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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**FRANCE**

**Information provided by the Government of France on the follow-up  
to the concluding observations of the Human Rights Committee  
(CCPR/C/FRA/CO/4)\* \*\***

[20 July 2009]

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\* 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 attached to this document by the Government of France can be consulted in the files of the secretariat.

## Introduction

The Human Rights Committee considered the fourth periodic report of France on 9 and 10 July 2008. In paragraph 28 of its concluding observations (CCPR/C/FRA/CO/4),<sup>1</sup> the Committee called on France to provide, within one year, information on its implementation of the recommendations contained in paragraphs 12, 18 and 20 of those concluding observations (see sections I-III below).

The French Government would like to take advantage of this intermediate response to provide some additional details to clarify a number of points that appear, to judge from the Committee's recommendations, not to have been sufficiently clear when France presented its report (see sections IV and V below).

### I.

**“The State party should collect and report adequate statistical data, disaggregated on the basis of racial, ethnic, and national origin, in order to enhance the effectiveness of its efforts aimed at ensuring equal opportunity to persons belonging to these minority groups, and to meet the reporting guidelines of the Committee.”**  
(CCPR/C/FRA/CO/4, para. 12)

1. The Government takes note of this repeated request of the Committee, and understands that the Committee is seeking information that will contribute to the analysis of national policies.
2. Nevertheless, it would like to remind the Committee that the collection of such data would be contrary to the French Constitution and points out that such data would in any case be of no help in understanding national policy, since this is not based at all on the concepts of minorities, race or ethnic origin. The State party is therefore not in a position to provide statistics disaggregated by ethnic or racial origin, and offers the following clarifications in an attempt to explain this once again.
3. The French State does not recognize the existence in France of minorities with legal status as such. It considers that the applicability of human rights to all citizens of a State on an equal and non-discriminatory footing normally provides all of them, regardless of their circumstances, with the full protection they can expect. This is a particularly rigorous approach to human rights that has its roots in the republican tradition dating from the French Revolution over two centuries ago.
4. In practice, the French approach postulates that the affirmation of identity is the result of a personal choice, not of a set of criteria that define, a priori, one group or another and that would necessitate a separate legal regime. Such an approach protects the right of every individual to embrace a cultural, historical, religious or philosophical tradition, or to reject it. Indeed, the right

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<sup>1</sup> “In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 12, 18 and 20 above.”

to a distinctive identity goes hand in hand with the basic right to abandon it. France has always stressed this point in international forums, pointing out the unintended consequences of an overly rigid approach to the protection of minorities, including any attempt to define general criteria for membership of a minority or even to compile registers of people from minorities.

5. This approach is the antithesis of compiling statistics disaggregated by racial or ethnic origin, and is reflected in the first article of the French Constitution, which states specifically that the Republic “shall ensure the equality of all citizens before the law, without distinction of origin, race or religion”.

6. Pursuant to this provision, the Constitutional Council found some provisions of the Immigration Act of 20 November 2007 to be unconstitutional (article 63, on carrying out studies of the diversity of origin of people). The Council held that “although the processing of data necessary for carrying out studies regarding the diversity of origin of people, discrimination and integration may be done in an objective manner, such processing cannot, without infringing the principle laid down in Article 1 of the Constitution, be based on ethnicity or race” (decision No. 2007-557 DC, 15 November 2007).<sup>2</sup>

7. French legislation thus prohibits the collection of “personal data that reveal, directly or indirectly, the racial or ethnic origins, the political, philosophical or religious opinions, or the trade union membership of persons” (article 8 of Act No. 78-17 of 6 January 1978, on files, data processing and individual liberties, as amended by Act No. 2004-801 of 6 August 2004, on the protection of individuals in the processing of personal data).

8. Looking beyond national legislation, it can be noted that very few countries of the European Union have taken steps to measure discrimination using collections of data on race or ethnic origin and that European Union legislation imposes restrictions on the collection of personal data. For example, Directive 95/46/EC of the European Parliament and Council of the European Union of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data, prohibits the processing of

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<sup>2</sup> “24. Section 63 of the statute referred for review, which is the result of an amendment passed by the National Assembly on first reading, amends II of section 8 and I of section 25 of the Act of January 6th 1978 referred to hereinabove. It is designed to allow processing of personal data ‘indicating, directly or indirectly, the racial or ethnic origins’ of persons for the carrying out of studies of diversity of origin, discrimination and integration, and subject to the authorization of the National Committee on Data Processing and Individual Liberties.

“... 29. Although the processing of data necessary for carrying out studies regarding the diversity of origin of people, discrimination and integration may be done in an objective manner, such processing cannot, without infringing the principle laid down in Article 1 of the Constitution, be based on ethnicity or race. In all events the amendment giving rise to section 63 of the statute referred for review was devoid of any connection with the provisions in the Bill from which it derives. Section 63 was thus passed in proceedings which were irregular and as such should be held to be unconstitutional.”

personal data revealing racial or ethnic origin (though a number of exceptions are provided for, such as when processing is necessary to protect the vital interests of the data subject or for the purposes of preventive medicine or a medical diagnosis).

9. The current legal framework thus prevents statistical studies from taking ethnic or racial origin into account. This framework, though far from settled, is based on an ongoing national debate, of which the most recent highlight was the submission on 17 December 2008 of the conclusions of the Advisory Committee on the Preamble to the Constitution (the “Veil Committee”). This committee was charged by the President with the task of studying “whether and to what extent the fundamental rights recognized by the Constitution need to be supplemented with new principles”, including a new approach to the principle of equality that would permit differentiated policies based on ethnic origin.

10. On this question, the committee, while pointing out “the importance of the room for manoeuvre available under the current Constitution to implement affirmative action policies”, which are “far from non-existent in French positive law”, stressed the following:

“Several countries around the world have experimented or are still experimenting with measures that allow race, origin or, less commonly, religion to be taken directly into account for this purpose. The committee rejects the transposition to France of such measures for several reasons.

“First, the committee cannot help but notice that the grounds traditionally evoked in the countries concerned to justify the use of such criteria have no direct equivalent in France. For example, in the United States, South Africa and India, the legislative promotional measures followed periods when the target ethnic groups were subject by law to real segregation. In other words, for this type of positive discrimination to be meaningful, it must be seen by everyone as a catch-up measure for groups which have been victims in their own country of a legal system that marginalizes them and which have thus been kept in a subordinate social position...

“Second, the committee notes that it would be somewhat paradoxical to be taking steps to introduce positive discrimination for ethical reasons at a time when the concept is clearly losing ground in the United States. The original policy of affirmative action was introduced in the 1960s in three principal areas - access to university, public-sector jobs and government contracts - but has been seriously weakened by a number of Supreme Court decisions and referendums, to the point where its merits, or even its constitutionality, are nowadays highly uncertain...

“Lastly, the committee fears that a policy of positive discrimination based on ethnic origin would have serious side effects (not to mention the risk of its being used by extremist groups for their own purposes): at best, a weakening of peaceful cohabitation as a result of encouraging citizens to identify with their community of origin so as to benefit from the measures in place; and, at worst, increased tension and resentment among communities, creating competition between ethnic groups and a breeding ground for further disruption of the nation.

“... In sum, it appears to the committee that the current constitutional framework cannot be regarded as an obstacle to the implementation of ambitious affirmative-action measures that could benefit, among others, people of foreign origin who are insufficiently integrated in French society.”

11. On the specific question of ethnic data, the committee says in its report that “it is reasonable to think that taking account of the name, geographic origin or nationality prior to the acquisition of French nationality, taken together with the ‘feeling of belonging’ expressed by the interviewees, could produce results comparable to those made possible by use of an ethno-racial frame of reference”.

12. These conclusions echo the positions commonly adopted by academics and associations on this subject. In 2007, for example, a petition signed by researchers, trade unionists and activists expressed their opposition to the introduction of ethnic statistics in France. More recently, the same opposition has been expressed by the Alternative Advisory Commission on Ethnic Statistics and Discrimination (which brings together legal experts, historians, demographers, etc.) and by prominent representatives of community associations (Patrick Gaubert, president of the High Council on Integration of the Ligue internationale contre le racisme et l’antisémitisme; Mouloud Aounit, president of the Mouvement contre le racisme et pour l’amitié entre les peuples; Dominique Sopo, president of SOS Racisme). The president of the High Authority to Combat Discrimination and Promote Equality (HALDE), an independent administrative body, has also expressed doubts about the usefulness of such statistics on more than one occasion.

13. Over and above the legal arguments, these individuals stress the ethical dimension of the debate, and the traditional desire of anti-racism campaigners to avoid seeing people purely in terms of their membership of a group or giving a social dimension to the concept of race. It is felt that the publication of raw data in this area would risk reinforcing stereotypes and stirring up antagonism, to the detriment of genuinely equal opportunities for all.

14. There is therefore a broad national consensus for the constitutional framework, which has led, for example, to the withdrawal from the “Base élèves 1er degré” (a database of pupils in State schools) of the data on pupils’ nationality, among other things. Article 4 of the Decree of 20 October 2008 establishing the database (see the written replies of the Government of France to the list of issues prepared by the Committee on the Rights of the Child for its meeting on 26 May 2009) thus provides that “no data concerning the nationality or racial or ethnic origin of pupils and their parents or legal guardians may be registered” (CRC/C/FRA/Q/4/Add.1, p. 35).

15. Finally, in addition to all the legal and ethical arguments and the national consensus that underlies them, it is important to remember that the statistics currently collected in France - name, geographic origin and nationality - already give an accurate picture of the population and permit any discrimination to be detected.

16. The data on the nationality and place of birth of individuals and their parents, or on the language learned as a child, can be used to reveal information on first- and second-generation immigrant families and to monitor their school and university careers, so that government policy can be adapted accordingly.

17. Most French researchers share the view of the sociologist Jean-François Amadieu (president of the Discrimination Monitoring Centre) that they have “sufficient measuring tools”.<sup>3</sup> Moreover, many foreign researchers find that French data permit studies of discrimination comparable to such studies in most other European countries. Institutional bodies such as the French Economic and Social Council<sup>4</sup> and research centres such as the Discrimination Monitoring Centre<sup>5</sup> are thus working to identify inequalities, particularly among population groups of foreign origin.

18. The issue is still being studied by other bodies too. In spring 2009, for example, the Commissioner for Diversity and Equal Opportunities, who was appointed in December 2008 by the Head of State, set up a committee to measure and evaluate discrimination and diversity (COMEDD), chaired by the director of the National Institute for Demographic Research (INED), to study statistical tools in this area.

19. It should be stressed that the legal framework referred to above appears to be a crucial factor in national cohesion and effective government policy in France. It is also worth pointing out that studies which do apply the concepts of “minority” and “community”, although these are not recognized in national law, nevertheless give satisfactory results for French society. Moreover, in a poll conducted by the Pew Research Center to find out how people from different cultural and religious categories view each other, France came out as the top country in the world for mutual acceptance and tolerance. The report found that the French Muslim population (along with that of Spain) was the least negative in the world in its attitude towards Westerners.<sup>6</sup> This national cohesion is also reflected in the high figures for mixed marriages in France.

20. Finally, since the Human Rights Committee mentions access to public-sector jobs in its concluding observations, it is worth pointing out that equal access to the civil service by all citizens, regardless of their origin, is ensured by, in particular, a recruitment process that relies heavily on competitive entry examinations. The principle underlying the process rests on a solid legal and constitutional foundation (in particular, article 6 of the Declaration of the Rights of Man and of the Citizen). Anonymity in the written tests is a guarantee of impartiality in the recruitment procedure, as is the collegiate nature of the panels and the oversight of the

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<sup>3</sup> Interview in *L'Expansion*, 23 February 2007.

<sup>4</sup> See, in particular, the report published by the Council on 26 September 2002 entitled “L’insertion des jeunes d’origine étrangère” ([www.conseil-economique-et-social.fr/ces\\_dat2/2-3based/base.htm](http://www.conseil-economique-et-social.fr/ces_dat2/2-3based/base.htm)).

<sup>5</sup> See, for example, the study carried out for the High Council on Integration by the Discrimination Monitoring Centre on elected municipal councillors from immigrant families ([www.observatoiredesdiscriminations.fr/the-community](http://www.observatoiredesdiscriminations.fr/the-community)).

<sup>6</sup> See the full report, “The great divide: How Westerners and Muslims view each other”, at <http://pewglobal.org/reports/display.php?ReportID=253>.

administrative courts. On 2 December 2008, the Minister for the Budget, Public Accounts and the Civil Service, the junior minister for the civil service and the president of HALDE signed a charter on the promotion of equality in the civil service, which is now in effect.

## II.

**“The State party should review its detention policy in regard to undocumented foreign nationals and asylum-seekers, including unaccompanied children. The State party should reduce overcrowding and improve living conditions in such centres, especially those in the overseas departments and territories.”**

(CCPR/C/FRA/CO/4, para. 18)

21. The State party is more than happy to provide the information requested, as this subject, despite being raised in the concluding observations, gave rise to no questions from the Committee, either in writing or orally, when it considered the report of France.

22. The issues raised by the Committee in this recommendation call for several explanations. The conditions for holding a person in a “waiting zone” (*zone d’attente*) (for foreigners who have been refused entry at the border or who submit an application for asylum at the border) and for holding a person in administrative detention (*rétenion administrative*) are spelled out in the law (Code on the Entry and Residence of Aliens and the Right of Asylum (CESEDA), arts. L.221-1 and L.551-1 et seq.), and are backed up by legal and material guarantees, which apparently need to be recalled here.

### A. Legal framework

23. **Holding period:** a person may not be held for longer than 20 days in a waiting zone (except in cases where an asylum application is filed in the last six days of the holding period or where a legal appeal against the decision refusing asylum has been lodged in the past four days, in which case an extension by the same period is possible). Administrative detention may not last for longer than 32 days. These periods, which are based on the need to reconcile effective measures to deny leave of entry or to remove a person and respect for their human rights, are among the shortest in Europe.

24. In practice, the average stay in a waiting zone is 2 days for a person to whom leave of entry is denied and 6 days for an asylum-seeker, and the average period in a holding centre is 10 days.

25. **Conditions:** after the first 4 days, a person may be held in a waiting zone only with the authorization of the liberties and detention judge, for a period not exceeding 8 days; only this judge may further authorize, exceptionally, the extension of the period beyond the first 12 days. Administrative detention exceeding 48 hours may only be authorized by the same judge for periods of up to 15 days or, at the end of this period, for a further 5 or 15 days, according to an exhaustive list of cases set out in the law.

26. All these judicial decisions are taken after the person concerned has received a hearing in the presence of defence counsel (who may be a court-appointed lawyer paid by the State) and an interpreter. The judge’s order is open to appeal before the first president of the appeal court.

27. **Rights of aliens:** foreign nationals kept in waiting zones or holding facilities may at any time during their stay request the assistance of an interpreter or doctor and contact a lawyer or any other person of their choice. They are notified of these rights in a language they can understand shortly after being held. They receive, by right, assistance from an interpreter at the various stages of the holding process (notification of the decision to refuse leave of entry or to hold the person, interview at the French Office for the Protection of Refugees and Stateless Persons (OFPRA), hearing before a judge). The rights of aliens during the removal and holding procedure (including the right to seek asylum) are set out in the most commonly used languages in a document available to everyone in a holding facility.

28. In the waiting zone at Roissy airport (where over 90 per cent of migrants arrive), under an agreement signed with Anafé (the Association nationale d'assistance aux frontières pour les étrangers, an umbrella organization), this organization can provide non-stop legal assistance to foreigners. The Red Cross provides non-stop humanitarian assistance at the airport. In holding centres, legal assistance is provided by Cimade or other specialized associations and humanitarian aid is provided by the French Immigration and Integration Office (OFII, the successor of the National Agency for Foreigners and Migrants, ANAEM).

29. **Monitoring the conditions in waiting zones or holding facilities:** the public prosecutor and the liberties and detention judge, who may visit the premises, check that the foreigner's rights are respected and inspect the conditions in which they are held. In the waiting zones, this task can also be carried out by the French delegation to the Office of the United Nations High Commissioner for Refugees (UNHCR) and by humanitarian associations, whose right of access is governed by an agreement with the authorities and who may talk in confidence with the foreigners.

30. The waiting zones and holding facilities may also be visited and inspected at any time by members of parliament (Code of Criminal Procedure, art. 720-1) or by the Office of the Controller-General for Places of Deprivation of Liberty, an independent authority set up pursuant to the Act of 30 October 2007 in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They may also be visited by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe (see report in CPT/Inf (2007) 44, of 10 December 2007) and by the Commissioner for Human Rights of the Council of Europe (see "Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, further to his visit to the Zones d'Attente (waiting areas) at Roissy Airport and the Mesnil-Amelot Administrative Holding Centre", CommDH(2008)5, of 20 November 2008).

## **B. Material conditions**

31. In theory, pursuant to articles R 551-2 et seq. of the Code on the Entry and Residence of Aliens and the Right of Asylum, foreigners who are detained are held in national administrative detention centres. Such persons may only be held in other administrative detention facilities - for a maximum of 48 hours except in exceptional cases - in certain circumstances and if they cannot be taken immediately to a centre. Administrative detention centres are governed by the statutory provisions of a decree of 30 May 2005, which sets out the material conditions for inmates. In particular, it provides for 10 m<sup>2</sup> of space for each person, standards of sanitation and comfort,



free access to a telephone, and shared accommodation and catering facilities. Rooms are available for private meetings with lawyers, and it is possible to receive visitors. Rooms are available for medical purposes and for daily visits from a nurse. Other holding facilities are required to provide adequate temporary accommodation (dormitories, sanitation) and to enable inmates to exercise their rights (by providing a telephone, visiting area, room for lawyers).

32. The norms for holding centres take the recommendations of the CPT into account. Since 2005, in an ongoing effort to renovate old buildings and construct new ones, the authorities have been bringing such centres up to standard and they remain vigilant as regards the use of other administrative detention facilities.

33. The same requirements apply to conditions in the waiting zones. The Roissy waiting zone (ZAPI 3), which houses 90 per cent of foreigners refused admission or seeking asylum at the border, is considered, in the words of the report of the Commissioner for Human Rights of the Council of Europe, “a perfectly satisfactory accommodation centre, as the 2006 Report rightly noted” (see CommDH(2008)5, mentioned earlier).

34. Moreover, special emphasis is placed on ensuring that staff in the centres are professional and properly trained in order to improve reception conditions.

35. In France’s overseas departments and territories, the Government is also concerned about assuring good conditions in holding facilities for aliens. Places of deprivation of liberty in these departments and territories are therefore open to any organization that wishes to inspect them. Accordingly, the Children’s Ombudsman recently visited the administrative detention centre in Mayotte, and the CPT visited all places of deprivation of liberty in French Guyana.

36. In Mayotte, the run-down state of the administrative detention centre led the Government to undertake major renovation work. Significant improvements have been made to furnishings (e.g. new mattresses, installation of a telephone) and to medical, sanitation, legal and catering services. Moreover, a new centre is to be built before the end of 2011.

37. In French Guyana, there is also a programme to renovate places of detention, and the Government will make sure, in any case, that the recommendations of the CPT are followed.

### **C. Unaccompanied minors**

38. It is not possible for an unaccompanied minor to be placed in a holding facility, in so far as French law prohibits the application of removal orders to minors.

39. However, children who have to stay with their parents may find themselves in a holding centre if their parents are subject to a removal order for unlawful residence, though special care is taken in such cases to house the family in centres with special areas for families. In the rare cases where this is not possible, the family will be placed in the areas reserved for women. All these measures are overseen by the liberties and detention judge, who may end the confinement if the conditions are deemed unsatisfactory. In practice, families are often restricted to residence rather than kept in a holding facility.

40. Special attention is paid to unaccompanied minors placed in waiting zones. In addition to the aforementioned legal guarantees applicable to all aliens, under the Act of 4 March 2002 the

public prosecutor must promptly appoint an ad hoc guardian to assist and represent the child in all legal and administrative proceedings related to the child's stay in the waiting zone and entry to national territory.

41. Moreover, pursuant to article 93 of the Immigration and Integration Act of 24 July 2006, as from 1 December 2008 the requirement under the Legal Aid Act of 10 July 1991 whereby an alien must have entered France legally or hold a residence permit valid for at least a year has been rescinded. Unaccompanied foreign minors or young adults can now therefore claim legal aid<sup>7</sup> in asylum proceedings provided that they have evidence of habitual residence in France, lawful or otherwise. This new provision was brought into effect by the Order of 2 September 2008, which set the amounts for payments in the criminal justice system for forensic medicine, translation, interpretation and ad hoc guardians. The fixed amount paid to ad hoc guardians assigned to foreign unaccompanied minors was raised by between 50 per cent and 200 per cent, depending on at what stage of the proceedings the ad hoc guardian becomes involved.

42. At Roissy airport, children under the age of 13 are lodged in a hotel and looked after by a nanny; soon, special facilities will be provided for them where they will be taken care of by the Red Cross. They enjoy all the legal guarantees mentioned above, including the appointment of an ad hoc guardian. Minors over the age of 13 are placed in ZAPI 3, where they receive special treatment from the Red Cross and others.

43. In accordance with the principle of *non-refoulement* enshrined in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, no unaccompanied minor seeking entry to France will be returned to their country of origin if they would appear to be at risk of treatment prohibited by the Convention if returned there; in such cases, the child is sent to a special centre. No child may be left unaccompanied and unprotected on French territory as a result of an entry application. If the need for protection in France cannot be established, the French authorities will ensure that the child is safely returned to his or her family in the country of origin.

44. An inter-ministerial working group on foreign unaccompanied minors was set up on 11 May 2009 by the Ministry of Immigration, Integration, National Identity and Development Solidarity. It brings together international organizations (UNHCR, United Nations Children's Fund (UNICEF)) and non-governmental organizations (Red Cross, France terre d'asile, Forum réfugiés, Anafé). Its job is to study the question of foreign unaccompanied minors in France, and particularly the issues surrounding their placement in waiting zones. The working group will be careful to take into account the principle of the best interests of the child, as guaranteed by the Convention on the Rights of the Child, and the particularly vulnerable situation of these minors. It is expected to issue its conclusions in September 2009.

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<sup>7</sup> That is, full or partial payment of lawyer's fees by the State.

### **D. Overcrowding**

45. Generally speaking, there is no overcrowding in the holding centres and waiting zones in metropolitan France, thanks in particular to the efforts of the French authorities over the past few years to increase their capacity while improving conditions inside them.

46. However, it is possible that in exceptional circumstances, when migration pressures are particularly strong, the accommodation capacity temporarily will fall short. This was the case in December 2007 and at the beginning of January 2008 in the Roissy waiting zone, following a sudden and massive influx of asylum-seekers. The situation prompted a visit to France by the Commissioner for Human Rights of the Council of Europe (see CommDH(2008)5, cited above). As ZAPI 3 had reached its maximum capacity, the French authorities were forced temporarily to use various other locations in the airport and departure lounge B33, which are not, it is true, suitable for accommodation over longer periods and where conditions are not satisfactory. However, a number of measures were taken very quickly: women and children were given priority for accommodation in ZAPI 3; the B33 departure lounge was fitted out making it more suitable for lodging people; blankets and washing kits were handed out; and a multilingual information system was set up.

47. This exceptional situation came to an end late in January 2008, and the temporary arrangements were discontinued. However, the situation did show how difficult it can be in a crisis, whatever efforts are made, to maintain the quality standards to be expected of accommodation for asylum-seekers at the border.

48. The French authorities intend to pursue efforts to improve reception and accommodation facilities in holding centres and waiting zones, while respecting the rights and dignity of the persons concerned. The Controller-General for Places of Deprivation of Liberty, who is responsible for these places too and who can offer advice and make recommendations to the administrative authorities, will also contribute, through the dialogue between the independent institution he heads and the authorities, to improving conditions in holding centres and waiting zones.

### **III.**

**“The State party should ensure that the return of foreign nationals, including asylum-seekers, is assessed through a fair process that effectively excludes the real risk that any person will face serious human rights violations upon his return. Undocumented foreign nationals and asylum-seekers must be properly informed and assured of their rights, including the right to apply for asylum, with access to free legal aid. The State party should also ensure that all individuals subject to deportation orders have an adequate period to prepare an asylum application, with guaranteed access to translators, and a right of appeal with suspensive effect.**

**“The State party should further recognize that the more systematic the practice of torture or cruel, inhuman or degrading treatment, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. The State party should exercise the utmost care in the use of such assurances and adopt clear and transparent procedures**

**allowing review by adequate judicial mechanisms before individuals are deported, as well as effective means to monitor the fate of the affected individuals.”**

(CCPR/C/FRA/CO/4, para. 20)

49. The Government notes that there is still some confusion over its procedures and practices, and points out that the French authorities never use “diplomatic assurances”. France has in fact taken a strong stance against the very concept of diplomatic assurances in international forums such as the Council of Europe.

50. In any case, respect for the fundamental principle of not returning aliens to a State where they would be at risk of being tortured or ill-treated is guaranteed by French law: first when their asylum application is considered (regardless of whether it is submitted at the border or within French territory); and then when removal procedures are undertaken (where it is particularly important to distinguish between escorting an illegal alien to the border and expulsions). These procedures incorporate legal guarantees for the rights of the individuals concerned.

#### **A. Procedures for considering asylum applications**

51. Asylum applications are examined with reference to the Convention relating to the Status of Refugees, as well as to “complementary protection”, which covers those who do not meet the criteria set out in the 1951 Convention but who would be at risk of being subjected to capital punishment, torture or other inhuman or degrading treatment or punishment, or who may face threats as a result of widespread violence. In all cases, such protection can be granted regardless of who is responsible for the persecution - it may be a non-State actor - if the authorities are unable to provide protection.

52. Only the French Office for the Protection of Refugees and Stateless Persons (OFPRA) is authorized to examine asylum applications. OFPRA is an independent public institution with a qualified, specialized and properly trained staff recruited by competitive examination.

53. **Asylum applications made at the border:** these may only be rejected by decision of the Minister of Immigration, whose decision is based on the advice of OFPRA. This advice is systematically issued after a personal interview with the asylum-seeker, who has the help of an interpreter if necessary. The asylum application may only be rejected if it is “manifestly unfounded”.

54. Since the adoption of the Act of 20 November 2007, an application may be made to the administrative court for the setting-aside of a decision refusing leave to enter for the purposes of asylum, and this application has full suspensive effect, as required by the European Court of Human Rights (judgement in the case of *Gebremedhin v. France*, 26 April 2007). Under this procedure, the asylum-seeker may be heard, request the assistance of an interpreter, be assisted by counsel (appointed by the court if need be) and receive legal aid; the court looks closely at the decision to refuse asylum and can set it aside if it believes the asylum-seeker would be exposed to danger if returned. The decision to refuse leave to enter cannot be enforced before the court has delivered its judgement.

55. Moreover, as has already been mentioned in the response to the recommendation in paragraph 18 of CCPR/C/FRA/CO/4, asylum-seekers held in a waiting zone are fully informed

of their rights in relation to this procedure and have access to legal assistance from Anafé. The time limit for lodging an appeal is set at 48 hours, so as to reconcile the right to appeal, for which there are no particular formalities, and the restrictions on the maximum stay in the waiting zone. However, a bill is presently before parliament that would extend the time limit to 72 hours, in order to make it easier for the foreigner to appeal.

56. **Asylum applications made within French territory:** these can be lodged at any time. The written application is examined by OFPRA, in the vast majority of cases after a personal interview, where necessary in the presence of an interpreter paid for by the State. Decisions by OFPRA to reject an application can be appealed to the National Court on the Right of Asylum (CNDA), a special administrative court whose decisions can be appealed on points of law to the Council of State, which takes decisions on a collegiate basis and counts among its members a representative of UNHCR. The asylum-seeker can present his arguments orally with the help of an interpreter and counsel, whose fees are generally covered by legal aid.

57. The general principle is that every asylum-seeker has the right to remain in the country for the time it takes OFPRA to examine the application and, in the event of an appeal to the National Court on the Right of Asylum, until the Court has taken its decision. The appeal therefore has full suspensive effect. However, in a departure from this principle, some asylum applications are examined under a “fast-track” procedure, which enables OFPRA to process the application more quickly; in such cases, an appeal to the Court does not have suspensive effect. This procedure is limited to the three cases envisaged in the law: (a) the alien’s presence in France constitutes a serious threat to public order; (b) the application is manifestly fraudulent or unjustified or submitted purely to block a removal order; or (c) the asylum-seeker is a national of a country to which the clauses on cessation of refugee status apply, or of one which is on the list of countries considered as safe. Seven per cent of asylum applications (mostly applications for reconsideration of a decision) were fast-tracked in 2008.

58. This provision strikes a fair balance between, on the one hand, respect for the right of asylum, which requires OFPRA to carefully examine every asylum application with the same due process as in ordinary proceedings, and, on the other, the need to deal with asylum applications submitted to gain time or for other purposes that have nothing to do with applications for protection.

59. In this respect, some explanation may be in order with regard to the concept of countries of origin considered as safe. This concept stems from a directive of 1 December 2005 of the Council of the European Union, under which a country is considered safe if, by law, it “ensures respect for the principles of freedom, democracy and the rule of law, as well as human rights and fundamental freedoms”. The list is drawn up by the OFPRA governing body under the supervision of the Council of State, and currently contains the names of 15 countries: Benin, Bosnia and Herzegovina, Cape Verde, Croatia, Georgia, Ghana, India, Madagascar, Mali, Mauritius, Mongolia, Senegal, Ukraine, the former Yugoslav Republic of Macedonia and the United Republic of Tanzania.

60. Contrary to what the Committee has been given to understand, neither Algeria nor the Niger are on the list (the former has never been on the list and the latter was removed from the

list by decision of the Council of State on 13 February 2008).<sup>8</sup> The OFPRA governing body keeps a close eye on international developments and updates the list. Some 9.5 per cent of asylum applications concern countries on this list.

61. Finally, with regard to asylum applications made from within holding centres, it should be pointed out that these are submitted by aliens subject to removal orders, most of whom have been in France for a long time without spontaneously submitting an asylum application. Upon arrival in a holding centre, aliens are specifically informed of their right to submit an asylum application within five days, and that, if they fail to do so, this time limit will no longer apply. The five-day limit is a reasonable period given that the maximum stay in the holding centre is 32 days and given the need to organize, within this time, the examination by OFPRA of the application, which can take over 96 hours, and to complete any departure formalities. Any extension of the time limit for filing an asylum application could damage the prospects for implementing the removal order should the application be rejected.

62. While it is true that the asylum application form must be completed in French, the asylum-seeker can receive legal assistance with this from the associations that have a permanent presence in the detention centres, under agreements with the State. The importance of this requirement should not be overestimated, given that the form is merely a starting point, and applicants can elaborate at length on their explanations in the interview with OFPRA, which is virtually automatic in the case of first-time applications.

## **B. Removal procedures**

63. To begin with, it should be recalled that French legislation guarantees that aliens are not returned to a State where they would be at risk of being subjected to treatment prohibited by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

64. Therefore, regardless of whether or not the alien has previously submitted an asylum application in France, and in line with the Convention against Torture, French law prohibits their return to a country where there are substantial grounds for believing that they would be in real danger of being subjected to ill-treatment. This rule applies whatever form the removal decision takes - escort to the border for illegal residence, a ban from French territory handed down with a criminal penalty, or expulsion on serious public-order grounds.

65. In all cases, if there are claims of a risk to the applicant, the administrative authority examines the situation, taking into account the general human rights situation in the country of return, the situation of any vulnerable group to which the person belongs, and the applicant's personal circumstances, past activities and relationship with the authorities.

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<sup>8</sup> See comments in paragraph 20 of the concluding observations (CCPR/C/FRA/CO/4): "The Committee is also concerned that under the State Party's so-called 'priority procedure' (*procédure prioritaire*), physical deportation occurs without waiting for the decision of any court in removals to so-called 'safe countries of origin' (*pays d'origine sûr*), apparently including Algeria and Niger."

66. Removal orders can be challenged before the administrative court, which checks that they do not contravene any international convention and which may overturn the decision regarding the country of destination if it appears that the alien would be at risk of inhuman or degrading treatment there. If an appeal is lodged against a decision requiring the person to leave the territory or to be escorted to the border, the appeal has full suspensive effect. As soon as an alien is notified of a removal order, they are informed, in a language they understand, of their right to appeal; during the appeal proceedings they are given a hearing, in the presence of an interpreter if necessary and with the assistance of counsel (court-appointed if necessary).

67. As regards expulsion orders, which are issued on public-order grounds, the French authorities wish to remind the Committee that, except in exceptional cases, the decision is taken after the person concerned has been informed that proceedings have been opened against them, and has been summoned to appear before a departmental expulsion commission (COMEX). This commission, consisting of judicial officers and an administrative judge, issues an advisory opinion. The alien may be accompanied by a lawyer or any other person of their choosing and may be assisted by an interpreter and receive legal aid.

68. Whatever form the expulsion proceedings take, the expulsion order may be the subject of an application for reconsideration or an appeal to a higher body, and of an application to the administrative court for annulment, possibly together with an urgent application for a stay of execution (*référé suspension*). It may also be the subject of an urgent application for the protection of a fundamental freedom (*référé liberté*). If granted by the judge, an urgent application suspends the execution of the measure, in which case the applicant may be ordered to remain in a particular place.

69. Lastly, it can be pointed out that legal aid is granted, with no requirement in terms of lawful and habitual residence, if the foreign national is the subject of one of the procedures set out in articles L.222-1 to L.222-6 (extension of stay in a waiting zone), L.312-2 (referral by the administrative authority to the commission for residence permits), L.511-1 and L.512-1 to L.512-4 (proceedings concerning residence permits accompanied by an order to leave French territory, and proceedings concerning escort to the border), L.522-1 and L.522-2 (referral by the administrative authority to the commission for expulsions) or L.552-1 to L.552-10 (extension of administrative detention in premises that are not under the authority of the prison service) of the Code on the Entry and Residence of Aliens and the Right of Asylum (CESEDA). Moreover, since 1 December 2008, evidence of lawful entry and residence in France is no longer a prerequisite for eligibility for legal aid when an asylum-seeker appears before the National Court on the Right of Asylum.

### **C. Overseas departments and territories**

70. The law applicable to aliens has been extended to Mayotte, New Caledonia, French Polynesia and the islands of Wallis and Futuna by means of ordinances, which replicate the structure and usually the letter of the law in metropolitan France to impose identical requirements for entry to and residence in the territory concerned.

71. While illegal immigration does of course take place in metropolitan France, it takes on a whole new dimension overseas, though not all overseas territorial communities are affected equally by it. Immigration to Mayotte, French Guyana and Guadeloupe is undoubtedly a product

of the particularly strong migration pressures in those places. This can be explained partly by their geographic proximity to regions where people's standard of living is far lower than that enjoyed by the French population, and partly by their porous borders.

72. The particular situation in those places therefore requires measures to preserve public order and unity among the territories. Such measures are also aimed at curbing trafficking, especially human trafficking, which has become a real parallel economy, to the detriment of people living in difficult circumstances in their home country.

73. In adopting the most recent laws on immigration (Act No. 2006-911 of 24 July 2006, and Act No. 2007-1631 of 20 November 2007), the Government therefore adapted several legislative provisions to the specific characteristics and requirements of the territorial communities.

74. The adaptation of legislation from metropolitan France for application overseas is authorized by article 73 of the Constitution, for overseas apartments, and article 74, for overseas territorial communities. Such adaptations, which are restricted geographically and in time, are monitored by the administrative court and must be justified by real problems. This is the case, for example, with the exception made for appeals against decisions to escort an alien to the border: such appeals are not suspensive in territorial communities where the circumstances justify an exception.<sup>9</sup> The person concerned can, however, challenge a decision by submitting an application for the decision to be set aside, and can take the case to the urgent-applications judge. The Constitutional Council has confirmed the validity of this system on several occasions.

75. With regard to the number of children expelled every year from Mayotte, it is important to distinguish between children who are with their families and who leave with them, and unaccompanied minors who emigrate to France without their family and may thus be at risk. It is settled case law that the removal of individuals with their underage children is not contrary to the applicable legislation. However, dealing with the second category of minors requires a different approach, which is now under consideration.

76. In Mayotte, the General Council is responsible for providing social assistance to children but there are no special arrangements for taking care of unaccompanied minors. They are therefore brought to the attention of the children's judge as "children who may be at risk". Under article 375-3 of the Civil Code, the judge can entrust the child to a "trustworthy person" where this step is necessary for the protection of the child. This person is then responsible for the child's return to his or her country of origin. The average holding time is usually just a few hours.

#### IV.

**"The State party should ensure that anyone arrested on a criminal charge, including persons suspected of terrorism, is brought promptly before a judge, in accordance with the provisions of article 9 of the Covenant. The right to have access to a lawyer also constitutes a fundamental safeguard against ill-treatment, and the State party**

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<sup>9</sup> An appeal to OFPRA, on the other hand, is suspensive throughout French territory.



**should ensure that terrorism suspects placed in custody have prompt access to a lawyer. Anyone arrested on a criminal charge should be informed of the right to remain silent during police questioning, in accordance with article 14, paragraph 3 (g), of the Covenant.”** (CCPR/C/FRA/CO/4, para. 14)

**“The State party should limit the duration of pretrial detention, and reinforce the role of ‘liberty and custody judges’ (*juges des libertés et de la détention*).”**  
(CCPR/C/FRA/CO/4, para. 15)

77. In light of the Committee’s observations and recommendations on custody and pretrial detention, some further explanations may be useful.

78. With regard to custody, and in light of the observations preceding the recommendation in paragraph 14, the Act of 23 January 2006 permits individuals suspected of terrorism to be held in custody for an initial period of four days. This period may, on certain conditions, be extended twice by 24 hours, giving a total time in custody of six days at most. Any extension is decided by a judge not linked to the investigation (the liberties and detention judge). Moreover, access to a lawyer is possible, at the request of the individual, after 72 hours, 96 hours and 120 hours of custody.

79. Although, as the Committee points out, the right to remain silent during questioning is not explicitly guaranteed in the Code of Criminal Procedure, it is stressed that the individual concerned can always choose to remain silent, without that choice entailing any consequences.

80. With regard to the observations preceding the recommendation in paragraph 15, the Government would like to recall that the assistance of a defence lawyer and periodic reviews of the detention by the liberties and detention judge are guaranteed. In addition, detainees are entitled to a review of detention at any time and without any restriction, if they so request. The possibility that such pretrial detention might be prolonged in some cases can be explained by the numerous investigations that have to be undertaken, sometimes abroad. In any event, the duration of pretrial detention is deducted from the final sentence.

## V.

**“The State party should have no tolerance for acts of ill-treatment perpetrated by law enforcement officials against foreign nationals, including asylum-seekers, who are detained in prisons and administrative detention centres. The State party must establish adequate systems for monitoring and deterring abuses and should develop further training opportunities for law enforcement officials.”**  
(CCPR/C/FRA/CO/4, para. 19)

81. The Government would like to make some further comments on the recommendation contained in paragraph 19, which appears to suggest that the French authorities tolerate acts of ill-treatment perpetrated by law enforcement officials against foreign nationals. It would appear in order to remind the Committee once again of the ethics training provided for law enforcement officials in France, and of the checks in place and the punishments handed down.

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

83. The French authorities are very attentive to the conditions in which individuals are arrested or held in custody or any other form of deprivation of liberty, as well as during the execution of removal orders against aliens. In particular, very close attention is paid to three important principles listed in the code of ethics of 16 March 1986 and elaborated on in the practical guide to ethics, as revised in 2001: absolute respect for all persons, whatever their nationality or origin; only the strictly necessary and proportionate use of force; and the protection of individuals after arrest and respect for their dignity.

84. Observance of these principles has recently been highlighted in a circular from the Ministry of the Interior dated 11 March 2003, on the dignity of persons in custody, as well as in the new rules and regulations of the national police, of 6 June 2006, and in the development plan for the national police for 2008-2012. In the same spirit, the French authorities are organizing special training courses to ensure careful monitoring, and impose severe penalties in all cases of proven misconduct.

85. The ethical component of training has been strengthened since 1999, with particular emphasis on the principle of respect for the dignity of all persons and the prohibition of ill-treatment. The National Commission on Security Ethics (CNDS) and the High Authority to Combat Discrimination and Promote Equality are involved in joint training exercises in this area.

86. Special attention is paid to training in the use of professional methods of intervention that incorporate the principles mentioned above, in particular with regard to procedures for the removal of aliens. Special courses can also be arranged, such as the one held on “Police officers and diversity”, to help ensure that people’s cultural, religious or other differences are taken into account.

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

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

89. Respect for human rights is monitored internally by the hierarchy and by specific bodies such as the Office of the Inspector General of the National Police (IGPN)<sup>10</sup> and the Office of the Inspector General of the National Gendarmerie (IGGN).

90. Numerous external control mechanisms have also been established. It should be noted in the first place that police officers who have committed criminal offences are prosecuted. In

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<sup>10</sup> The Committee will find an account of the role, work and achievements of the IGPN in 2008 annexed to this document.

addition, France has established independent administrative authorities to which lawmakers have assigned specific tasks in the field of human rights, such as the High Authority to Combat Discrimination and Promote Equality, the National Commission on Security Ethics and the Office of the Controller-General of Places of Deprivation of Liberty.

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

92. Any police officer who breaks the law or breaches ethical rules is liable to both criminal and disciplinary sanctions. Hence, of the 3,423 disciplinary sanctions imposed on police officers in 2008 (as compared with 3,318 in 2007 and 3,228 in 2006), 163 were for proven acts of violence; 14 resulted in dismissal or a similar penalty and 4 in compulsory retirement for the officers concerned. In the same year, 1,348 cases (as compared with 1,454 in 2007 and 1,721 in 2006) were referred to the Office of the Inspector General of the National Police. Of these, 585 concerned assaults (as compared with 727 in 2007 and 708 in 2006). These figures need to be seen in the context of the 4 million interventions made by the police each year.

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