention of Torture (CPT) of the Council of Europe, following a visit to France in 2006, made a number of recommendations on this subject.

80. France has an incarceration rate close to the European average (lower even than that of its Dutch, Spanish and British neighbours), but has difficulties that have to do with the age, sometimes the obsolescence, of its prison buildings and with prison overcrowding. Thus, as at 1 May 2008, there were 50,746 places for 63,645 prisoners. Overcrowding does not affect all prisons, however; only some prisons are faced with this problem.

81. Major efforts have been made to renovate prisons and increase the number of places: thus, the number of places rose from 34,200 in 1987 to 50,500 in 2007. An affirmative construction policy is being pursued at present to reach, by 2012, the target of 63,500 places - an increase of 32 per cent between 2002 and 2012. Moreover, six prisons which have been specially adapted for minors are operational. The first two prison-hospitals, to be established in Lyon and Rennes in 2009, will represent a step forward in terms of access to psychiatric care.

82. An ambitious policy on sentencing adjustment has been launched. Regional conferences are held every six months in appeal courts, where all the interested partners are involved. This innovative step has borne fruit, as the number of adjusted sentences increased by 34 per cent between 2007 and 2008. Specific measures have been taken:

- The dates for day release permits may be set directly by the managers of rehabilitation and probation services
- Surveillance by means of electronic tagging, which was experimental, has been extended: 3,215 persons now wear electronic bracelets (up 44 per cent in one year)
- Following a period of stagnation in 2005 and 2006, the number of prisoners released on parole rose again in 2007, with an increase of 9 per cent

83. Lastly, the Prisons Bill submitted in June should meet many of the recommendations made by the CPT in its report. It will, in particular, promote even further progress in the management of sentences, while giving detainees new rights, in order to avert their marginalization (for example, the possibility of giving the prison as their registered address for the purposes of any action taken in preparation for their release). In order to limit recourse to pretrial detention, the bill further aims to establish house arrest. This humane approach is also manifested in the modernization of prisons and the more dignified treatment of detainees. The office of the **Controller-General of prisons**, instituted by Act No. 2007-1545 of 30 October 2007 and appointed by decree of 13 June 2008, will exercise oversight. His budget is set at 2.5 million euros a year.

¹¹ The results of these studies are available on the Internet (for the most recent, see: <http://toulon.net/spip.php?article1615>).

Question 9

Monitoring of prisons

84. In 2006, the National Committee on Security Ethics (CNDS) noted that, since its establishment, it had recorded **71 cases concerning prison administration**, and that, every year, the number of cases had increased - from 3 in 2001 to 22 in 2006. Cases recorded up to 31 December 2006 primarily concerned adult males. Seven cases nevertheless concerned minors or young adults, and five concerned women.

85. The institutions concerned are mainly local prisons. Some cases have concerned central prisons or detention centres, and two have concerned the E 2 wing of the Pasteur Hospital in Nice, which is used for the detention of sick prisoners. On 14 occasions, the Committee received complaints from detainees placed in the disciplinary sector or the solitary confinement sector. It decided to visit numerous establishments and to interview prisoners and prison officers in situ. On each occasion, it was able to visit the places it wished to visit and was allocated a room by the establishment concerned in order to be able to interview the persons it wished to hear.

86. Among the complaints addressed to it during its six years of activity, the Committee has been called upon, inter alia, to inquire into the circumstances surrounding the deaths of 12 detainees, including seven suicides. The principal cases that have come before it are analysed below:

- **Inter-prisoner violence and suicide:** several cases of violence perpetrated by one prisoner against another, or cases of suicide, have shown that the choice of prison assigned to the prisoners and the monitoring required entailed, on the part of the prison authorities, having a minimum of relevant information about the persons detained, and ensuring effective communication between the various services and persons involved. These precautions should make it possible to adapt solutions to individual situations and thus prevent suicides and inter-prisoner ill-treatment or violence.
- **Breaches caused by unprofessional behaviour by prison personnel:** in several cases, prison personnel or security force personnel operating in prisons were accused by prisoners, either because of ill-treatment (bullying, harassment, psychological pressure or blackmail) or violence, or because of permissive or abusive behaviour.
- **Breaches connected with poor conditions of detention:** the Committee noted in certain cases shortcomings and breaches relating to poor conditions of detention. The problems observed were of various kinds: insufficient care provided to prisoners, failure to take account of the state of health of sick prisoners in the decision on disciplinary penalties, withdrawal of police escorts, etc.

87. Following the recommendations and views expressed by the CNDS, the prison authorities decided to issue reminders concerning the observance of regulations and ethics, either individually or through general directives. In this respect, particular mention may be made of Decree No. 2006-338 of 21 March 2006 amending the Code of Criminal Procedure concerning the solitary confinement of prisoners.

Effective monitoring of ethics

88. The CNDS has extensive means of inquiry. It may, inter alia, request ministers to undertake studies, checks and inquiries, and to communicate all relevant information and evidence; it may also summon public and private officials, who are obliged to comply, and undertake checks in situ after giving notice or, exceptionally, without giving notice.

89. Once its inquiry has been completed, the Committee transmits its views and recommendations to the public or private authorities, which must respond within a time limit fixed by the Committee. If the responses are late or if the recommendations are not acted on, the Committee may issue a special report, which will be published in the *Journal Officiel*. It also has the power to propose to the Government any amendment of legislation or regulations in the areas within its competence. This includes laws, regulations, instructions and circulars, and the techniques and practices of the national police. Lastly, it submits an annual report to the President of the Republic and Parliament, which is subsequently made public.

90. The Committee's recommendations and views are carefully examined by the authorities and taken into consideration in the formulation of new provisions or in the adaptation of professional practices. Thus, for example, the concern expressed about the use of tear gas, handcuffing and the special situation of minors has given rise to specific instructions to the services concerned. The remit entrusted to the Committee, which concerns not only prison establishments but all the security forces, therefore constitutes an essential guarantee of respect for citizens' rights.

Question 10

Measures taken to combat trafficking in adults and children

91. France is resolutely pursuing a policy of combating all forms of trafficking in persons and supports the activities undertaken in this area by the international organizations. In this respect, it should be noted that, as regards **action to combat prostitution**, France is implementing an abolitionist policy, in conformity with the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, approved by the United Nations on 2 December 1949; its principles include the abolition of all regulations and of the recording of information on prostitutes, severe enforcement with regard to traffickers and the prevention of prostitution.

92. The strengthening of the body of law to combat modern slavery in general, and trafficking in persons in particular, is driven by a very strong political will to reaffirm the absolute necessity of respect for human dignity, in a context of expanding criminal networks. This will has manifested itself through the transposition by France of the Palermo Protocol of 2000 and through the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings on 9 January 2008. This Convention entered into force on 1 May 2008.

93. In domestic law, Act No. 2003-239 of 18 March 2003 relating to internal security reinforced the available measures aimed at combating this phenomenon. It first consolidated the legal provisions to **combat domestic slavery** by increasing the penalties for such acts, which are now punishable by five years' imprisonment and a fine of 150,000 euros. In order to reinforce action to combat these offences, article 225-15-1 of the Criminal Code further established a presumption of vulnerability or dependence benefiting minors and persons who fall victim, on arrival in France, to the acts provided for in articles 225-13 and 225-14 of this Code. Since 2004, about 15 prison sentences have been imposed on the basis of these provisions.

94. In addition, articles 225-4-1 to 225-4-9 of the Criminal Code define the criminal offence of trafficking in persons as "the recruitment, transport, transfer, accommodation or reception of a person in exchange for remuneration or any other benefit or for the promise of remuneration or any other benefit, in order to put the person at the disposal of a third party, whether identified or not, so as to permit the commission against the person of offences of procuring, sexual assault or attack, exploitation for begging, or the imposition of living or working conditions inconsistent with human dignity, or to force the person to commit any felony or misdemeanour".

95. Trafficking in persons is punishable by seven years' imprisonment and a fine of 150,000 euros. Article 225-4-2 of the Criminal Code provides for a number of aggravating circumstances, the most significant of which is the victim being a minor. The French courts imposed penalties for 28 offences of this type in 2003, 29 in 2004, 35 in 2005 and 38 in 2006.

96. Other provisions of the Criminal Code may also be used to **punish persons who benefit from the services of the victims of acts relating to trafficking in persons**, notably for purposes of sexual exploitation. These include the provisions relating to procuring, which impose penalties for promoting or deriving benefit from the prostitution of others or for keeping an establishment for the purpose of prostitution; these provisions have been supplemented by the Act of 18 March 2003, which added a new case of procuring involving hotels, making it an offence to provide vehicles for prostitutes (Criminal Code, art. 225-10, fourth paragraph). Procuring is punishable by a penalty which may range from seven years' imprisonment to life imprisonment, depending on aggravating circumstances.

97. In the case of the prostitution of minors, an Act of 4 March 2002 criminalized procuring committed with respect to a minor and established a penalty of 15 years' imprisonment (Criminal Code, art. 225-7-1). This Act also introduced into criminal law provisions to combat recourse to prostitution when the prostitute is a minor, whether the acts are committed within or outside France. Lastly, acts of child pornography are provided for and punishable under article 227-23 of the Criminal Code.

98. **Police investigations** of networks engaged in trafficking in persons for purposes of sexual exploitation are conducted in a "proactive" manner by the specialized services concerned (see below). This method of investigation averts the lodging of complaints by the victim, and hence endangerment by the most violent networks.

99. In parallel with these activities, the public authorities have resolutely pursued **action to combat child pornography and cybercrime**. France has taken account of the emergence of the use of the internet and cybercrime. The Act of 5 March 2007 relating to the prevention of delinquency has thus set up cyberpatrols whose objective is to prevent certain offences and combat them more effectively, to gather evidence about them and to seek out the perpetrators when the offences are committed by electronic means. These offences concern trafficking in persons, procurement and recourse to the prostitution of minors, and also offences endangering minors.

100. The Central Office for Action to Combat Crime connected with Information Technology and Communication has had a national database to identify illicit content since 1 September 2006. This database forms part of an ambitious plan designed to ensure the more effective prevention of risks relating to cybercrime and to provide the State services with effective human and technical resources, in the context of action to combat cybercrime. It is based on experience with gateway `mineurs@interieur.gouv.fr`, which since 2001 has enabled internet users to report online internet sites with a child pornography content. The scope of this new database is universal and is aimed at providing official internet users and private individuals over the long term with a single access point, irrespective of the nature of the illicit act (child pornography, racism, anti-Semitism, etc.).

Measures taken to facilitate the rehabilitation of victims

101. While French legislation makes provision for the severe punishment of persons responsible for sexual exploitation, its implementation, as from the commencement of the investigation, makes it possible to avoid harming the victim and to guarantee his or her safety, and possibly that of the family members who have remained in the country of origin.

102. Thus, an investigatory service is empowered to initiate a preliminary investigation simply on the basis of information reported, thus making it unnecessary for the victim to lodge a complaint. Furthermore, the Code of Criminal Procedure provides that, on the basis of the authorization of the public prosecutor, persons in a position to furnish evidence may declare the police station to be their registered address. Similarly, if the person under investigation asks to be confronted with the witness, the confrontation takes place using a technical device which renders the witness's voice unrecognizable.

103. In addition, the Code of Entry and Residence of Aliens and the Right to Asylum (CESEDA) provides for the possibility for a foreigner who is a victim of offences relating to procuring or trafficking in persons and who lodges a complaint or testifies against the perpetrators in criminal proceedings, to be admitted for residence and to work (CESEDA, arts. L.316-1 et seq., and R.316-1 et seq.). This authorization creates entitlement to work and may be issued to a foreigner who lodges a complaint against a person whom he accuses of having committed against him the offences of trafficking in persons or procurement, or who testifies in criminal proceedings concerning a person prosecuted for these offences (unless his presence constitutes a threat to public order).

104. Article R.316-7 of the same Code furthermore provides that the victims of acts of trafficking in persons may, if they are considered to be in danger, be given police protection. In any event, the victims have available to them a system of social protection and assistance. Places in a reception and social rehabilitation centre must accordingly be provided for them in conditions of security; like all victims, they may also be granted free legal assistance, in the light of their financial status (Code of Criminal Procedure, art. 53-1).

105. Lastly, reference should be made to the signing of an agreement between the Ministries of the Interior and Health and the City of Paris, in partnership with a number of private associations providing assistance to victims; this agreement sets up the ACSE, a nationwide agency providing secure refuge coordinated by a number of associations, which takes practical care of prostitutes and whose objective is their rehabilitation.

Question 11

106. Work by prisoners in France is governed by the Code of Criminal Procedure. There are three forms of work in prisons: State-controlled, general service and the **concession of criminal labour**. Under the latter system, the prison authority concludes with a private enterprise a contract which establishes the conditions relating to the number of prisoners to be employed and the amount of remuneration. The prisoners then work within the prison for private enterprises.

107. The work is **optional** (Code of Criminal Procedure, art. 717-3). Applications to work must be addressed in writing to the prison governor. Although article 804 of the Code expressly excludes the implementation of article 717-3 in French Polynesia, New Caledonia, and Wallis and Futuna, the third part of the Code (regulations), which establishes the procedures for work by prisoners, does apply to these territories. As in metropolitan France, therefore, work may be offered only to prisoners who expressly request it.

108. The **remuneration** for any work done by a prisoner in prison is paid to the prison authorities, which effect payment of social security contributions to the collection agencies and then transfer the net remuneration to the prisoners' accounts. Prisoners are informed of the rates of remuneration.

109. Optional and paid work in prisons is therefore an essential tool in rehabilitation, which must be further developed, both in metropolitan France and in the overseas communities, in order to meet the substantial demand by prisoners in this respect.

Question 12

110. The Act of 25 February 2008 relating to secure detention established two security measures applicable to persons sentenced to a term of imprisonment of 15 years or more for the most serious offences, in particular offences such as the murder or rape of minors, when these prisoners are regarded as extremely dangerous because of a serious personality disorder and a very high risk of reoffending.

111. The first measure is **secure detention**, which enables persons sentenced for these offences to be placed, on completion of their sentence, in a social-medical-judicial security centre for a period of one year, renewable for as long as the particular danger continues to exist. Persons in this centre, which is subordinate to the Ministry of Justice and the Ministry of Health, will be subject to permanent medical, social and psychological supervision, whose aim is that this measure should be terminated.

112. The above-mentioned Act having been partly invalidated by the decision of the Constitutional Council of 21 February 2008,¹² this placement in secure detention after the sentence has been served may be applied only to persons sentenced for **acts committed after the adoption of the Act**. This measure is therefore not retroactive and consequently entails no possible infringement of the provisions of article 15 of the Covenant.

113. The same Act also established **secure surveillance**, which makes it possible to extend for a period of one year, renewable for as long as the person continues to constitute a danger, the surveillance of this person by the public authorities **after his release**. This secure surveillance, which thus concerns a free person, may comprise a good behaviour order and the obligation to wear an electronic tag enabling the person's whereabouts to be ascertained at any time. If the person fails to comply with his obligations and evinces a particular form of danger, he may be placed in a detention centre.

114. Secure surveillance is immediately applicable to persons already convicted. However, it is not a penalty intended to punish the perpetrator of a criminal offence in proportion to the seriousness of his offence, but a **security measure** intended solely to prevent reoffending and justified by the particularly dangerous nature of the person concerned. There is therefore no violation of article 15 of the Covenant, which forbids the imposition of a heavier penalty than that applicable at the time when the offence was committed.

115. The applicable procedures for placing and keeping a person in secure detention or under secure surveillance, and in the latter case for placing him in detention if he does not comply with his obligations, are fully in conformity with the procedural requirements of article 9 of the Covenant aimed at the prevention of arbitrary arrest or detention.

116. Thus, as regards secure detention, all procedural guarantees are provided to ensure that this deprivation of liberty is ordered and extended only on an exceptional basis, in cases where it is strictly necessary in order to prevent reoffending (express decision of the assize court authorizing possible detention on completion of sentence, multidisciplinary examination and evaluation of degree of danger on completion of sentence, proposal of security measures by a multidisciplinary commission, substantiated and appealable decision by the regional court concerning secure detention - the court comprising an appeal court judge).

¹² DC No. 2008-562: "Whereas ... that secure detention, having regard to its custodial nature, the duration of such custody, its unlimited renewable character and the fact that it is ordered after a conviction by a court, may not be applied to persons sentenced before the publication of the Act or persons convicted after that date for acts committed prior to it."

117. As to secure surveillance, similar guarantees are provided: compulsory examination, proposal of security measures by a multidisciplinary commission, substantiated and appealable decision by the regional court concerning security detention. In the event of the violation of obligations, the decision to place the offender in detention must be taken by the presiding judge of the regional court and be validated by that court within three months.

118. The Act has already been applied to 13 persons sentenced to life imprisonment, who applied for conditional release, and to 49 convicted prisoners classified as dangerous, who are currently under judicial surveillance.

Question 13

119. In French law and in conformity with the principles established by the international conventions, the deportation of a foreigner, regardless of the reasons therefor, may be ordered only after an **individual examination of the situation**.

120. The legislation in force and the consistent jurisprudence of the State Council forbid the issuance of collective deportation orders. Each case is therefore the subject of an individual and specific examination by officials in the immigration offices of the various prefectures, pursuant to the regulations in force and with due respect for the provisions of the relevant conventions.

121. In fact, a distinction should be drawn between deportation orders issued on the ground of unlawful residence and expulsion orders issued for reasons of public order.

122. The former measures, which comprise the **obligations to leave France and escort-to-the-frontier orders for unlawful residence**, may be ordered only for reasons established by law and may not be issued with respect to so-called “protected” persons, such as under-age children, persons who can prove lengthy residence in France or clear French family links, or are in specific situations (disabled, sick). Lastly, asylum-seekers may not be deported until the Office for the Protection of Refugees and Stateless Persons, and the National Court on the Right of Asylum,¹³ have reached a decision on their refugee status.

123. A foreigner who is the subject of such an order has the possibility of applying to the administrative tribunal for its annulment. This is a fully suspensive remedy, in accordance with which the foreigner may not be deported during the period he has been granted in order to lodge his appeal or, if the case has come before the judge, before the latter has issued a ruling. In the case of these appeals, the foreigner may receive the assistance of an interpreter and a lawyer, who may if necessary be appointed ex officio.

124. The administrative judge exercises far-reaching supervision over the deportation order, particularly with regard to the right to respect for privacy and family life, as established by the

¹³ Save for, in the latter case, an exception relating, for example, to the lateness of the application.

international conventions. He also exercises such supervision over the decision determining the country of destination (in particular in the light of article 3 of the Convention against Torture, which prohibits expulsion to a country where there is a risk of torture).

125. A total of 14,901 escort orders for unlawful residence were carried out in 2005, and 16,653 in 2006 (the Committee will find in annex 5 the precise figures for the years 2002 to 2007). The increase in the use of these measures is accounted for by the strong migratory pressure currently being experienced and by greater efforts to ensure, with due respect for the law and persons, that illegally resident foreigners are deported.

126. It should be emphasized that the Government also offers illegal aliens an alternative to compulsory deportation in the form of financed voluntary return. Thus, the number of deportation orders undergone by foreigners in the context of national voluntary assisted-return programmes is growing steadily (133 per cent increase in 2007 over 2006). This trend is continuing in 2008 since during the first four months some 5,000 people availed themselves of these assistance procedures for return and integration in their countries of origin.

127. **Expulsion measures** are another category of measures for removing persons and are taken for **serious reasons of public order**. They can be taken only for reasons provided for by law and [must] be based on a comprehensive review of the alien's situation, weighing the threat posed by the alien against his or her personal situation.

128. Act No. 2003-1119 of 26 November 2003 strengthened the means of protecting against expulsion for reasons of public order, for the benefit of aliens claiming to have personal or family attachments in France. The stronger these attachments are, the higher the level of threat to public order must be in order to justify the expulsion. Thus, for example, if an alien who has been the father or mother of a French child or the spouse of a French person for more than 3 years, or who has resided in France for 10 years, has received a sentence of less than 5 years, he or she can be expelled only if "this measure constitutes an overriding necessity for State or public security". If the matter involves an alien who entered France before the age of 13 or has resided there for 20 years (or for 10 years if he or she is married or is the parent of a French child), the alien can be expelled "only in the case of behaviour which is likely to be detrimental to the fundamental interests of the State, or which is linked to activities of a terrorist nature, or which constitutes acts of explicit and deliberate incitement to discrimination, hatred or violence against a specific person or group of persons".

129. Except in exceptional circumstances, an expulsion measure cannot be taken until an opinion has been received from an expulsion committee, composed of judicial officers and the administrative judge, before which the alien may appear accompanied by counsel and an interpreter. The expulsion decree may, moreover, be the subject of an action for annulment before the administrative judge, which may be accompanied by a temporary suspension injunction (if ordered by a judge, the injunction suspends the execution of the measure). It may also be the subject of an appeal to be released from custody. The administrative judge is responsible for conducting an in-depth jurisdictional review of the reasons for expulsion and of the proportionality of the measure. In all cases in which expulsion is contemplated, care is taken to ensure that the alien will not be exposed, in the country of return, to risks of treatment contrary to article 3 of the Convention against Torture.

130. In 2002, 385 expulsion decrees were executed; 242 in 2003; 231 in 2004; 243 in 2005; and 224 in 2006 (see annex 5).

Question 14

131. Since 2001, the National Commission on Security Ethics (CNDS) and the General Inspectorate of the National Police have dealt with only 14 cases involving the behaviour of law enforcement officers during the execution of measures to remove aliens from French territory.¹⁴ Most of the 14 cases concern alleged breaches of ethics during removal operations, and to inappropriate or excessive professional actions.

132. With regard to these situations, which remain rare, it should be pointed out that the French authorities pay very close attention to the conditions in which measures are taken to refuse admission at the border and to remove aliens. The execution of these measures, which have been legally sanctioned, can at times be difficult owing to resistance by the persons concerned; however, the services endeavour to carry out these operations with respect for the dignity of the persons and to use force only when it is absolutely necessary and in a proportionate manner. The instruction of 17 June 2003 of the Director-General of the National Police, on the removal by air of aliens in an irregular situation, sets out very precise conditions in which force may be used during the execution of these measures. The instruction, which is guided by the recommendations of the Committee for the Prevention of Torture of the Council of Europe, specifies the technical actions that are authorized and those that are prohibited, in conditions that are in conformity with medical requirements. These new techniques are, moreover, taught in special training courses for police officers who are responsible for these operations. The training also includes the consideration of the psychological state of the persons being removed. Only officers who have received such training and have been recognized as suitable are subsequently authorized to carry out these operations.

133. Moreover, these operations are closely monitored by the hierarchy. If alleged breaches of ethical obligations and unlawful violence are found, they are immediately punished by disciplinary measures, without prejudice to the criminal sanctions incurred.

134. Lastly, it should be noted that a representative of the CIMADE association is present in each administrative detention centre. The representative therefore has the possibility of reporting any infraction that he believes has been committed against detained aliens. The presence of CIMADE in these centres is provided for in the 1984 convention.

Question 15

135. In its report, which was submitted to the President of the Republic in July 1997, the Judicial Review Commission, chaired by Pierre Truche, proposed, inter alia, the increased

¹⁴ This represents some 4.2 per cent of the cases that have been referred to CNDS since 2001.

statutory independence of the government prosecutor's office vis-à-vis the executive, which would, in particular, result in the reform of the procedures applicable before the Supreme Council of Justice. Some the proposals put forward by the 1997 Truche Commission gave rise to **Organization Act No. 2001-539 of 25 June 2001** on the status of judges and the Supreme Council of Justice, which introduced the following changes:

- The Supreme Council of Justice may consider disciplinary cases referred to it by chief judges (articles 50-2 and 63 of Ordinance No. 58-1270 of 22 December 1958)
- The publicity of disciplinary hearings is ensured by statute (article 57 of Ordinance No. 58-1270 of 22 December 1958)
- The President of the Republic and the Minister of Justice do not attend hearings relating to the disciplining of judges (amended article 18 of Organization Act No. 94-100 of 5 February 1994)

136. One of the aims of the **ongoing reform of the Supreme Council of Justice** is to ensure the independence of the judiciary: the President of the Republic and the Minister of Justice are no longer ex officio members of the Supreme Council; the composition of the Council is more open to society; its powers of appointment have been broadened. The reform will also make it possible better to guarantee the rights of persons subject to trial by allowing them to refer disciplinary matters to the Council when they consider themselves to be victims of a judge's negligence or misconduct. This reform is intended to increase citizens' confidence in the judicial system.

137. On 22 February 2008, the Minister of Justice launched the reform of the **National College of Magistrates**. The purpose of the reform is to modernize the training of magistrates and to diversify recruitment methods. Thus, in keeping with the policy of restoring equal opportunity, new preparatory classes will be introduced in 2009, in Lyon and Bordeaux, with a view to better reflecting the diversity of society (a preparatory class for 15 students was opened in Paris in January 2008). Lastly, the continuous training of magistrates will be more open to European and international law and to knowledge of other legal and judicial systems.

138. Among other wide-ranging measures, the **reform of the judicial map** contributes to the effectiveness and quality of the judicial system. The reform makes it possible to improve the distribution of the means of jurisdictions: they will no longer be dispersed in the 1,200 jurisdictions but regrouped within 862 courts. Judges will thus be able to specialize, while the workload will be more balanced and the organization of services more effective. A positive impact on the time limits for handling cases and the time limits for enforcing decisions is expected; this should strengthen the credibility and authority of the judicial system, and improve the service rendered to persons subject to trial.

139. Moreover, **new technologies** increase the positive effects of the judicial map. Since 1 January 2008, courts have begun to digitize criminal procedures. Instead of obtaining a paper copy, lawyers receive a CD-ROM, which obviates both the need for photocopies and

research in the archives. Fifty jurisdictions have signed a convention with their Bar. In civil matters, 30 jurisdictions are already communicating with lawyers by electronic means, which makes it possible to follow the proceedings online and to transmit documents via the Internet. The videoconference, which is used to avoid transfers of detainees, also saves time and improves security.

140. New technologies thus facilitate access to law and justice. The very dense territorial network of lawyers, notaries and law officers also contribute to such access. Based on the improved structure of the judicial map, a second phase of judicial reform, relating to litigation, has been launched. The Guinchard Commission, which deals with these questions, should issue its conclusions in the near future.

Question 16

Conditions for family reunification

141. The acts adopted in 2003 and 2006, supplemented by Act No. 2007-1631 of 20 November 2007, have made it possible to improve the procedure for family reunification, in observance of the constitutional and treaty-based right to lead a normal family life and for the European directive on family reunification.

142. Thus, lawmakers have endeavoured to ensure that persons requesting family reunification can receive their family in acceptable conditions. For example, they require that aliens prove that they have **suitable accommodation** and sufficient **personal resources**, which should be at least equivalent to the minimum wage (SMIC). The act of 20 November 2007, moreover, introduces a condition concerning resources that takes account of the size of the family. While an income equivalent to the minimum wage should enable a couple with one child to lead a family life in acceptable conditions, these resources are not sufficient to enable a very large family to live in decent conditions. However, lawmakers have introduced the requirement concerning the level of resources, which cannot be higher than 1.2 times the minimum wage; moreover, some aliens who have been recognized as disabled will no longer be subject to the resource requirement.

143. The other part of the conditions for receiving families in the context of family reunification is **integration**. With the creation of a welcome and integration contract, which has been compulsory since the adoption of the act of 26 July 2006, persons who settle in France now have a tool that enables them to learn French and receive a civic education on the values of the Republic.

144. The act of 20 November 2007 provides that this integration process should begin, for beneficiaries of family reunification and spouses of French citizens, even before arrival in France. This anticipation of the integration process in the country of origin, through an evaluation of knowledge of the French language and awareness of the values of the Republic, will make the arrangements in France for first-time arrivals more effective and will facilitate their acclimatization. This measure is part of an approach that is today being taken by many European countries.

Identification of the applicant

145. Article 13 of Act No. 2007-1631 of 20 November 2007 supplements article L.111-6 of the Code on the Entry and Stay of Aliens and the Right of Asylum, and is intended to give aliens the opportunity to request the identification of the applicant for a long-stay visa by his or her genetic fingerprints, in order to provide proof of a declared filiation with the mother of the applicant.¹⁵

146. This possibility is available, provided that a number of conditions are met:

- The country of which the visa applicant is a national has a defective civil registration system
- Diplomatic or consular services confirm that there is no civil registration system or raise serious doubts about the authenticity of the documents submitted
- These doubts cannot be dispelled by apparent status as defined in article 311-1 of the Civil Code

147. Moreover, the act establishes guarantees that protect the rights of visa applicants by informing the applicant about the scope and consequences of such a measure and by requiring prior consent for the conduct of a genetic test. The law also makes it possible for a court of law to decide on these investigations (Nantes district court); the court must take a decision after holding contentious proceedings. The law makes the cost of this procedure incumbent on the State.

148. The implementation of this measure is subject to a decree by the Council of State, which has been taken after receiving an opinion from the National Advisory Committee on Ethics. This procedure must be the subject of an experiment, which will end on 1 July 2009, with a list of countries that have the dual characteristics of representing high migration flows and benefiting from genetic tests that have already been organized by other consular representations.

149. In the light of this approach, the procedure appears to be entirely compatible with the principles set out in articles 17 and 23 of the Covenant. Lastly, it should be added that France will endeavour, in this regard, to improve its administrative procedures with a view to reducing the length of family reunification proceedings.

Question 17

150. As a secular republic, France respects all beliefs, whatever they may be, in accordance with its constitutional principles and its international commitments. No one may be harassed because of his or her opinions, particularly religious opinions. The authorities and the

¹⁵ The Constitutional Council (DC No. 2007-557, 15 November 2007) ruled that all methods of proof recognized by the personal law of the foreign mother may be used, and that, moreover, the law would not be applicable to adoptive filiation, which will continue to be proved by the issuing of a ruling. With these reservations, ensuring the equality of all methods of establishing filiation, the act was deemed constitutional and, in particular, in keeping with the principle of equality.

jurisdictions take great care to ensure that no discriminatory measure is taken against a person because of his or her beliefs. For example, a child custody measure may not be taken on the basis of the parents' religious convictions but must be based solely on the best interests of the child.

151. In this regard, the concept of "sect" is alien to French law and is not used by the authorities. In the eyes of the law, membership of a movement, whatever it may be, is first of all a matter of freedom of opinion, which is a constitutional principle.

152. The action taken by the Government is thus dictated by the concern to reconcile the struggle against the activities of certain groups that exploit the subjection, physical or psychological, of their members, with respect for public freedoms and the principle of secularism. It is up to the State to maintain particular vigilance concerning any organization that could have a dangerous hold on the individual freedom of its members, in order to be prepared to identify any action that may be classified as criminal or, more generally, that appears to be contrary to laws and regulations. In accordance with the provisions of the Covenant, restrictions on freedom can be contemplated only when acts or behaviour cause serious harm to human dignity or public safety. These restrictions are possible only if they are based on duly noted objective facts and if they are necessary and proportionate to the purpose of protecting individuals. This may involve situations in which assistance is not given to persons in danger, sexual aggression against minors, abuses of a person's weakness, etc.

153. In this context, the Inter-ministerial Mission for Vigilance and Combating Sectarian Aberrations (MIVILUDES), established under the authority of the Prime Minister in November 2002, is responsible for observing and analysing any sectarian aberrations that may occur, in other words, the criminal offences that may be committed by certain movements under the pretext of assisting in the personal or spiritual development of vulnerable persons. In accordance with its constitutive decree of 28 November 2002, MIVILUDES is responsible for "observing and analysing the phenomenon of sectarian movements, the actions of which are detrimental to human rights and fundamental freedoms or pose a threat to public order, or are contrary to laws and regulations" (Decree No. 2002-1392, art. 1, para. 1).

154. Respecting all beliefs and faithful to the principle of secularism, lawmakers have always refused to define religions. In this regard, the task entrusted to MIVILUDES by the Prime Minister does not involve beliefs or religions; MIVILUDES has no competence in matters of religion or worship. The vigilance for which the Inter-ministerial Mission is responsible relates to the behaviour of individuals, groups or movements that would appear reprehensible from the point of view of laws and regulations.

155. In addition to its role as a body responsible for promoting, while respecting public freedoms, coordination of preventive and repressive action by the authorities, MIVILUDES is principally an institution for study, information and training. While it has the authority to refer matters to the government procurator, it does not have the authority to issue norms, nor does it have the power to investigate, suppress or punish. The administrative authority or the judicial authority has exclusive responsibility for taking measures to prevent or punish reprehensible behaviour that has been duly established.

Question 18

Prosecution of anti-Semitic acts

156. If legislation on combating anti-Semitism is hardly distinguishable from legislation on combating racism, special circumstances have justified specific attention to this problem; such attention has since been generalized to all manifestations of intolerance. From the end of 2001 to the end of 2004, France has witnessed a resurgence of anti-Semitism, which has been recorded both by the services of the Ministry of the Interior and by the judiciary. Fuelled in particular by the exploitation of international conflicts, this phenomenon has led the State to take a number of measures to halt anti-Semitism and prosecute perpetrators of acts of violence.

157. These measures include:

- **Development of a statistical tool** within the Ministry of Justice that makes it possible to have a monthly summary of judicial responses to anti-Semitism and also to racial offences or offences committed because the victim belonged to a different religion. Thus, according to the statistics available to the Ministry of Justice, the number of convictions for violence against persons because they belonged to a particular ethnic group, nation, race or religion has gradually increased: 1 conviction in 2003, 13 in 2004, 26 in 2005 and 45 in 2006.¹⁶ In 2007, 66 cases of attacks of an anti-Semitic nature were recorded.
- **Adoption of numerous legislative innovations** to strengthen the suppression of all forms of racism and anti-Semitism, particularly Act No. 2003-88 of 3 February 2003 on the toughening of punishment for racist, anti-Semitic or xenophobic offences, and Act No. 2004-904 of 9 March 2004 on the adaptation of the judicial system to developments in criminality. Instructions concerning severity and speed in the handling of cases involving anti-Semitism and racism have been transmitted to prosecutors' offices by a number of dispatches and circulars regarding the judicial response to be taken to acts with anti-Semitic overtones, or to the degradation, violation or desecration of tombs or monuments erected to the memory of the dead, owing to the ethnicity, nation, race or religion of the deceased.
- **Inclusion in training programmes for judicial officers** of the question of combating racist or anti-Semitic phenomena. A practical guide to the criminal provisions applicable in combating racism, anti-Semitism and discrimination will soon be posted on the Intranet site of the Ministry of Justice.
- **Involvement of the police and national gendarmerie services** in combating all forms of racism, anti-Semitism and discrimination: this measure is part of a partnership and inter-ministerial action to ensure that law enforcement officers are trained to deal with cases of discrimination, and to improve their treatment of victims, while taking more effective measures to combat all forms of criminality and delinquency.

¹⁶ Data for 2006 are provisional.

158. With regard, more particularly, to the measures taken to combat racist and anti-Semitic violence in schools, the national police, pursuant to the guidelines contained in the inter-ministerial circular of 13 September 2004, is involved in the implementation of measures to prevent and detect acts of a racist or anti-Semitic nature in the school environment. There is close cooperation among the central administrations concerned, while, at the local level, awareness-raising measures for young people are organized jointly in schools. The annual report on the activities of the public security forces contains a list of acts of a racist or anti-Semitic nature committed in schools against teachers and students. In 2006, there were 38 reported incidents, 5 of which were of an anti-Semitic nature, committed against staff members, and 23 of the incidents were clarified; there were also 138 reported incidents, 46 of an anti-Semitic nature, committed against students, and 69 of the incidents were clarified.

159. Lastly, it should be pointed out that **there was a notable decline in the total number of racist, xenophobic and anti-Semitic acts in 2007**: 707 racist, xenophobic or anti-Semitic incidents were recorded, as compared with 923 in 2006, representing a decline of 23.5 per cent. Moreover, the greatest decline concerned anti-Semitic violence and threats: 386 incidents were recorded in 2007, as compared with 571 in 2006, representing a decrease of 32.5 per cent (these figures are from the 2007 report of the National Consultative Commission for Human Rights).

Teaching tolerance

160. The fundamental principle of equality of opportunity and of non-discrimination in educational matters is a priority for the Government. In recent years the Ministry of Education has stepped up its efforts to combat racism, anti-Semitism and xenophobia.

161. From 2004 to 2006, the Ministry's efforts were devoted among other things to training the educational community and providing numerous informational tools (such as the Department of Primary Schooling's brochure, *Action against Racism and Anti-Semitism*, annex 6). In 2007, the Ministry worked to strengthen its links with various partners while continuing to encourage the educational community to mobilize in a coherent manner.

162. **Links with partner institutions or associations** have been enhanced to facilitate concerted action nationwide, including through the following partnerships:

- With the High Authority to Combat Discrimination and Promote Equality (HALDE): contacts were strengthened in 2007 through the Ministry's involvement in the pilot committee for the report requested by HALDE on coverage in school materials of discrimination and stereotyping.
- With the Ministry of Defence: a protocol of agreement between the two ministries highlighting the education of young people in civics was signed in January 2007. For example, a civic involvement booklet for secondary schools is to be tested in one school district; one of the subjects proposed is respectful behaviour for others.
- With the Centre for the History of Immigration: the Ministry of Education co-administers this institution and is on its governing board.

163. A new circular dated 30 November 2006 reconfirms the mission of the health and citizenship education committees (CESC) in secondary school institutions: they are responsible, among other things, for educating citizens, combating discrimination and drawing up a plan for preventing violence which should guard against racist or anti-Semitic acts and facilitate interaction between the schools and local institutions, particularly local security and prevention councils (CLSPD). The Ministry of Education is also working, together with the Ministries of the Interior, Immigration and Justice, on a joint circular on the commissions for the promotion of equality of opportunity and citizenship (COPEC). The purpose of this text is to promote and reinforce the work of the ministries concerned in the area of equality of opportunity, combating all forms of discrimination, preventive efforts and the struggle against racism and anti-Semitism.

164. One might point out, concerning the **content of the curriculum**, that the topics of human rights and rights and duties come up frequently in the text on core knowledge and skills,¹⁷ including an introduction to texts such as the Declaration of the Rights of Man and of the Citizen and the International Convention on the Rights of the Child. Some topics covered in secondary school history courses give students an opportunity to start thinking about racism, anti-Semitism and xenophobia. For example, immigration and immigrants are covered in the second year course on the science and technology of administration that has been taught since 2006; this includes an introduction to the subject and to the depiction of immigrants in literature and film.

165. Students are also involved in historical commemorations. The courses on health and social sciences and technology that have been part of the second year history curriculum since September 2007 include the subjects of “Auschwitz, memorial to the policy of exterminating European Jews”. A circular dated 10 April 2007 on the history of the slave trade, slavery and abolition calls on teachers to take part in the celebrations held on 10 May every year by setting aside time for reflecting on slavery on the basis of reading assignments.

166. Lastly, in terms of educational activities, on the basis of a coherent project, teachers may choose activities in which they wish to participate. Some examples that might be given of such activities:

- A national week against racism which teaches students about respect for human rights based on actual situations that arise every day during school, on school premises or outside school.
- A nationwide competition concerning the resistance movement and deportation. The subject this year is assistance to people who were persecuted and hunted during the Second World War as a form of resistance. In 2007, 46,382 secondary school students took part in this competition (an increase of 27.47 per cent).

¹⁷ The text on core knowledge and skills is the basis for the drafting of primary and middle school curricula. It lays down the cultural and civic standards that students are to have assimilated by the end of their compulsory schooling (Act of 23 April 2005).

Question 19

Legislative machinery

167. The **principle of secularism**, cited in article 1 of the Constitution, is part of the policy of separation of Church and State (1905). It aims to guarantee the neutrality of the State and provide an open forum centred on the shared democratic values of freedom of conscience, thought and expression, the dignity of all persons, cultures and religions and respect for others. The Act of 15 March 2004, which prohibits the **conspicuous wearing of religious symbols in public schools**, gives dual expression to the principle of secularism.

168. Firstly, it **reaffirms the republican vocation of the State**. The latter is responsible for “inculcating the values of the Republic, which include the dignity of all human beings, equality of men and women and the freedom of all, including in the choice of lifestyle (...). By shielding from the pressures that might arise from conspicuous manifestations of religious affiliation the public secondary schools, whose vocation is to educate all children, irrespective of whether or not they hold religious beliefs and of their religious or philosophical values, the Act guarantees freedom of conscience for all” (implementing circular dated 18 May 2004). In fact, the Act does not run counter to the texts that, in accordance with articles L.141-2, L.141-3 and L.141-4 of the educational code, enable the obligation to attend school to be reconciled with the right of parents to have their children given a religious education if they so desire.

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

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

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

Implementation of the Act

172. The lawmakers have sought to give priority to educational efforts and dialogue. They have accordingly emphasized pragmatism and left to those actually involved the responsibility of ensuring compliance with the Act and punishing any infractions. An initial period of dialogue

with the student who has committed the infraction is thus envisaged, to be organized and carried out by the head of the scholastic institution in cooperation with the administrative and pedagogical staff. Only following this period of dialogue can disciplinary action be undertaken, if necessary. Lastly, if the disciplinary board decides on expulsion, the academic authorities will examine with the student and his or her parents the conditions in which his or her schooling can be continued.

173. The Act itself provided for the evaluation of its application one year after its entry into force, in July 2005. In this respect, the fears that some young women might be expelled from the educational system have proved in fact to be groundless. During the school year 2004-2005, only 39 students, of which 36 were girls, were definitively expelled, other cases having been solved through dialogue. The number of expulsions has since gradually diminished: in all, only 46 students were definitively expelled from their scholastic institutions in the course of implementation of the 2004 Act. These figures signify that the principles of the Act have indeed been accepted by the students and their families.

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

175. The Act of 15 March 2004, aimed above all at promoting the neutrality and secularism of educational institutions, progressive conditions and respect for others, is thus entirely compatible with article 18 of the Covenant.

Question 20

176. The number of minors in pretrial detention decreased by 25 per cent from 1999 to 2008, the result of an increase in judicial controls and other alternatives to incarceration (closed educational centres, for example), in other words, of better and possibly more restrictive educational management facilitating less frequent recourse to incarceration of minors prior to sentencing.

177. In annex 7, the Committee will find statistics on the number of minors in pretrial detention, broken down by sex and age, for the period 2002 to 2006 (*Source: Annuaire statistique de la Justice*, 2008 edition). The Government has no figures on the duration of such pretrial detention but it can nevertheless inform the Committee that the average length of detention of minors (all types of detention) is two and a half months.

178. Domestic law, moreover, guarantees minors **legal assistance** in the context of judicial proceedings. As stated by article 1 of Act No. 91-647 of 10 July 1991, such assistance comprises “legal aid, aid in gaining legal access and aid for the participation of legal counsel during detention, penal mediation and legal settlement procedures”.

179. With more specific regard to criminal matters, article 4.1 of Ordinance No. 45-174 of 2 February 1945 stipulates that any minor subject to criminal proceedings must be assisted by counsel. As in the case of educational aid (protection of minors), the payment of counsel's fees is in principle the responsibility of the parents, save if they show lack of interest in their child. On this point, the ordinance of 8 December 2005 amended article 5 of the Act of 10 July 1991 on legal aid by harmonizing the terms for according legal aid to delinquent minors and envisaging taking into account any lack of interest of parents in their minor children so that, if necessary, they could receive legal aid more easily.¹⁸

Question 21

180. As pointed out in the report, France does not recognize the existence of domestic minorities which have legal status as such, and considers that the application of human rights to all the nationals of a State, in a spirit of equality and non-discrimination, normally gives them, whatever their situation, the full and comprehensive protection which they may expect. The practical effect of this concept is that the affirmation of an identity is the result of a personal choice, not of applicable criteria defining one group or another a priori.

181. The fact that the legal status of minorities is not recognized does not prevent the application of many policies designed to assert France's cultural diversity and support individual choices in this field. In the field of education, for example, while mastery of the French language, considered as the prime tool to ensure equal opportunities, constitutes a priority challenge, various measures are adopted to take linguistic diversity into account.

182. Firstly, **the teaching of original languages and cultures** is organized in schools, where classes are taught either during the school day or outside it (when it is necessary to bring together pupils from several schools). Local communities are involved in the practical organization of this teaching (provision of premises and equipment). This teaching is always subject to the consent of the families and the presence of a sufficient number of pupils. It is provided by foreign teachers (from the country of origin), made available by their governments. This arrangement is covered by bilateral agreements signed by eight countries - Portugal, Spain, Italy, Morocco, Algeria, Tunisia, Turkey and Serbia.

183. Next, **the teaching of regional languages** enjoys the status of a specific subject, with its own timetable, curricula, examinations, trained staff and educational and scientific research

¹⁸ Article 5 of the Act of 10 July 1991 on legal aid states as follows: "For the application of article 4, every type of resources directly or indirectly available to the applicant shall be taken into account. (...) Also taken into account for assessing the resources are those of the spouse of the applicant for legal aid as well as those of persons habitually domiciled with the applicant, unless the spouses are persons habitually domiciled together are opposing parties in the proceedings. They are likewise not taken into account if between them, in view of the object of the dispute, there is a divergence of interests necessitating a separate evaluation of the resources or if, where the request concerns assistance to a minor pursuant to Ordinance No. 45-174 of 2 February 1945 on delinquent children, a lack of interest is manifested towards the minor by persons habitually domiciled with him or her."

programmes from nursery to university level. The Act of 23 April 2005 on the future of schools reaffirmed this place in the overall French educational system: under article 20, this teaching is designed to develop in the context of agreements between the State and local communities where these languages are spoken. The teaching of certain languages (Corsican, Basque, Breton, Catalan, Creole, Occitan-Langue d'Oc, Tahitian) is provided by teachers who hold the *certificat d'aptitude au professorat de l'enseignement du second degré* (CAPES); it is validated when pupils are awarded the secondary certificate for 16-year-olds.

184. Lastly, **more specific measures** have been taken for the overseas regional languages. Under the Act of 2 August 1984 concerning the powers of the regions of Guadeloupe, Guyane, Martinique and Reunion, each regional council determines the additional educational and cultural activities relating to knowledge of the regional languages and cultures, which can be organized in the schools that fall within the competence of the region. Similarly, for New Caledonia, the organic law of 19 March 1999 grants recognition to the Kanak languages as languages of instruction and culture, while incorporating commitments regarding teaching, scientific and university research, and teacher training.

185. Taking all forms of education and all levels together, 404,351 pupils received instruction in regional languages in 2005/2006.

Question 22

186. French law allows effective prevention in cases of statelessness. The following persons are French:

- A child born in France of unknown parents (Civil Code, art. 19)
- A child born in France of stateless parents, or of foreign parents who cannot transmit their nationality to the child (Civil Code, art. 19-1)
- A child born in France one of whose parents was also born in France (Civil Code, art. 19-3)

187. Specific legal provisions protect persons born in a former French territory or department before independence, when the nationality of the country which has become independent has not been granted to them, so that they may retain French nationality. The provisions adopted by French nationality law are thus designed to avoid cases where persons born on French territory, whatever their country of origin, become stateless.

Question 23

188. The Government has assigned priority to **efforts to combat discrimination and promote diversity in enterprises**. In 2006 it set up the Agency for Social Cohesion and Equal Opportunity, a public institution whose task is to apply government guidelines in relation to urban policy, integration, efforts to combat discrimination and equal opportunity. It also urges the social partners to negotiate on diversity and pursues a programme of action and partnership with enterprises and institutions in the economic world.

189. All the studies commissioned by the authorities and the “testing” operations carried out by the Observatory on Discrimination, among others, show that while cases of discrimination in recruitment continue to exist, awareness of this phenomenon on the part of stakeholders in the economic sphere has been growing for some years. Over 2,000 enterprises have now signed the Charter of Diversity, an awareness-promoting tool which enables enterprises to demonstrate their commitment to diversity and against discrimination. Many enterprises have also negotiated enterprise agreements on diversity; in addition, the multisectoral agreement on diversity in enterprises signed on 12 October 2006 by the three employers’ organizations and the main unions (CFDT, FO, CFTC and CGT) is designed to combat discrimination through respect for the law and its effective application. Lastly, a “diversity” label, which will be awarded by a certifying body to enterprises that make diversity a focus of their company policy and base their management on non-discrimination, is also being developed.

190. A still more recent development was the adoption of Act No. 2008-496 of 27 May 2008, introducing various steps to bring French law into line with European Union law in the field of efforts to combat discrimination. Its purpose is to transpose or refine the transposition of the five European directives promoting equality between women and men, as well as equal treatment between persons irrespective of race or ethnic origin. In relation to **judicial remedies**, it allows the victim to establish evidence of discriminatory actions in civil law by means of a mechanism for modification of the burden of proof as an exception to ordinary law. It is also planned that associations whose purpose is to combat discrimination can institute substitution proceedings in the civil and administrative courts, so as to better defend the victims of discrimination.

191. In addition to the judicial remedies which are available, everyone who is a victim of such discrimination has the option of bringing a case before the **High Authority to Combat Discrimination (HALDE)**. HALDE, which was set up by the Act of 30 December 2004 and granted strengthened powers by Act No. 2006-396 of 31 March 2006, is, as the Government pointed out in its report, an independent authority competent to examine and combat direct or indirect discrimination which is prohibited by the law or by an international convention to which France is a party. Since January 2008, cases can be brought before HALDE simply by completing a form on its Internet site: 580 cases were registered in four months. The High Authority also installed its first 11 local correspondents in 2007; there are now 20 of them (May 2008), the aim being to institute a network of 100 correspondents by the end of 2009.

192. The Committee will find in annex 8 an overview of the work of HALDE in recent years, which bears witness to the importance of its activities in the field of discrimination in recruitment.

193. Lastly, with particular reference to **State employment**, it is important to point out that the main means of access to such employment is the competitive examination, the cornerstone of the recruitment arrangements for the three public services. The anonymous nature of the procedure, in the framework of written examinations, is a guarantee of the principle of impartiality in recruitment. This rests on a solid legal foundation of a constitutional nature (article 6 of the Declaration of the Rights of Man and the Citizen and article 1 of the 1958 Constitution), which sets forth the principle that all citizens are equal, including in terms of access to public employment.

Question 24

194. Article 1 of the Constitution provides that the Republic “*shall ensure the equality of all citizens before the law, without distinction as to origin, race or religion*”. On this basis, the Constitutional Council considers that “*while the processing necessary in order to carry out studies to measure the diversity of the origins of persons, discrimination and integration may cover objective data, it may not ... be based on ethnic origin or race*” (DC No. 2007-557, 15 November 2007).

195. It is therefore not constitutionally possible to undertake a statistical study based on the origin or beliefs of the various elected officials. In any event, by virtue of the Constitution, persons elected by universal suffrage are French citizens or, in some cases, European citizens (in the meaning of article 18 of the Treaty instituting the European Community), who enjoy their civil and political rights, and whose origin or religion do not constitute a relevant criterion for qualification. Consequently, no measure likely to favour access by a religious or ethnic category exists.

196. The French Republic, which is one and indivisible, thus leaves to universal suffrage the task of determining which citizens will be called on to take a seat in the National Assembly.

Question 25

197. Racist attitudes which may appear in political speeches or in the press are the subject of prosecutions on the basis of the following offences:

- Public abuse of a racial nature
- Public slander of a racial nature
- Public provocation of racial or religious hatred or violence
- Denial of crimes against humanity

198. These offences are listed and their punishments specified in articles 23, 24 bis, 29, 33 and 42 of the **Act of 29 July 1881 on freedom of the press**. The necessary public element of these offences involves the remarks having been uttered in a public place or through the media (press, audiovisual media, various publications, Internet site). Moreover, while the other press offences are time-barred after three months, the four offences mentioned above enjoy a longer period of limitation, lasting one year. Lastly, in contrast to the usual rule in press law that criminal proceedings cannot be instituted unless the victim lodges a complaint, these offences may be the subject of proceedings instituted by the public prosecutor, without a prior complaint.

199. Associations engaged in combating racism may also exercise the rights granted to applicants in criminal indemnification proceedings in cases involving the offences of provoking racial hatred, racial slander and racial abuse. The same is true for associations which uphold the moral interests and honour of the resistance and deportees, which may exercise the rights granted to applicants in criminal indemnification proceedings in cases involving the offences of denying crimes against humanity.

200. Public prosecutors have regularly been reminded by the Ministry of Justice of the need for firmness in prosecuting those responsible for racial offences. An updated guide setting out the main offences involving racism, anti-Semitism and discrimination is to be distributed in June 2008 by the department of criminal matters and pardons. It will complement a circular on press law for the use of judges which has been available on line since July 2004.

Question 26

201. As already pointed out in the reply to question 7, it is not possible under the current system to identify convictions handed down against law enforcement personnel. While this system makes it possible to identify convictions for violence against persons prompted by membership of a specific ethnic group, nation, race or religion, it is not possible to single out those committed by persons wielding public authority.

202. Nevertheless, the Government can inform the Committee that, under the specific arrangement allowing the collection of information from public prosecutors' offices, 274 cases involving attacks of a racist nature against individuals were registered in 2007.

Question 27

203. It is first necessary to specify which group is being targeted by the "*Espoir banlieue*" plan introduced in March 2008. The objectives of this plan are designed to promote equal opportunities for *all* the citizens living in the neighbourhoods which are experiencing economic and social difficulties. While these neighbourhoods are notable for the particular difficulties encountered by their inhabitants, in no case do they demonstrate a situation of segregation based on the origin of the inhabitants.

204. Under the "*Espoir banlieue*" plan, each ministry must adopt a three-year programme of action designed to reduce the gaps between these neighbourhoods and the country as a whole. Full-time representatives of the prefects will be appointed in September 2008 in the neighbourhoods experiencing the greatest difficulties, so as to coordinate action by the authorities. A proposed reform of the State's solidarity grants to the local communities will be presented, so as to increase the urban solidarity grants received by the poorest communes.

205. In this framework, the main sectoral measures under this plan involve:

- **Elimination of isolation by means of transport:** the Ministry of Ecology, Energy, Development and Sustainable Planning has undertaken to make a contribution of 500 million euros to the programme for the elimination of isolation and the development of transport infrastructure for the urban policy neighbourhoods.
- **Improvement of housing and habitat:** in order to promote social diversity and urban renewal, businesses and services must be better integrated in the neighbourhoods. Providers of social housing will also undertake to improve the quality of the services they provide to their tenants. Lastly, the policy of selling public housing to tenants will be expanded, and the allocation of social housing will foster social diversity within neighbourhoods.

- **Strengthening the neighbourhood police:** in spring 2008, 200 local neighbourhood units are to be created, and in the summer, forces specializing in urban violence, each of them including 100 or so men.
- **Support during the learning process:** in this field, it is planned that pupils in over 5,000 primary schools will benefit from upgraded educational support. Five per cent of the most deserving pupils will also be offered access to preparatory classes for the *grandes écoles* in autumn 2008, while a pool of training opportunities will be created in each area to enable greater fairness in access to training.
- **Creating contacts between young people and enterprises with a view to lasting employment.** On this last point, three main steps are planned to help young people in the neighbourhoods experiencing the greatest difficulties to find jobs: the “*contrat d'autonomie*”, which is to be introduced in 35 experimental departments and forms part of a mutual commitment between the State and young job-seekers; assistance with *setting up businesses*, whereby young entrepreneurs will benefit from support and finance in the form of interest-free loans; lastly, *involvement by enterprises*, which will sign a three-year commitment specifying the number of young people from the neighbourhoods that they are prepared to accept.

Question 28

206. The Foreign Ministry's site contains a section specifically focused on human rights, in presenting such topics as the existing international instruments in this field. One page is devoted to the International Covenant on Civil and Political Rights. It contains explanations, together with links to the United Nations Internet site for access to the Covenant and the accompanying Protocols. Mention is made of the possibility of submitting individual communications to the Human Rights Committee in accordance with Optional Protocol No. 1, after domestic remedies have been exhausted.

207. To supplement this official information, specialist associations offer citizens support and guidance with the procedure for submitting communications to the Human Rights Committee.

208. Lastly, it should be pointed out that the reports prepared by the Government under the compliance mechanism referred to in article 28 and subsequent articles of the Covenant are all communicated to the National Consultative Commission for Human Rights, which is composed of representatives of many associations. The Commission may make comments and thus participate in the preparation of the reports, as well as the written replies submitted to the Committee (cf. Decree No. 2007-1137 of 26 July 2007, article 1).
