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

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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Seventh periodic reports of States parties due in 2014

France*,**,***

[5 March 2015]

* The sixth periodic report of France is contained in document CAT/C/FRA/4-6; it was considered by the Committee at its 928th and 931st meetings on 27 and 28 April 2010. For the Committee's concluding observations, see also CAT/C/FRA/CO/4-6.

** The present document is being issued without formal editing.

*** The annexes may be consulted, in their original language, in the archives of the secretariat.

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Introduction

1. France has the honour to submit to the Committee against Torture its seventh periodic report under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. In accordance with the Committee's general guidelines regarding the form and content of periodic reports (CAT/C/14/Rev.1), this report consists of two parts. The first contains a description of developments falling within the scope of the Convention that have occurred since the submission of the previous report. The second is a response to the recommendations made by the Committee in its concluding observations on the previous report of France (CAT/C/FRA/CO/4-6).

3. It should also be noted that this report, like its predecessors, was prepared through a process of consultation with civil society, as represented on the National Consultative Commission for Human Rights. In keeping with its purpose and representative function, the Commission "contributes to the preparation of reports that France is required to submit to international organizations, pursuant to its human rights treaty obligations".

Part I

4. The developments falling within the scope of the Convention of which the Government of France would like to inform the Committee include: (a) the submission of a bill on asylum reform; (b) legislative reforms strengthening the prerogatives and capacity of the national mechanism for the prevention of torture; and (c) the ratification by France of the Convention on preventing and combating violence against women and domestic violence, which entered into force on 1 August 2014.

(a) Asylum reform

5. Since 2007, France has been dealing with a sharp increase in requests for asylum: 35,520 in 2007, 47,686 in 2009, 57,337 in 2011, 61,468 in 2012 and 66,251 in 2013. For several years, France, along with Germany, has been one of the two European countries receiving the largest number of asylum seekers.

6. The increased demand for asylum has created a backlog in the system, prolonging the processing of applications and worsening the conditions in which asylum seekers are received.

7. A thorough reform of the asylum system is therefore needed. Consideration of the reform of the asylum system began in July 2013, with the establishment, at the suggestion of the Minister of the Interior, of a broad consultation process involving the United Nations High Commissioner for Refugees, the French Office for the Protection of Refugees and Stateless Persons, the National Court on the Right of Asylum, the French Immigration and Integration Office and many civil society organizations.

8. The consultation concluded on 28 November 2013 with the submission of a report containing a set of proposals for reform.

9. This report identifies eight principles by which legislative action in this area should be guided:

- The strengthening of safeguards for asylum seekers, especially the most vulnerable;
- Compliance with European standards on asylum issues, in particular the new European Union directive on reception standards (Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), hereafter the "Reception Directive") and the European directive on the procedure for dealing with asylum applications (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast); hereafter the "Asylum Procedures Directive"), to be transposed into French law in 2015;
- The need for timely processing at all stages;
- More suitable financial coverage and improved distribution of asylum seekers throughout the country;
- The need for tools to deter abuse of asylum procedures for purposes other than the need for protection;
- Improved access to rights for persons who have been accorded international protection;
- The effective return to their countries of origin of persons who, after the examination of their application for asylum, have not been awarded protection;
- Clarification of the procedures and resources mobilized.

10. This is the thinking behind the submission of a bill that was adopted on first reading by the National Assembly on 16 December 2014.

11. The bill seeks to strengthen safeguards for asylum seekers at all stages of the process: faster registration of their applications, the presence of counsel during the interview with a protection officer and greater sensitivity to the vulnerability of asylum seekers.

12. The bill also provides that appeals of rejections of asylum applications have suspensive effect in all cases.

13. Moreover, it establishes new procedures for timely consideration of applications, backed up by safeguards. A new fast-track procedure, replacing the current priority procedure, will be put in place by or under the control of the French Office for the Protection of Refugees and Stateless Persons, which will be allocated additional resources to ensure faster processing of asylum applications. Contentious proceedings have also been updated, not least with the institution of an accelerated suspensive appeal procedure, to be completed in five weeks before a single judge of the National Court on the Right of Asylum. The time given to the Court to make decisions on normal procedures is five months.

14. Furthermore, the bill also seeks to make the conditions of reception of asylum seekers fairer and more equitable by improving the distribution of asylum seekers throughout the country and standardizing the benefits they receive, while still taking into account their family situation.

15. Finally, the bill strengthens the rights of asylum beneficiaries to family reunification and travel documents, essential components of integration into French society.

16. The Committee will be kept informed of the progress of this legislative reform.

(b) The Act of 26 May 2014 on the Inspector-General for Detention Facilities

17. In its concluding observations on the previous report (see CAT/C/FRA/CO/4-6, para. 4), the Committee had noted with satisfaction the ratification by France of the Optional Protocol to the Convention and the establishment of the post of Inspector-General for Detention Facilities as a national preventive mechanism within the meaning of the Optional Protocol.

18. The results of the work of the Inspector-General after the six-year term of the first incumbent are extremely positive.

19. By the end of 2012, less than four years after the creation of the post, the Inspector-General had visited:

- 237 of 4,095 police custody facilities;
- 18 of 236 customs-service detention centres;
- 49 of 182 court cells or jails;
- 150 of 191 prisons;
- 70 of 102 administrative holding centres and facilities or waiting areas;
- 106 of the 369 health-care facilities under its mandate;
- 34 of 44 secure educational centres.

20. In 2010, the Inspector-General also made a significant number of follow-up visits to assess the changes made after his earlier recommendations.

21. In addition to these visits, the Inspector-General's Office has received an ever-increasing number of communications, as the Act of 30 October 2007 allows any individual or any legal entity whose work centres on respect for fundamental rights to bring to the Office complaints of alleged violations of the fundamental rights of persons deprived of liberty. Moreover, the Inspector-General has decided that even in the absence of obligations arising from the Act of 30 October 2007, any communication addressed to him should receive a response and, whenever appropriate, lead to inquiries intended to ascertain the veracity of the allegations.

22. On the basis of this experience, the Inspector-General has called for a change in the Act of 30 October 2007 to enable him to improve the effectiveness of his Office, as well as to bring the law into line with established practices and ensure greater protection of the people who turn to him.

23. The Act of 26 May 2014, which started as a parliamentary bill, can be seen as a response to the recommendations made by the Inspector-General on the strength of his experience.

24. The Act provides a legal basis for the methods developed by the Inspector-General since the creation of the post, both for the handling of individual complaints and for submitting his opinions and recommendations to facility directors and ministerial authorities for their comments.

25. The Act also provides additional support for his action by giving the Inspector-General the capability to collect information from any person likely to provide him with information (rather than only the directors of the places visited), by granting him the authority to summon such persons before him and by allowing him access to ordinarily confidential medical records at the express request of the person concerned or, in the case of a minor or a particularly vulnerable person, without this consent.

26. Measures have also been adopted to protect persons who are in contact with the Inspector-General by prohibiting all penalties for such contact, strengthening the confidentiality of such discussions and making impairment of the work of the Inspector-General an offence.

27. Finally, the Act has broadened the work of the Inspector-General's Office to include:

- A role in supervising the removal of foreign nationals until they are handed over to the authorities of the receiving State;
- The option of sending the authorities advice on plans for the construction or renovation of places of detention.

(c) Ratification and entry into force of the Council of Europe Convention on preventing and combating violence against women and domestic violence

28. Since the 1990s, the Council of Europe, and its Steering Committee for Equality between Women and Men in particular, has been taking initiatives to further the protection of women from violence.

29. At the Warsaw Summit (16-17 May 2005), the Heads of State and Government of the States members of the Council of Europe reiterated their commitment to eradicating violence against women, including domestic violence.

30. On 10 December 2008, the Ministers' Deputies of the Council of Europe agreed to task the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence with developing a binding legal instrument or several such instruments.

31. After discussion, a majority of the delegations came out in favour of a legally binding instrument covering violence against women in the domestic and public spheres, without excluding other forms of domestic violence. The delegations also decided overwhelmingly in favour of a convention based on the so-called 3-P structure: prevention, protection and prosecution.

32. The draft Convention was approved by the Ad Hoc Committee and adopted by the Committee of Ministers of the Council of Europe on 7 April 2011.

33. It was opened for signature on 11 May 2011, signed by France on the same day and ratified on 4 July 2014.

34. This ratification was preceded by the adoption of an act bringing French law into line with some of the provisions of the Convention by:[1]

- Criminalizing attempts to perform an abortion on a woman without her consent (arts. 39 and 41, para. 2, of the Convention);
- Criminalizing luring a person abroad to force him or her to enter into a marriage (art. 37, para. 2, of the Convention);
- Criminalizing the very fact of inciting an underaged girl to undergo genital mutilation, even when the incitement has not led to the act; that is, when genital mutilation was neither performed nor attempted (art. 38 of the Convention);

[1] Act No. 2013-711 of 5 August 2013 introducing various modifications in the judicial field to bring domestic law into line with European Union law and the international commitments of France.

- Eliminating the provision, contained in article 706-3, paragraph 3, of the Code of Criminal Procedure, stating that victims of serious offences must be legally resident to obtain compensation (art. 30, para. 2, of the Convention).

35. The Convention, also known as the Istanbul Convention, entered into force on 1 June 2014.

36. It establishes a monitoring mechanism referred to as the Group of experts on action against violence against women and domestic violence, before which States parties are called upon to report on the steps they have taken to implement the Convention.

Part II

37. During the consideration of the previous report of France, the Committee addressed several recommendations to the Government of France in paragraphs 13 to 40 of its concluding observations.

38. In addition, the Committee invited the Government to provide information on the implementation of six of these recommendations, contained in paragraphs 14, 21, 24, 28, 30 and 36 of the concluding observations. The French Government had the honour of complying with that request in the form of a follow-up report sent to the Committee on 22 June 2011 (CAT/C/FRA/CO/4-6/Add.1). The parts of the present report that relate to the six recommendations concerned (marked with an asterisk) should be read as a complement to the responses provided previously.

39. The information in this report reflects the state of law and practice at the time of its drafting, while making reference, where appropriate, to ongoing reforms. If the need arises, the information herein can be made more specific, supplemented or updated during the consideration of the report by the Committee.

Reply to the recommendations in paragraph 13 of the concluding observations

40. In paragraph 13 of its concluding observations, the Committee recommended that France incorporate in its criminal law a definition of torture that is in strict conformity with article 1 of the Convention. The Committee also reiterated its recommendation that torture be made an imprescriptible offence.

41. Here, we cannot but refer to the reply previously provided by France (see CAT/C/FRA/4-6, paras. 6-10) to the effect that the offence relating to “torture and acts of barbarity” under Article 222-1 of the Criminal Code admits, as interpreted by the courts, of a definition consistent with article 1 of the Convention, article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) and the jurisprudence of the European Court of Human Rights.

42. In particular, it should be emphasized anew that article 222-3, para. 7, of the Criminal Code differentiates among acts of torture and punishes them more severely when they are committed by persons vested with public authority in the exercise of or in connection with their duties. Likewise, any public official who, expressly or tacitly, encourages or consents to the perpetration of torture incurs identical penalties as an accessory to the offence.

43. In this regard, the criminalization of torture in French law is consistent with the aim and purpose of the Convention, while falling under a definition broader than that in article 1, insofar as it makes it possible to charge a public official with torture and

acts of barbarity or wilful violence, depending on the seriousness of the offence and the extent of the injury, it provides for the application of more severe penalties in every instance depending on the status of the perpetrator.

44. In addition, the clarity and predictability of French laws on combating torture cannot be questioned. As it happens, the European Court of Human Rights, to which a complaint had been brought by a Mauritanian national prosecuted and convicted in France under the quasi-universal jurisdiction established by article 689-2 of the Code of Criminal Procedure, explicitly dismissed the complaint, finding that the acts imputed to the complainant constituted offences defined with sufficient predictability and accessibility under French and international law (*Ould Dah v. France* (dec.), no. 13113/09, 17 March 2009). In its concluding observations on the third periodic report of France, the Committee itself welcomed the conviction in this case (CAT/C/FRA/CO/3, para. 14).

45. Finally, the French Government notes that the Convention does not require that torture be made an imprescriptible offence. This is the case only when torture is a crime against humanity within the meaning of article 7, paragraph 1 (f), of the Rome Statute of the International Criminal Court and article 212-1 of the Criminal Code.

Reply to the recommendations in paragraph 14 of the concluding observations (*)

46. In paragraph 14 of its concluding observations, the Committee recommended that the State party introduce an appeal with suspensive effect for asylum applications conducted under the priority procedure, that it automatically hold individual interviews and that it ensure appropriate training for the judges responsible for assessing complaints relating to article 3 of the Convention.

(a) Introducing an appeal with suspensive effect

47. In general, when an asylum decision by the French Office for the Protection of Refugees and Stateless Persons is appealed before the National Court on the Right of Asylum, the appeal has suspensive effect, and no expulsion can take place before the Court rules.

48. Only in exceptional instances specifically listed in the law can an application for asylum be considered under the priority procedure, in which case the appeal before the Court does not have suspensive effect. The instances concerned, exhaustively enumerated, are as follows: the asylum seeker is from a country considered safe; the presence of the asylum seeker constitutes a threat to public safety; and the application for asylum is fraudulent or has been submitted only to thwart an expulsion.

49. The use of this procedure can be appealed before the administrative courts, which can reverse the decision to use the priority procedure, thereby giving suspensive effect to appeals to the National Court on the Right of Asylum.

50. The issue of the suspensive effect of appeals of the decisions made by the Office for the Protection of Refugees and Stateless Persons and the more general issue of accelerated or priority review procedures are among the items likely to be taken up as part of the reform of asylum procedures.

51. In this respect, the bill on asylum reform provides for thorough changes to the priority procedures, which are henceforth referred to as “accelerated” procedures, in accordance with the Asylum Procedures Directive. The Office will be legally entitled to implement these accelerated procedures on the basis of criteria intrinsic to the contents of the application; the administrative authorities will be entitled to do so

solely on the basis of criteria extrinsic to the contents of the application. However, the Office will still be able to reclassify the examination of an application for asylum as falling under the normal procedure. In particular, the bill expands the suspensive effect of appeals before the National Court on the Right of Asylum to include all applications for asylum, whether they were examined under the normal or the accelerated procedure, meaning that no asylum seeker can be expelled before his or her application has been definitively rejected by the Office for the Protection of Refugees and Stateless Persons and the National Court on the Right of Asylum.

(b) Interviewing asylum seekers

52. The law makes it a requirement to hold interviews with asylum seekers and provides for exemptions from that requirement only in very specific cases, exhaustively listed in article L. 723-3 of the Code on the Entry and Residence of Aliens in France and the Right of Asylum. Summons for interviews with the Office were issued at an overall rate of 84.4 per cent in 2013; for first-time applicants, the rate was 96 per cent, and for first-time applicants under the priority procedure, 98 per cent.

53. The bill on reforming asylum procedures strengthens the interview requirement, as the Office will be able to dispense with the requirement only when it is preparing to recognize refugee status or where medical causes are involved.

(c) Training judges

54. Administrative judges study European and international law on immigration and asylum during their basic education and professional development.

55. Once they have been recruited, administrative judge trainees take courses in immigration law, a field that makes up a large share of the cases they will hear.

56. Trainee judges also receive practical training by studying the case files on disputes over the right of residence and the deportation of aliens. Their basic training also includes a visit to an administrative holding centre for aliens.

57. In addition to this initial training, the administrative court system's training centre organizes several one-day refresher courses for administrative judges each year on the latest developments in legislation relating to aliens.

58. The training centre also offers courses in other aspects of legislation relating to aliens and, more broadly, on international and European human rights law. These courses may cover such topics as:

- The risk of torture in the sending country;
- Disputes over visa denials;
- The right of residence for health-related reasons;
- An overview of the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights;
- The human rights situation in sending countries.

59. In addition, for administrative judges, the National Court on the Right of Asylum organizes one or two conferences a year dealing with the geopolitical situation of the countries accounting for the largest share of applications for asylum, as well as internships focused on the right of asylum.

60. The learning opportunities made available to administrative judges thus ensure that, throughout their careers, they receive the training they need to understand the

implications of international and European law and thus to help prevent human rights abuses in the context of immigration and asylum.

Reply to the recommendations in paragraph 15 of the concluding observations

61. In paragraph 15 of its concluding observations, the Committee recommended that any appeal against a decision to refuse entry for the purposes of asylum should be subject to a hearing before the judge, and that the appeal should be subject to all basic procedural guarantees, including the right to an interpreter and counsel.

62. Article L. 221-1 of the Code on the Entry and Residence of Aliens in France and the Right of Asylum states that aliens who have arrived in France by rail, sea or air and who are either not authorized to enter French territory or are seeking entry on the grounds of asylum may be held in a waiting area located at a railway station, in a port or near the place of disembarkation, or in an airport for an interval strictly necessary to organize their departure or, if they have requested asylum, to check whether their application is manifestly unfounded.

63. If the alien is an asylum seeker, articles R. 213-2 and R. 213-3 of the Code state that the decision to grant or refuse entry is to be made by the Minister of the Interior, after consultation with the Office for the Protection of Refugees and Stateless Persons, which interviews the alien.

64. In the event of refusal of entry, article L. 213-9 of the Code provides for an appeal with suspensive effect that must be submitted to the president of the administrative court within 48 hours of the notification of the decision.

65. This appeal was introduced by Act No. 2007-1631 of 20 November 2007 on immigration control, integration and asylum. It was instituted pursuant to the reasoning in the judgement in *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, 26 April 2007.

66. The terms and conditions under which aliens seeking asylum may appeal a decision to deny them entry provide all the procedural guarantees essential to the filing of the appeal.

67. First, when aliens are placed in a waiting area, they are asked to indicate a language that they can understand, and whether they can read. The language that the aliens say they understand is used throughout the procedure (art. L. 111-7 of the Code on the Entry and Residence of Aliens).

68. Aliens are informed in a timely manner that they may request the assistance of an interpreter and a doctor and that they may communicate with counsel or any other person of their choice (art. L. 221-4 of the Code on the Entry and Residence of Aliens).

69. Before a decision on entry into the territory is made, they are also informed in a timely manner, in a language it is reasonable to assume that they understand, about the asylum process and about their rights and obligations over the course of the proceedings.

70. Aliens are interviewed by an official of the Office for the Protection of Refugees and Stateless Persons, if necessary with the assistance of an interpreter, who is to be paid by the State (art. R. 213-2 of the Code on the Entry and Residence of Aliens).

71. At that stage of the proceedings, aliens thus enjoy safeguards enabling them to present all the components of their applications in an effective manner.

72. Second, when a decision to refuse entry is taken by the Minister of the Interior, aliens are to be informed of this decision. In such cases, the decision must mention the right to file an appeal to reverse the decision and must specify the modalities and time limits for filing this appeal (art. L. 213-2 of the Code on the Entry and Residence of Aliens).

73. A copy of a report prepared by an official of the Office for the Protection of Refugees and Stateless Persons must be forwarded to them, together with the decision to refuse entry.

74. Moreover, aliens who are being held in waiting areas may be assisted by the Association nationale d'assistance aux frontières pour les étrangers (National Association for Border Assistance to Foreigners).

75. The process thus includes numerous safeguards that enable aliens to contest the decision in court effectively.

76. Third, when they contest a refusal, aliens may be represented by counsel of their choice or they may ask the president of the court for counsel to be appointed. They may also request the assistance of an interpreter (art. L. 213-9 of the Code on the Entry and Residence of Aliens).

77. In urgent proceedings where the judge rules within 72 hours, the case is examined during hearings. The parties may put forward new reasoning and enter new pleas.

78. In this context, aliens who have been refused asylum enjoy all the procedural guarantees necessary for exercising the right of appeal provided for under article L. 213-9 and the right to counsel. In response to the Committee's observation in paragraph 4 (c), the Government of France attaches "Le praticien face à une victime de torture" (When medical personnel are treating torture victims) as annex 1 to this report, a document drafted jointly by the Ministry of Health and the Association pour les victimes de la répression en exil (Association for the Victims of Repression in Exile).

79. In addition, as part of the bill on asylum reform, the legal regime applicable to requests for entry to France is to be revised to strengthen its safeguards and ensure compliance with the provisions of the Asylum Procedures and Reception Conditions Directives.

80. Finally, there will be special provisions to benefit vulnerable people, including minors.

Reply to the recommendations in paragraph 16 of the concluding observations

81. In paragraph 16 of its concluding observations, the Committee expressed concern about the requirements that asylum seekers in places of detention must meet to submit their applications and recommended allowing additional time, as well as having better procedural guarantees.

82. In this regard, it should be recalled that under the law (art. L. 551-3 of the Code on the Entry and Residence of Aliens and the Right of Asylum), all aliens placed in administrative detention are informed of their right to seek asylum. This right must be exercised within five days of such notification.

83. As soon as they have applied for asylum, aliens have the right to remain in France until a decision is taken by the Office for the Protection of Refugees and

Stateless Persons. If the Office's decision is negative, it is not subject to an appeal with suspensive effect before the National Court on the Right of Asylum.

84. The deadlines correspond to the very limited detention periods, which cannot exceed 45 days, and to the need to prevent last-minute asylum applications from being submitted during or at the end of detention for the sole purpose of making it impossible to enforce removal orders. This provision was found to be constitutional by the Constitutional Council (decision No. 2003-484 DC of 20 November 2003), on the grounds that it reconciles "respect for the right of asylum [...] with the need to ensure compliance with expulsion measures as part of the maintenance of public order" and as long as the rights that can be exercised in connection with applications for asylum are made clear.

85. Asylum seekers are given a number of solutions to facilitate the submission of their applications, including the right to counsel, an interpreter and legal assistance provided by a non-profit association partnering with the State.

86. The review of applications for asylum made in detention involves the same safeguards from the Office for the Protection of Refugees and Stateless Persons as those available to persons seeking asylum under the normal procedures. Applications are reviewed by an immigration officer with special expertise in the alien's native region, in impartial fashion and in accordance with international human rights instruments and the jurisprudence of the National Court on the Right of Asylum. The officer reviews each application individually, on the basis of a personal interview with the asylum seeker.

87. In addition, the bill on asylum reform contains several provisions designed to strengthen the rights of asylum seekers placed in detention, in conformity with the Asylum Procedures Directive.

88. First, it states that an alien seeking asylum may be kept in detention only based on an explicit, reasoned decision made by the administrative authority if it deems that the request has been made for the sole purpose of thwarting the execution of an expulsion order. The bill also provides for an end to the detention when the Office for the Protection of Refugees and Stateless Persons considers that, given the complexity of the request, it is unable to make a determination in timely fashion. Finally, for detained persons whose applications have been rejected and who intend to appeal to the National Court on the Right of Asylum, it will provide the option to appeal to the administrative court against the administrative authority's assessment of the application as a stalling tactic and to request authorization to remain in the country until the National Court on the Right of Asylum has ruled.

Reply to the recommendations in paragraph 17 of the concluding observations

89. In paragraph 17 of its concluding observations, the Committee indicated that it was concerned about the concepts of "internal asylum" and "safe countries of origin", as well as about the way the list of such countries was drawn up. It also recommended that the use of these concepts should not preclude giving due consideration to applications for asylum, in accordance with article 3 of the Convention.

(a) Internal asylum

90. Under the Code on the Entry and Residence of Aliens and the Right of Asylum, "an asylum application from a person who would have access to protection in a part of his or her country of origin may be rejected if that person has no grounds to fear being subjected to persecution or a serious violation there and if it is reasonable to expect

that he or she can remain in that part of the country. The general conditions prevailing in that part of the country, the applicant's personal situation and that of the persecutor are to be taken into account when the decision on the application for asylum is made" (art. L. 713-3).

91. This provision is in line with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as persons who need international protection.

92. The implementation of this provision, the aim of which is to specify the criteria enabling the Office for the Protection of Refugees and Stateless Persons to assess the risk of persecution or the seriousness of the threats faced by asylum seekers, with a view to determining their need for protection, is carefully circumscribed: the Office is merely empowered to refuse asylum, rather than obliged to do so, and it has broad discretion. A refusal on these grounds is possible only on the dual condition that the person concerned has "no reason to fear being subjected to persecution or a serious violation" and that it is "reasonable to expect that he or she can remain in that part of the country"; it must be the result of a personalized situation assessment.

93. Finally, as the Constitutional Council ruled in its decision of 4 December 2003, it is incumbent upon the Office for the Protection of Refugees and Stateless Persons, under the supervision of the Refugee Appeals Commission (now the National Court on the Right of Asylum), to deny safe haven on these grounds "only after ensuring that the interested party can safely have access to a substantial part of his or her country of origin, settle there and lead a normal life".

94. These conditions, fully complied with (Refugee Appeals Commission, 7 April 2007; 16 February 2007), ensure effective protection of the rights of the persons concerned.

(b) Establishment of the list of safe countries of origin and judicial oversight

95. Coming from a safe country of origin is by no means grounds for the inadmissibility or rejection of an asylum application submitted by aliens who are nationals of that State. In all cases, asylum seekers' situations are assessed individually, a practice that, if the conditions are met, can lead to the conferral of protection.

96. Coming from a safe country has implications only from a procedural point of view, insofar as it entails examination of the application for asylum under the priority procedure enabling the Office for the Protection of Refugees and Stateless Persons to make a decision on short notice, although any appeal to the National Court on the Right of Asylum will be without suspensive effect.

97. This possibility is provided for by Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, as well as by the Asylum Procedures Directive.

98. The aim is to facilitate the processing of requests for asylum by setting up an accelerated procedure for applications by nationals of safe countries that ensures "respect for the principles of freedom, democracy and the rule of law, as well as human rights and fundamental freedoms".

99. The list of safe countries of origin is to be drawn up by decision of the governing body of the Office for the Protection of Refugees and Stateless Persons on the basis of a considerable amount of information on the situation in the country in question, including reports from diplomatic missions, European and international organizations and NGOs. This decision can be appealed to the Council of State.

100. The Council of State scrutinizes the decisions by which the Office places or keeps a country on the list of safe countries within the meaning of article L. 741-4, paragraph 2, of the Code on the Entry and Residence of Aliens and the Right of Asylum.

101. For example, it reversed a decision of 20 November 2009 whereby the Office's governing body had put Armenia and Turkey on the list and had retained Madagascar and (for women only) Mali on it (Council of State, 23 July 2010, Amnesty International section française et al. — Association Forum Réfugiés et al., Nos. 336034 and 336232).

102. For Mali, the Council of State found that "in view of the frequency with which female Malian nationals are subjected to genital mutilation, the Office for the Protection of Refugees and Stateless persons could not, without fear of misjudgement, consider Mali a safe country of origin when considering requests for asylum submitted by or on behalf of female nationals of that State".

103. On Madagascar, the Council of State took into account both the great political instability that prevailed after 2009 and the persecution and violence suffered by those who were opposed to the Government.

104. Regarding Turkey, the Council of State based its judgement on the violence against Turkish nationals of Kurdish origin in that country, as well as on the limitations to freedom of expression in force there. The Council of State concluded that "at the time of the contested decision, and despite the measures for better protection of human rights adopted by the Government, Turkey did not demonstrate the characteristics justifying its inclusion on the list of safe countries of origin within the meaning of article L. 741-4, paragraph 2", of the Code on the Entry and Residence of Aliens and the Right of Asylum.

105. This case shows that the administrative courts conduct a thorough review of the evidence used by the Office for the Protection of Refugees and Stateless Persons to draw up the list of safe countries of origin.

106. Finally, it should be recalled that, from the creation of a list of safe countries of origin in 2005 up until 2011, asylum seekers from those countries accounted for between 5 and 10 per cent of all asylum seekers. The figure was 7 per cent in 2011, 14.4 per cent in 2012 and 7 per cent in 2013.

107. In 2012, applications from persons from safe countries of origin accounted for 46 per cent of the priority procedures, and 91 per cent of such applications were subsequently classed as falling under the priority procedures. In 2013, the figures were 33.6 and 91.5 per cent respectively.

108. In 2013, the rate of admission of applicants from safe countries by the Office for the Protection of Refugees and Stateless Persons was 6.2 per cent (4 per cent in 2012), while the rate of rejection by the National Court on the Right of Asylum was 8.7 per cent (10.2 per cent in 2012).

109. The bill on asylum reform is aimed at improving the designation of safe countries of origin by adopting a definition more consistent with the Asylum Procedures Directive and by stiffening the requirement that the list be relevant and up to date.

Reply to the recommendations in paragraph 13 of the concluding observations

110. In paragraph 18 of its concluding observations, the Committee deplored the fact that it had received several documented allegations according to which persons expelled in violation of article 3 of the Convention, in some cases despite interim protection measures requested by the Committee or the European Court of Human Rights, had been detained and subjected to ill-treatment on arrival in the country concerned. The Committee recommended taking the steps necessary to ensure that such would not be the case in the future.

111. The Government of France wishes to stress that in the absence of any indication of the number and nature of the allegations that the Committee states that it has received, it is difficult to provide a meaningful response to the recommendation.

Reply to the recommendations in paragraph 19 of the concluding observations

112. In paragraph 19 of its concluding observations, the Committee recommended that the normal residence requirement for alleged perpetrators be replaced by a requirement that they be simply present in the territory, in accordance with articles 5 and 6 of the Convention.

113. The Committee's recommendation on this point seems to stem from a misunderstanding.

114. As it happens, articles 689-1 and 689-2 of the Code of Criminal Procedure, incorporated into French law by Act No. 99-515 of 23 June 1999, confer jurisdiction on French courts to prosecute for acts of torture within the meaning of article 1 of the Convention any person present in France, even if that person is not normally resident in France.

115. Those were the grounds for instituting the proceedings that led to the conviction, welcomed by the Committee in its concluding observations on the third periodic report of France (CAT/C/FRA/CO/3, para. 14), of a Mauritanian national found guilty of having subjected detainees to acts of torture and barbarity and of having brought about those crimes through abuse of authority or by giving orders to the military personnel who committed them.

116. It must also be emphasized that the lengthy parliamentary process of bringing French law into line with the Rome Statute of the International Criminal Court — with which the Committee had expressed concern — has now culminated in the adoption of Act No. 2010-930 of 9 August 2010 on adapting domestic criminal law to take into account the creation of the International Criminal Court. This Act, which led to the introduction of article 689-11 of the Code of Criminal Procedure, supplements Act No. 2002 of 26 February 2002 on cooperation with the International Criminal Court.

Reply to the recommendations in paragraph 20 of the concluding observations

117. In paragraph 20 of its concluding observations, the Committee requested more information on the initial and in-service training in human rights instruments provided to police officers, prison staff and medical personnel and on the training given to private security firms operating both in France and abroad.

(a) Training of law enforcement officers (police and gendarmerie)

118. The initial and in-service training of law enforcement officers, irrespective of rank, includes the study of acts of torture and barbarous acts as offences in their own right and as aggravating circumstances for related offences.

(i) National police

119. The national training plan, which sets out the year-long training policy for all police personnel, identified the following priorities for 2013: ethics, police-population relations, secure operations in at-risk neighbourhoods, service management and communication.

120. The training of assistant security personnel, i.e. contractual law enforcement agents who assist police officers in the performance of their duties, includes a module on ethics. The outline of the training can be found in annex 2 to this report.

121. During their training at the national police academies, police officers are taught the basics of ethics in police work.

122. The main purpose of the initial training at the National Police Officers Academy is to train police officers in the duties of high-ranking officers. To this end, six months are allotted to traineeships in national police departments, in addition to theoretical training in ethics and civil liberties.

123. The standards and requirements of ethics training are even higher for police superintendents, who undergo two years of training at the National Police Officers Academy. The training, in particular the module on the behaviour society expects from superintendents, deals in a cross-cutting manner not only with superintendents' adherence to ethical standards but also with their duty to ensure that the police officers under their command uphold and are mindful of such standards at all times (annex 4 of this report).

124. The Defender of Rights, or a representative thereof, is systematically involved in the initial training of superintendents and other officers. Information on its set-up and mandate is also systematically included in the initial training of police officers and assistant security personnel. Moreover, the Office of the Inspector General of the National Police always presents a summary of the Defender of Rights' recommendations during the initial and in-service training of all active national police personnel.

(ii) National gendarmerie

125. Similar instruction is provided to the personnel of the national gendarmerie, whose initial and in-service training, irrespective of rank, includes information on national and international laws for the protection of human rights.

126. Higher-ranking gendarmes take specific classes on ethics (a total of 64 hours) that broach the main ethical principles, international human rights instruments and how police practice should fulfil the obligations under these instruments.

127. Non-commissioned gendarmerie officers receive many hours of ethics training (31 hours).

128. Volunteer assistant gendarmes also receive ethics training (4 hours).

(iii) Constantly evolving training

129. There is an ongoing dialogue within law enforcement bodies about changes in control and arrest procedures in order to identify the techniques best suited to the situations that police officers encounter in the field.

130. These discussions cover, inter alia:

- The use of firearms and non-lethal weapons;
- The conditions for renewing licences for such weapons;
- The conditions for resorting to physical constraint;
- The ban on police officers refusing to be filmed in public;
- Security measures and handcuffing.

131. The discussions are followed by the dissemination of instruction circulars for the police and are also a reference for the continuous evaluation of initial and in-service training. A working group systematically obtains feedback from the lead trainers regarding the changes or adaptations they deem necessary and the recommendations to be made.

(b) Training of prison officials

132. The National Prison Administration Academy promotes and protects the fundamental rights of persons deprived of their liberty through the initial and in-service training of prison personnel, the certification of prisons under European prison regulations and international cooperation.

(i) Initial and in-service training

133. As part of its initial training programmes, the National Prison Administration Academy systematically allocates a set number of hours to the fundamental rights of persons deprived of their liberty so that all trainee prison personnel receive that information.

134. Due to the specificities of their duties, prison administration officials undergo initial training that covers, in addition to the main international instruments of universal scope, the standards that apply specifically to detained persons. These include the Council of Europe recommendations regarding the management of detained persons, in particular recommendation Rec(2006)2 of the Committee of Ministers on the European Prison Rules of 11 January 2006 (see paragraph 175). In addition, the work of the national mechanisms for the prevention of torture, be it the Inspector-General for Detention Facilities, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment or the Subcommittee on Prevention of Torture, is also specifically broached.

135. Conflict management, in enclosed and open spaces alike, is a major issue that concerns all the corps and categories of personnel; accordingly, the prison administration has set up a training programme for its staff.

(ii) Certification of prisons under European prison regulations

136. The European Prison Rules[2] spurred the drafting of a reference document for commitments and good practices on the part of prison administrators with a view to

[2] Initially adopted in 1973, then revised in 1987 and again in 2006, the Rules are designed to

effectively implementing the Rules and obtaining the certification of prisons.[3]

137. In 2014, 161 establishments obtained and/or retained the quality certificate that is issued and assessed annually by Bureau Veritas Certification. It should be noted that all of the establishments that underwent a renewal audit had their certification extended. The certification concerns primarily the admission of detained persons, as described in the reference document, in the following three stages:

- *Intake*: The prison undertakes to set up an individualized intake system that operates day and night. The system ensures that the imprisonment is lawful, that the incoming prisoners' urgent needs are taken care of (access to a shower, warm meal, clean underwear, free use of a telephone), that they are placed in specific intake rooms overseen by qualified personnel, that a personal log is opened and that the prisoners receive arrival documents detailing their rights and duties (new arrival's guide and admission programme);
- *Individualized treatment*: The prison administration undertakes, during the admission phase, to ensure that each prisoner receives personalized assistance. Under this system, the members of a multidisciplinary team (prison officials, medical partners and heads of the training, work and education sectors) meet with the prisoners during the first days of their confinement in order to assess their personal situation and to ensure prompt processing, in particular a medical check-up within 48 hours of imprisonment. The results of these interviews are shared with the team, in keeping with each department's prerogatives and obligations, especially with regard to professional confidentiality;
- *Report by a multidisciplinary committee*: At the end of the admission period, the situation of each prisoner is reviewed by the team members, meeting as a multidisciplinary committee. The review is to result in a personal report on each prisoner and a tailored imprisonment schedule (cell allocation, training, work). The personal report is to be made available to the prisoner and the judicial authorities and is subject to review throughout the imprisonment.

(iii) International cooperation

138. The National Prison Administration Academy has a major international cooperation policy involving the hosting of foreign delegations whereby, in close cooperation with the international relations department of the corrections service, it exchanges best practices in the protection and promotion of the fundamental rights of detained persons.

(c) Training of private security agents

139. The legal and regulatory framework governing the activities of private security firms has recently been strengthened.

140. Since 1 January 2012, the National Council on Private Security Activities, established pursuant to the Act of 14 March 2011, has been responsible for regulating access to the profession and overseeing its practice in accordance with the law and regulations and with the code of ethics that was adopted by decree on 10 July 2012.[4]

harmonize prison policies among member States of the Council of Europe and to encourage the adoption of common practices and standards. Although they are not binding on States, they nonetheless constitute a reference tool for the Ministry of Justice.

[3] See annex 5 to this report.

[4] Decree No. 2012-870 of 10 July 2012 (annex 6 to this report).

141. This new public institution, which comes under the Ministry of the Interior, has authority over surveillance and security activities, the use of electronic security systems, the transportation of funds, the physical protection of individuals, sniffer dogs, airport security and private detection agencies.

142. According to its 2013 activity report, the National Council audited 1,488 firms, visited 2,536 sites and ran background checks on 6,882 agents. It received 39,592 applications for professional badges and 42,487 requests for prior consent.

Reply to the recommendations in paragraph 21 of the concluding observations*

143. In paragraph 21 of its concluding observations, the Committee stated its particular concern about the persistent allegations regarding ill-treatment by law enforcement officers and invited the French authorities to take steps to ensure that all such allegations are promptly investigated in the course of transparent and independent inquiries, enabling them to identify the perpetrators and punish them appropriately.

144. The Government wishes to provide the following clarification on: the processing of complaints against law enforcement officers; on the conditions for the use of constraints during removals by air; and on the two cases of death by asphyxia specifically mentioned by the Committee in its concluding observations.

(a) Processing of complaints against law enforcement officers

145. Cases involving law enforcement officers are closely reviewed by public prosecutors, whose annual reports on criminal law policy systematically include sections on this type of case. They are also closely reviewed by internal investigation services as part of administrative disciplinary proceedings or criminal investigations. As an oversight body, the Office of the Inspector General of the National Police conducts judicial and administrative investigations but does not impose any penalties. Criminal penalties are handed down by the courts while administrative sanctions are meted out by the superior officer, upon the advice of a disciplinary committee in the most serious cases.

146. In 2012, the Office of the Inspector General of the National Police received 786 complaints of harm allegedly inflicted by law enforcement officers.

147. Regarding intentional acts of violence, inspection departments have received 591 allegations:

- Intentional violence not causing a temporary inability to work (186 cases);
- Intentional violence causing a temporary inability to work of less than 8 days (356 cases);
- Intentional violence causing a temporary inability to work of 8 or more days (44 cases);
- Intentional violence causing death (5 cases).

148. In such situations, the Office of the Inspector General of the National Police may suggest penalties against the police personnel involved. In 2013, it handed down 2,416 penalties, 1,988 directly (1,141 warnings and 847 reprimands) and 428 on the advice of a disciplinary board (12 warnings, 45 reprimands, 7 relegations in step, 163 temporary suspensions, 21 compulsory reassignments, 1 demotion, 118 temporary suspensions of between 3 months and 2 years, 11 forced retirements and 50 dismissals of senior officials).

149. In 2013, 37 disciplinary measures were taken against personnel of the gendarmerie for breach of ethics. These measures, whose use remains stable in comparison to previous years (38 in 2012, 39 in 2011 and 34 in 2010), do not systematically relate to acts of violence, which remain marginal.

150. In order to make it easier for the public to identify police officers and gendarmes, since 1 January 2014, members of the security forces have been required to wear a seven-digit badge number on their uniform.

151. The identification of police officers and gendarmes in this manner is based on the principles of transparency and individual accountability.

152. It should be noted that, independently of the possibility afforded to all persons to file a complaint with the public prosecutor, a police department or a gendarmerie unit, the directorates-general of the gendarmerie and the national police have set up online platforms for reporting breaches and offences committed by law enforcement officers. These reports can trigger investigations by the inspectorates of the national police and the gendarmerie.

(b) The use of constraints during removals by air

153. As noted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in the report of its visit to France from 17 to 21 June 2002:

> There are two levels of security for removals by air: unescorted departure with guard to the foot of the aircraft and escort to destination. The latter is compulsory for persons expelled from the country; in other cases (persons denied entry, persons returned to the border and indicted, convicted or extradited foreigners), the decision to provide an escort to destination is taken based on the circumstances, in accordance with ministerial circular No. NOR INT D94/00034C of 4 February 1994, which stipulates that persons who oppose their removal and foreigners who, because of their criminal record, might be violent or pose a risk to the safety of the passengers should be escorted during their trip (CPT/Inf (2003) 40, para. 17).

154. The above remains true, subject to amendments to the instructions on the execution of removal measures made since the European Committee's visit, especially with regard to the use of constraints. These instructions[5] fulfil the recommendations in the aforementioned report (para. 20) and similar recommendations contained in a decision of the National Commission on Security Ethics of 4 July 2003.

155. Coercion can be used during removals by air only when strictly necessary and in proportion to the removed person's behaviour and prospective resistance. The person may be brought under physical control using only the professional techniques taught during initial and in-service training and the equipment issued to the escorts.

156. These professional techniques, which were devised in consultation with doctors and are presented in the annexes to the instructions of the Office of the Inspector General of the National Police of 17 June 2003, absolutely prohibit all forms of gagging and the use of equipment other than that issued to escorts (metal or fabric handcuffs, adhesive strips such as "Velcro", restraining belts).

157. A strong practical guarantee of adherence to instructions is the fact that escorting removed persons is the responsibility of specialized agents and cannot under any circumstances be delegated to a private firm.

[5] See annex 7 to this report.

158. It is the particular remit of the agents of the Escort, Support and Intervention Unit.[6]

159. The Unit has nationwide jurisdiction and is responsible for escorting, by land, sea or air, persons who cannot remain in French territory, and for supporting the central and regional departments of the Central Directorate of the Border Police. Only police personnel who have been in service for at least three years, have been found medically fit and have passed recruitment examinations evaluated by a committee made up of a national police psychologist and two representatives of the administration can be posted with the Unit. Postings with the Unit last three years. Members of the Unit are also required to complete specialized courses at the beginning of their posting as well as in-service training (quarterly refresher courses) and individual and group exercises.

160. Members of the Unit perform 77 per cent of escorted removals.

(c) The specific cases of death by asphyxia

161. In its concluding observations, the Committee mentioned the deaths of Mr. Mohamed Saoud in 1998 and Mr. Abdelhakim Ajimi in 2007, about which the following information should be noted.

162. The investigation into the death of Mohamed Saoud resulted in a dismissal order of 12 October 2000, which was upheld by the investigating chamber of the Aix-en-Provence Court of Appeals in an order of 4 January 2001. The appeal against this order has been rejected.

163. However, by an order of 9 October 2007, the European Court of Human Rights found France guilty of violating article 2 of the European Convention on Human Rights, finding that the authorities had failed in their positive duty to protect the life of the person concerned. The Court considered that the person had been held in a position that caused slow asphyxiation at a time when he no longer represented a danger to the police officers who had arrested him (European Court of Human Rights, *Saoud v. France*, No. 9375/02, 9 October 2007).

164. In the case of Abdelhakim Ajimi, three police officers were convicted of manslaughter and/or failure to assist someone in danger via an order of the criminal chamber of the Court of Cassation dated 11 February 2013.

Reply to the recommendations in paragraph 22 of the concluding observations

165. In paragraph 22 of its concluding observations, the Committee reiterated its previous recommendation that the State party should guarantee immediate access to a lawyer during police custody, in accordance with article 11 of the Convention, and recommended that pretrial detention should be used less frequently and for shorter periods.

(a) Access to a lawyer in police custody

166. The provisions on police custody were substantially amended by the Act of 14 April 2011 and now permit persons in police custody to meet with a lawyer from the outset and to have the lawyer present during questioning, including in cases of terrorism, delinquency and organized crime.

[6] Whose organization, membership and mandate are set out in the order of 1 February 2011 on the mandate and organization of the Central Directorate of the Border Police (annex 8 to this report).

167. While there are exceptions to this principle, any postponement of the meeting with a lawyer is strictly regulated under the law, is of limited duration and always requires the reasoned and written decision of a judge.

168. Article 63-4-2 of the Code of Criminal Procedure authorizes deferring the intervention of a lawyer during questioning where this is considered indispensable for urgent reasons relating to the specific circumstances of the inquiry, either to allow for the proper conduct of urgent investigations whose purpose is to collect or preserve evidence, or to prevent imminent harm to others. Such deferral may be ordered by the public prosecutor or the investigating judge for a maximum of 12 hours. Where the investigation relates to an offence punishable by at least 5 years' imprisonment, deferral of access for up to 24 hours may be ordered by the liberty and custody judge or the investigating judge.

169. In investigations into delinquency or organized crime, access to a lawyer may be deferred for urgent reasons relating to the specific circumstances of the inquiry or investigation — either to collect or preserve evidence or to prevent imminent harm to others (article 706-88 of the Code of Criminal Procedure). Such deferral may be ordered by the public prosecutor during the first 24 hours, and beyond that by the liberty and custody judge or the investigating judge, in the event of a request for judicial assistance.

170. The deferral may exceed 48 hours only in drug trafficking and terrorism cases, where the maximum postponement is set by law at 72 hours (Code of Criminal Procedure, article 706-88, paragraph 6).

171. Thus, lawmakers have put in place a balanced system that provides for strict limitations on exceptions to the right to a defence which are in proportion to the seriousness of the offences and whose constitutionality and compliance with the international conventions to which France is a party has been confirmed on several occasions by the Constitutional Council (DC decision No. 2004-492 of 2 March 2004 and QPC decision of 22 September 2010).

(b) Development of alternatives to pretrial detention[7]

172. In its previous report to the Committee, the Government noted that the prison bill, which was being drafted at the time, would introduce house arrest as an alternative to pretrial detention (CAT/C/FRA/4-6, para. 89).

173. This is now the case: the Prison Act of 24 November 2009 instituted, in addition to placement under judicial supervision, the possibility for the investigating judge or the liberty and custody judge to place indicted persons under house arrest with electronic monitoring or mobile electronic monitoring.[8]

174. On 1 July 2014, there were 228 persons under house arrest with electronic monitoring (out of a total of 16,622 detained indicted persons, or 1.4 per cent), and 4 with mobile electronic monitoring.[9]

175. The conditions in which this measure can be ordered are governed by article 142-5 of the Code of Criminal Procedure, supplemented by articles D.32-3 to D.32-26, introduced through a decree of 1 April 2010. The entry into force of these provisions was the subject of a circular of the Ministry of Justice dated 18 May 2010.

[7] See annex 9 to the present report.
[8] See annex 10 to the present report.
[9] See annex 10 to the present report.

176. Both types of house arrest replace the judicial supervision with electronic monitoring that was instituted under the Act of 9 September 2002 but was very seldom used in practice.

177. These monitoring measures, alternatives to pretrial detention via electronic means, may only be applied to persons accused of offences punishable by at least 2 years' imprisonment. Moreover, under article 142-6 of the Code of Criminal Procedure, they may be ordered only following a public hearing held in the presence of a lawyer and the public prosecutor, as in the case of pretrial detention.

Reply to the recommendations in paragraph 23 of the concluding observations

178. In paragraph 23 of its concluding observations, the Committee recommended that the authorities make the video recording of interrogations a standard procedure and install video surveillance cameras throughout police stations and gendarmeries.

(a) Making the video recording of interrogations a standard procedure

179. As the Government indicated in its previous report to the Committee (CAT/C/FRA/4-6, paras. 69 to 71), the Act of 5 March 2007 mandated the audiovisual recording of interrogations by the police or investigating judge in criminal cases, but provided for an exception to this principle in cases of organized crime, offences undermining the fundamental interests of the nation and terrorism offences, for which the recording of interrogations is subject to a decision of the public prosecutor or the investigating judge.

180. However, in QPC decision No. 2012-228/229 of 6 April 2012, the Constitutional Council ruled that this exception constituted unjustified discrimination and breached the principle of equality; therefore, the Council repealed the seventh paragraphs of articles 64-1 and 116-1 of the Code of Criminal Procedure.

181. Accordingly, all interrogations led by the judicial authorities and the police in criminal cases are now recorded.

(b) Installation of cameras in police stations and gendarmeries

182. The Government has made it a priority to renovate police custody cells, especially those of the national police, and equip them with video surveillance.

183. The renovation plan concerns over 1,700 individual cells, 500 communal police custody cells and nearly 800 sobering-up rooms and will entail a considerable outlay.

184. However, while it provides for video surveillance equipment in all the cells, the plan does not include its installation in hallways and other passageways.

185. Concerns regarding the right to privacy would undoubtedly be raised if such equipment were to be installed in places like search rooms, lounge areas and bathrooms.

Reply to the recommendations in paragraph 24 of the concluding observations*

186. In paragraph 24 of its concluding observations, the Committee welcomed the adoption of the programme for construction of new prison facilities, but invited the State party to carry out a major review of the effects of its recent criminal policy on

prison overcrowding and to provide details about the implementation of the recommendations issued by the Inspector-General for Detention Facilities.

187. Prison overcrowding remains an issue in France.

188. On 1 March 2014, the nationwide average for occupancy of detention centres was 118.9 persons per 100 places. The rate was 118.4 per cent in metropolitan France and 126.3 per cent overseas.

189. Actions taken to fight overcrowding consist of gathering feedback on previous refurbishment programmes, rolling out an ambitious programme to expand and renovate prison facilities and implementing the policy on adjusted sentences and alternatives to imprisonment.

(a) Feedback on previous refurbishment programmes

190. Sixteen establishments were involved in the feedback exercise, which focused on the following:

- Comparison with foreign prisons systems;
- Establishment of 10 thematic working groups that met on several occasions;
- Consideration of the report of the Inspector-General of Places of Detention of liberty;
- Individual interviews;
- Consideration of the report of the Commission on Violence against Detainees;
- Exchanges with trade union organizations;
- Individualized consideration of work station ergonomics.

191. The exerciser shed light on the improvements that were needed with regard to visiting rooms (natural light, flow, wait time), exercise yards, the admission of families, waiting rooms in medical units and the passages between these units and cell blocks.

(b) Prison renovation programme

192. The Ministry of Justice is rolling out an ambitious programme to improve detention conditions and the working conditions of prison personnel.

193. This fully funded programme aims to add 6,500 places to meet the most urgent demand, as well as to close 1,082 of the most derelict places while opening new facilities to replace them. It also consists of vast renovation projects, including at the short-stay prisons of Baumettes, La Santé and Fleury-Mérogis.

194. Thus, by the end of 2018, France will have 63,500 prison places, of which 40,600 will have been built since 1990.

195. This will enable the prison administration to meet the requirements under the Prison Act with regard to individual cells.

196. Lawmakers have given the national preventive mechanism a say in the design and implementation of the programme. Act No. 2014-528 of 26 May 2014 added article 10-1 to the Act of 30 October 2007 on the Office of the Inspector-General for Detention Facilities, whereby this institution may submit to the competent authorities its opinion on building, restructuring and refurbishment projects in any place of detention.

197. Involving the national preventive mechanism in the prison renovation programme will ensure that the programme effectively protects the fundamental rights of detainees.

(c) Policy on adjusted sentences and alternatives to imprisonment

198. Concurrent with the ambitious refurbishment programme, the authorities are promoting alternatives to detention and furthering the policy on adjusted sentences.

199. Before handing down prison sentences, and in order to tailor sentences to the circumstances in each case, judges are strongly encouraged to consider alternatives to imprisonment.

200. There are many of these, including community service as the main penalty, a suspended sentence coupled with an obligation to perform community service, a suspended sentence coupled with probation, civic education courses, day-fines, an order to pay punitive damages, deferment of the sentence coupled with probation and the sentences provided for in article 131, paragraph 6, of the Criminal Code, which involve the deprivation or restriction of certain rights (suspension or revocation of a driving licence, prohibition against carrying a weapon, prohibition against writing checks).

201. Such alternatives make it possible to avoid issuing non-suspended prison sentences and to adapt sentences to the offender's profile and situation and the type of offence committed.

202. Among these alternatives, community service and deferred sentences coupled with probation are the primary alternatives to imprisonment and are being increasingly used. On 1 January 2007, 23,938 community service sentences and suspended sentences coupled with community service were being supervised by the Integration and Probation Correctional Service, compared to 34,459 on 1 October 2013, or 17.3 per cent of the non-institutional penalties overseen by the Service.

203. Deferred sentences coupled with probation are the most common of the alternative measures overseen by the Service. On 1 January 2007, the Service was overseeing 117,225 such non-institutional sentences, compared to 141,107 on 1 January 2014, or 72 per cent of non-institutional penalties. Deferred sentences coupled with probation have thus risen sharply in the past seven years, in part due to the implementation of the circular of 27 April 2006 on adjusted sentences and alternatives to imprisonment, which encouraged public prosecutors to request alternatives to imprisonment.

(d) Implementation of the recommendations issued by the Inspector-General for Detention Facilities

204. The Office of the Inspector-General for Detention Facilities was established pursuant to the Act of 30 October 2007, and the first Inspector-General, Mr. Jean-Marie Delarue, was appointed by a decree of 13 June 2008 for a non-renewable six-year term.

205. Mr. Delarue was succeeded by Ms. Adeline Hazan by a decree of 17 July 2014.

206. Since the Office of the Inspector-General was established, 215 prison establishments, departments and facilities have been visited. As at 1 August 2014, 120 visit reports had been drafted, 111 of which have already been responded to by the Ministry of Justice, while 9 await processing. The Ministry's responses constitute commitments to improving detention conditions and the treatment of detainees. Particular attention is paid to the Inspector-General's recommendations that are

published in the Official Gazette. Ministry inspectors have conducted follow-up visits to ascertain whether or not the commitments are being met.

207. Towards the end of his term of office, Mr. Delarue himself took stock of the implementation of his recommendations at a hearing before the Law Commission, held on 12 February 2014 as part of the parliamentary procedure that resulted in the Act of 26 May 2014 mentioned in the first part of this report (paras. 17 to 27).

208. Although he found regrettable that all his suggestions had not been acted upon, he nonetheless noted that:

> Action is sometimes taken on our recommendations at various levels. They are taken into account by lawmakers for example, as demonstrated by the Act of 14 April 2011 on police custody and the Act of 27 September 2013 on psychiatric treatment performed without consent, whose provisions we found to be satisfactory. Our recommendations are also followed by ministers, as demonstrated by the circular of 25 March 2013 on the procedures for the issuance and renewal of residency permits for detainees and the circular of 11 July 2013 on detainee access to entitlements. Lastly, they are followed by the administration; for example, the ban on coffee in prisons has been lifted. Wardens are open to our comments and try, to the best of their ability, to modify instructions provided to staff […], undertake refurbishments, change practices […].

209. It should also be noted that it is not solely for the executive branch, but also for the courts, to take into account the recommendations made by the Office of the Inspector-General, especially the "urgent" opinions which it has the power to publish in the Official Gazette when it finds a "serious violation" of the fundamental rights of persons deprived of their liberty (Act of 30 October 2007, article 9, paragraph 2).

210. One issue is currently of particular interest to the Inspector-General: the use of mobile phones in prison. The prison administration has accordingly initiated a discussion on the establishment of a new telecommunication system for prisoners, based on pilots run in Europe, especially in recently constructed institutions in Belgium.

Reply to the recommendations in paragraph 25 of the concluding observations

211. In paragraph 25 of its concluding observations, the Committee issued recommendations regarding waiting areas pending entry into France and invited the authorities to ensure that living conditions there are in conformity with the requirements of articles 11 and 16 of the Convention; that minors are segregated from adults, shielded from acts of violence and systematically assigned an ad hoc guardian; and that any removal procedures guarantee their safety and dignity. The Committee also invited the State party not to create additional waiting areas and to pay particular attention to the recommendations made by the Inspector-General for Detention Facilities regarding those currently operating.

(a) General comments

212. The authorities must ensure that placement in waiting areas, which is necessary to control entries into France, is subject to legal safeguards and that housing conditions are decent.

213. Persons cannot be kept in waiting areas for more than 20 days and, in practice, the average stay is two days (six for asylum seekers). This period is strictly monitored

by a judge, who is the sole person with the power to extend a stay for more than four days; extension decisions are appealable. Foreigners have guaranteed rights, of which they are informed in their language (right to a lawyer, a doctor, etc.) and are entitled to legal aid provided by associations that have signed agreements with the Ministry of the Interior and to medical care and humanitarian aid from the French Red Cross.

214. The material reception standards are based on a specific reference document, and efforts have been under way for several years to improve the quality of accommodation in all the waiting areas in France and overseas. The discussions on how to improve the conditions in these areas take into account the recommendations of the Inspector-General for Detention Facilities, with whom there is an ongoing dialogue.

(b) Minors

215. Unaccompanied foreign minors can be held in a waiting area at the border only if they do not possess the requisite documentation for entry into France or if they claim asylum, and only for the amount of time strictly necessary for the review of their situation.

216. This measure is justified in order to prevent the unrestricted entry of foreign youths who may be or may become victims of exploitation networks.

217. The purpose of placement in waiting areas is to help minors through all the relevant administrative and legal procedures, and all the steps taken on their behalf are under the aegis of the judiciary. Minors are entitled not only to all the safeguards in place for foreigners but also to specific safeguards, including the appointment of an ad hoc guardian responsible for protecting their interests. The guardian is chosen from a list, largely made up of child protection associations, and is provided with appropriate training.

218. While it is true that the appointment of ad hoc guardians has been problematic in the past, the situation has been resolved and 100 per cent of minors in waiting areas now have representation.

219. Very close attention is paid to ensuring that unaccompanied minors are not at risk of falling victim to exploitative gangs. This is one of the reasons why no systematic right of entry for unaccompanied minors exists and why each individual case is subject to very thorough investigation. In the presence of the ad hoc guardian, minors are given a hearing, the purpose of which is to obtain accurate information on their origin, background and prospects. It is a means of understanding the real reasons for their arrival in France and identifying any criminal offence that has been or may be committed, which is then brought to the attention of the judicial authorities.

220. When minors claim asylum, the inquiries in relation to their claim as well as their interview are conducted by officers of the French Office for the Protection of Refugees and Stateless Persons with the necessary qualifications and knowledge of the specific needs of minors. Their particular vulnerability and cultural background are duly taken into account.

221. Asylum may be granted to minors on the basis of the Convention relating to the Status of Refugees or through subsidiary protection, for example, in cases where they run a risk of falling victim to child trafficking, prostitution or abduction rings, forced labour or severe ill-treatment.

222. When it is established that they would be at risk if returned, minors are admitted to the country and placed under judicial protection in specialized facilities.

223. Where this is not the case, they are redirected to their country of origin and all necessary precautions are taken, including ensuring that they are safely returned to their family.

224. At Roissy Airport, where almost 95 per cent of minors arrive, all unaccompanied minors under the age of 13 are systematically placed in their own accommodation area that is strictly separated from the adult area and has a capacity of six. All minors between the ages of 13 and 18 are also placed in this area, space permitting, which is very often the case in practice.

225. An agreement with the Ministry of the Interior provides for the French Red Cross and Red Cross staff who are skilled in dealing with children's issues and humanitarian protection to run this facility and to provide assistance to the minors concerned. They maintain a presence 24 hours a day, 7 days a week. The agreement also provides for a psychologist to be present for 25 hours a month.

226. In cases where the ad hoc guardian, the Red Cross staff or the doctors working in the waiting area consider that a minor requires specific psychological support outside of regular hours, every effort is made to arrange it.

227. It should be noted that some changes regarding unaccompanied minors who claim asylum at the border are to be made as part of the legislative reform of the asylum system. The bill on asylum reform provides that unaccompanied minors can be placed in a waiting area for the time needed to determine whether their claim is reasonable only in exceptional circumstances, i.e. in specifically listed cases (safe country of origin, reconsideration, fake documents or false information intended to mislead the authorities, serious threat to public order).

(c) Use of ad hoc waiting areas

228. The Act of 16 June 2011 supplements article L.221-2 of the Code on the Entry and Residence of Aliens and the Right of Asylum (CESEDA), stating that: "In cases where it is clear that a group of at least 10 foreigners has just arrived in France at a point other than a border crossing, at the same location, or at a number of locations no more than 10 kilometres from one another, a waiting area shall be established for a maximum duration of 26 days and shall extend from the location(s) at which the persons concerned were discovered to the nearest border crossing."

229. The purpose of this provision, which in exceptional cases authorizes the creation of an ad hoc waiting area in the vicinity of the point of disembarkation, is to adapt the existing legislation to take into account of exceptional situations which may arise on the external land borders by providing a relevant legal framework.

230. To this date, the provision has not been applied.

231. Were such ad hoc areas to be set up in future, any foreigners affected would enjoy all the rights and guarantees afforded by the law to foreigners placed in waiting areas. In particular, requirements under the asylum legislation would be fully met and any asylum claims would be considered in line with all the guarantees provided for by law (hearing before the French Office for the Protection of Refugees and Stateless Persons, ministerial decision against which an appeal with full suspensory effect may be lodged with the administrative court).

Reply to the recommendations in paragraph 26 of the concluding observations

232. In paragraph 26 of its concluding observations, the Committee recommended that the French authorities should take all necessary measures to prevent suicide in

custody, and in particular, that under the supervision of the Public Prosecutor, the authorities should take steps to ensure that any solitary confinement remains an exceptional measure of limited duration.

233. Suicide among detainees certainly remains a real cause for concern, and the French authorities do not underestimate it: on the contrary, they are resolutely pursuing a policy of prevention.

234. The Ministry of Justice has made combating suicide among detainees a priority. To that end, on 15 June 2009 it launched a national action plan which applies to all prisons and to the Integration and Probation Correctional Service.

235. The action plan sets out 20 measures based on five objectives:

- Strengthening training for prison staff in assessing potential suicides;
- Applying specific protection measures for detainees at risk of suicide (emergency protection cells, emergency protection kits composed of tear-resistant blankets and tearable and disposable clothing, intercoms);
- Developing a multidisciplinary approach as a tool for identifying potential suicides;
- Combating the sense of isolation in disciplinary blocks. Prior to their placement in a disciplinary block, detainees are to meet with a supervisory staff member who will explain to them how their sentence will be carried out. This meeting also provides the opportunity to detect any potential risk of suicide. Two booklets have been published, one for detainees and the other for minors, to remind all persons held in disciplinary blocks of their rights and obligations. The document provides an overview and can be easily reproduced by each institution. The purpose of systematically holding a meeting with a supervisory staff member for any person placed in a disciplinary block following their remand in custody or further to a decision of the disciplinary committee is essentially to detect any possible vulnerability of the detainee. The meeting may provide an opportunity to review the incident that led to the detainee's placement in the disciplinary block. It gives staff the chance to see if any detainees are in a state of distress or are at risk of actually attempting to commit suicide and to bring the detainee to the attention of medical staff, social workers and probation officers;
- Engaging the whole prisoner community.

236. The measures that have been put in place, including experimental measures such as assigning a fellow prisoner to provide support, stem from the recognition that caring for persons at risk of suicide needs to be the responsibility of everyone who participates in prison life: prison staff, medical staff, partners of the Ministry of Justice, stakeholders, but also family, friends and fellow prisoners.

237. The action plan includes a particular focus on the sense of isolation experienced by persons held in disciplinary blocks and provides for appropriate procedures for admission to these units, as well as access to telephone and radio.

238. Since the first quarter of 2010, the disciplinary blocks have also been provided with emergency protection kits containing appropriate equipment, such as special tear-resistant blankets and tearable clothing to prevent prisoners from using their belongings to hang themselves. Moreover, as part of a pilot started in April 2014, solitary confinement units have been supplied with box cutters for security and protection personnel which enable them, if the situation so requires, to act promptly and effectively by cutting through any tied material which may have been used for the purposes of hanging.

239. Other pilot measures have already been widely implemented.

240. Such is the case for the emergency protection units, for example, which, as at 1 April 2014, had been established in 89 prisons. These are “smooth cells” without any kind of hooks. The cells are designed to hold, for a limited period (24 hours) and pending appropriate medical care, detainees who should not be placed or kept in ordinary cells because they pose a significant suicidal risk or are experiencing an acute suicidal episode.

241. Furthermore, since 2012 the “fellow prisoner” scheme, which has been piloted in three prisons since 2010, has been expanded: the objective is to implement the scheme in at least one prison under the jurisdiction of each interregional correctional service. This measure makes it easier to detect persons at risk and to enhance the support and counselling provided by professionals.

242. There are other initiatives that aim to further improve the detection of prisoners at risk of suicide, particularly during the most dangerous periods, such as when they arrive or are placed in a disciplinary cell.

243. The French authorities are also acutely aware that suicide prevention in prisons requires constant vigilance and that any results achieved in this area should never be considered definitive.

244. The death rate from suicide in detention fell significantly between 2009 and 2013 (see annex 15 to this report).

Reply to the recommendations in paragraph 27 of the concluding observations

245. In paragraph 27 of its concluding observations, the Committee expressed concern at the broad discretion given to the prison authorities in determining the detention regime and invited the French authorities to take appropriate steps to effectively supervise discretionary decisions made by prison authorities with a view to preventing any risk of arbitrary action, including through regular visits of the supervisory mechanisms and reporting by those mechanisms to the judicial authorities of any decisions that could be considered an arbitrary measure, particularly decisions involving solitary confinement.

(a) Different detention regimes and their oversight by a judge

246. Under article 89 of the Prison Act, No. 2009-1436 of 24 November 2009, paragraph 2 of article 717-1 of the Code of Criminal Procedure was amended and henceforth provides that the detention regime of prisoners is determined based on their personality, health, the danger they pose and their efforts towards social reintegration. A detainee may be placed under a harsher prison regime only if this does not violate the rights enshrined in article 22 of the Prison Act. This provision should therefore be read in conjunction with article 22 of the Prison Act, under which the prison authority guarantees to all persons respect for their dignity and rights.

247. It is important to emphasize that the differentiation of detention regimes has neither the purpose nor the effect of restricting human rights. The different regimes assist in tailoring to individual detainees the way sentences are carried out in detention facilities. The aim is to afford detainees more responsibility and autonomy. The observation period, which begins upon arrival at the facility, allows useful information to be gathered in order to carry out an assessment of the person concerned. It involves a meeting with members of the management team, the Integration and Probation Correctional Service, the medical unit, the officials in charge of education, training

and work and the psychologist dealing with the enforcement of the sentence. The central multidisciplinary committee also issues an opinion on each new arrival and meets on a regular basis to review the situation of detainees and decide on changes to the detention regime (at the request of the individual concerned or further to a proposal by management). The opinions of central multidisciplinary committee members are documented and the prison director's decision is informed by these discussions. All decisions relating to the placement, transfer or retention of a detainee are thus taken by reasoned decision within the central multidisciplinary committee.

248. A notice from the prison authorities of 20 July 2009 on the different regimes, which remains applicable, highlights the rules which must be enforced. It notes that detainees retain all rights pertaining to the detention regime provided for by law. The differentiation among regimes relates not to rights but to specific procedures for dealing with detainees according to the degree of autonomy they may be granted. The same notice also expressly states that the use of this differentiation among regimes may under no circumstances constitute a response to certain behaviour that may be a disciplinary offence.

249. The differentiation of detention regimes thereby fulfils the recommendations in paragraphs 51.1 to 51.5 of the European Prison Rules,[10] which provide that the security conditions applied in a prison must be adapted to the risk that each individual presents to the community. It is also in line with the recommendation in paragraph 104.1, on the organizational aspects of imprisoning sentenced prisoners, which encourages the placement of prisoners in separate sections of a prison to facilitate the management of different regimes.

250. Furthermore, decisions to place a detainee under a specific detention regime are overseen by a judge, whose involvement safeguards against the risk of arbitrary measures.

(b) Judicial review of decisions by the prison authorities

251. In addition to the issue of detention regimes, over recent years the reviews carried out by the administrative courts on the legality of measures taken by the prison service authorities relating to detainees have been strengthened.

252. Through its Combined Court decisions in Payet (No. 306432), Planchenault (No. 290420) and Boussouar (No. 290730) of 14 December 2007, the Council of State laid down the principle that in decisions on the admissibility of appeals for annulment, the nature and impact of any contested measures on the situation of detainees must be taken into account.

253. Owing to their nature or their impact on the situation of a detainee, some decisions (such as placement in solitary confinement) are inherently subject to appeal.

254. Other decisions, however, are not subject to appeal unless, as indicated by the Council of State, the fundamental rights and freedoms of detainees are at stake.

255. Even in the case of decisions that are not generally subject to appeal, the infringement of the fundamental rights and freedoms of detainees can always be the basis for an appeal on grounds of abuse of power.

256. In one instance, for example, an appeal against a decision to transfer a detainee to a different prison — which is not in itself a decision subject to appeal if the new prison falls into the same category as the previous one — was considered admissible on the grounds that this transfer, from a prison near the detainee's family home to a prison located over 800 km away made it more difficult for the detainee to exercise

[10] See paragraph 175 and footnote 3.

the right to family life while in detention; consequently, it was likely to violate a fundamental right (Council of State, 27 May 2009, Miloudi, No. 322148). Thus, if subject to a measure that threatens his or her fundamental rights, a detainee may claim that one of the rights under article 3 (Prohibition of torture or inhuman or degrading treatment or punishment) of the European Convention on Human Rights has been disregarded.

257. The Council of State's jurisprudence thereby testifies to the fact that the courts engage in specific and effective review of the conditions in which the authorities ensure the health and dignity of detainees.

(c) Role of the national preventive mechanism

258. Among the steps that might reduce the risk of arbitrary actions, the Committee mentioned in particular the possibility for the supervisory mechanisms to report to the competent judicial authority any decision that could be considered an arbitrary measure.

259. In this regard, it should be noted that the lawmakers went beyond the obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and empowered the national mechanism for the prevention of torture to report to the competent authorities any act that seems likely to incur criminal or disciplinary sanctions. Article 9 of the Act of 30 October 2007 establishing the Office of the Inspector-General for Detention Facilities provides that the Inspector-General shall inform the Public Prosecutor of any fact suggesting that a criminal act has been committed and inform the authorities or persons invested with disciplinary powers of any act likely to result in disciplinary proceedings.

260. This prerogative of the Office of the Inspector-General has recently been strengthened through the Act of 26 May 2014, which provides that the Public Prosecutor and the authorities or persons invested with disciplinary powers shall inform the Inspector-General of action taken to follow up on his or her initiatives.

Reply to the recommendations in paragraph 28 of the concluding observations*

261. In paragraph 28 of its concluding observations, the Committee recommended that the French authorities exercise strict supervision of body searches, ensure that the methods used are the least intrusive and the most respectful of the physical integrity of persons and implement electronic detection methods to eliminate the practice of body searches altogether.

Prison equipment

262. In the light of an increase in the number of illegal items being brought into prisons, a plan to safeguard prisons was announced on 3 June 2013, entailing investments of 33 million euros.

263. As a result of these investments, prisons have been equipped with mechanisms to prevent items from being thrown into open spaces in prisons and to electronically detect certain items which can be concealed by detainees.

264. All prisons have walk-through metal detectors, whose number and location (main entrance, workshop area, visiting area, exercise yard entrance, etc.) depend on the category and structure of each centre.

265. In 2014, millimetre wave scanners were installed in seven central prisons, with a view to installing them in all such prisons (central prisons and detention facilities with a central prison block) in the long-term.

266. However, it must be noted that the costs of acquiring such equipment, coupled with certain technical constraints inherent in the way it works, are delaying its delivery and installation throughout the detention facilities.

267. Personal searches are still required in some cases, for the security of the detainees and of the officials who supervise them.

(b) Body search procedures

268. It should be noted that only pat-down or full searches are allowed in prisons in France.

269. Pat-down searches involve passing one's hands over a person's clothed body.

270. Full searches involve having detainees undress completely to ensure that they are not carrying prohibited items in their clothing or on their person. They are carried out without any physical contact, out of the sight of anyone who is not directly involved, in a room reserved for this purpose and under suitable sanitary conditions (clean, appropriate temperature, etc.).

271. In a notice dated 11 December 2013, on the implementation of the notice regarding supervision arrangements of 15 November 2013, the prison authorities informed interregional prison directors that all systematic search measures must be prohibited. The notice also highlights the need to ensure full traceability of search measures in order to guarantee the observance of the latter principle.

272. Furthermore, regardless of the type of search, it is always carried out on an individual by one or several officials of the same sex under conditions which, while ensuring the effectiveness of the search, guarantee respect for the inherent dignity of the human person. The number of officials participating in a full search is determined in accordance with the circumstances and the profile of the individual concerned.

273. A survey covering all prisons was conducted from 1 to 30 June 2014, with a view to assessing the impact of article 57 of the Prisons Act. It was found that 37.4 per cent of detainees who had used the visiting room over this 30-day period were subjected to a full search and that 60 detainees had refused to submit to it. In the same period, four detainees filed appeals to the prison authorities and to the courts against the decision to perform a full search. Such figures show that, while in the past there may have been complaints from the prison population, particularly concerning what was viewed as the discriminatory nature of full searches, the phenomenon appears to have become somewhat less pronounced.

Reply to the recommendations in paragraph 29 of the concluding observations

274. In paragraph 29 of its concluding observations, the Committee expressed serious concern about secure detention (*rétention de sûreté*), established by Act No. 2008-174 of 25 February 2008, and recommended that the French authorities consider repealing this provision, which it deems a violation of the fundamental principle of legality in criminal law, and potentially a breach of article 16 of the Convention.

275. On 31 March 2014, the Minister of Justice established a committee to revise the law on criminal sanctions, chaired by Bruno Cotte, former President of Criminal

Division of the Court of Cassation and Presiding Judge of the International Criminal Court.

276. The mandate given to Mr. Cotte is part of the reform of criminal policy undertaken by the Minister of Justice.

277. He has been given a specific mandate to carry out a study into secure detention as part of his work.

Reply to the recommendations in paragraph 30 of the concluding observations

278. In paragraph 30 of its concluding observations, the Committee expressed concern at the use, for testing purposes, of conducted energy devices (tasers) in places of detention and requested the French authorities to provide up-to-date information on the use of this type of weapon in places of detention.

(a) Use of tasers in prisons

279. The French authorities do not underestimate the risks related to the unsupervised use of tasers and all lethal and non-lethal weapons which public officials may carry in the course of their duties.

280. Several years of piloting by the prison administration has nevertheless highlighted the preventive value of this weapon, the dissuasive effect of which has proved to be inversely proportional to its actual use. To date, tasers have in fact only been used on three occasions against a detainee.

281. Tasers are currently effective substitutes for the use of other more dangerous weapons, particularly since their use is strictly reserved for staff members whose missions, training and expertise in maintaining and restoring order are wholly in line with that purpose.

282. The circular of 12 December 2012 on the use of force and weapons in prisons states that tasers are assigned only to members of the Regional Intervention and Security Teams and the National School of Prison Administration, which are responsible for the initial training of these officials.

283. The Regional Intervention and Security Teams are composed of prison staff who have been specially trained and authorized to intervene in prison incidents, including to maintain or restore order during riots or similar uprisings.

284. The fact that only staff whose training is strictly and regularly monitored are entitled to use tasers constitutes a strong and practical guarantee of the conditions in which tasers are used.

285. While the use of tasers is covered in the general regulatory framework, it is also the subject of a separate circular setting out specific restrictions under which the use of such weapons must be:

- Necessary, proportionate and measured, taking account of the vulnerability of the person targeted;
- Only in response to a physical attack or dangerous or threatening behaviour;
- Preceded by a mandatory oral warning to the person concerned;
- Strictly limited to the number of shots necessary to neutralize the person; and
- Systematically videotaped from the moment the pistol is switched on.

286. The traceability that results from systematic video recording starting from the moment the pistol is switched on is a strong guarantee of compliance with the terms of use.

287. To date, there have been no unfortunate incidents related to the use of tasers in prisons.

(b) Use of tasers by municipal police officers

288. To support the recommendation made in paragraph 30 of its concluding observations, the Committee noted that Council of State, in a decision of 2 September 2009, repealed the decree of 22 September 2008 authorizing the use of tasers by municipal police officers.

289. In this decision, which did not call into question the principle of using such a weapon, the Council of State noted that, while the regulatory framework governing their use contained adequate safeguards for national police officers, this was not the case for municipal police officers, as neither the decree nor any other text provided for specialized prior training, an evaluation procedure or periodic monitoring, or set out appropriate precautions for their use. The Council of State therefore repealed the decree on the grounds that it failed to take into account the principles of absolute necessity and proportionality in the use of force by the police.

290. Following this decision, a new decree, No. 2010-544, was published in the Official Gazette on 26 May 2010.

291. This decree amended decree No. 2000-276 of 24 March 2000 which, pursuant to article L.412-51 of the Municipalities Code authorizing the municipal police to carry weapons, specifies the conditions under which municipal police officers may carry a weapon, the relevant categories of weapons and the training to be delivered. The decree of 26 May 2010 added tasers to the list of weapons in category four (defence weapons requiring a permit) which municipal police officers may carry, as long as they receive specialized training from the National Centre for the Territorial Civil Service. The decree also stipulates that tasers must be with a monitoring system and a visual and audio recording device, and that reports must be drawn up on instances of the use of a taser.

292. The decree provides that the rules, procedures and specific precautions for the use of these pistols are set out by an order of the Ministry of the Interior, issued on 26 May 2010.

293. The decree of 24 March 2000, as amended by the decree of 26 May 2010 and supplemented by the order of 26 May 2010, thus creates a comprehensive regulatory framework regarding precautions for the use of tasers by municipal police officers.

294. Moreover, the framework was deemed appropriate by the Council of State, before which the decree of 26 May 2010 had been contested by the same party that had obtained the repeal of the decree of 22 September 2008.

295. In a decision dated 1 June 2011 (No. 341917), the Council of State ruled that the decree of 26 May 2010 was in line with the provisions of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, articles 1 and 2 of the Convention or article 7 of the International Covenant on Civil and Political Rights.

296. In order to take into account the recommendations of the Defender of Rights on tasers and flash ball devices, a new joint order for the police and the national gendarmerie on the use of these means of intermediate force (40 and 44 calibre flash-

ball devices, tasers and sting grenades) was circulated to all services on 2 September 2014.

Reply to the recommendations in paragraph 31 of the concluding observations*

297. In paragraph 31 of its concluding observations, the Committee reiterated its previous recommendation (CAT/C/FRA/CO/3, para. 20) that compliance with article 12 of the Convention requires a derogation from the system of discretionary prosecution, so as to oblige the competent authorities to launch impartial inquiries systematically and on their own initiative wherever there are reasonable grounds for believing that an act of torture has been committed under their jurisdiction.

298. In this regard, the Government regrets that, like the Committee before it, it must reiterate its previous response (CAT/C/FRA/4-6, paras. 119 to 123), in which it stated that the principle of discretionary prosecution, which helps to ensure that the judicial process is adapted to individual cases, does not violate the provisions of article 12 of the Convention, since under French law any person claiming to be the victim of a crime (including acts of torture) can file for damages in a civil case directly with the senior investigating judge, thereby ensuring that proceedings are instituted and an investigating judge assigned.

Reply to the recommendations in paragraph 32 of the concluding observations

299. In paragraph 32 of its concluding observations, the Committee expressed concern about the findings of the Léger Report of 1 September 2009, which recommended the abolition of the post of investigating judge, and invited the French authorities to ensure the independence and integrity of judicial proceedings, and of investigations by existing independent supervisory mechanisms, by providing them with the means to carry out their supervisory mission independently, impartially and transparently.

300. In response to these concerns, the Committee may wish to note that the findings of the Léger report have not been acted upon and that the investigating judges have not been abolished.

Reply to the recommendations in paragraph 33 of the concluding observations

301. In paragraph 33 of its concluding observations, the Committee expressed concern that the National Commission on Security Ethics can only accept complaints through a member of Parliament, the Prime Minister or the Defender of Rights, and recommended that the French authorities accept complaints directly from anyone claiming to have been subjected to torture or cruel, inhuman or degrading treatment.

302. It should be noted that the National Commission on Security Ethics was disbanded on 1 May 2011, when the functions previously performed by it were transferred to the Defender of Rights.[11]

303. The Committee's recommendation on the possibility of accepting complaints directly has also been fulfilled insofar as complaints may be submitted freely and

[11] See paragraphs 304-306 of this report.

directly to the Defender of Rights, which is an independent constitutional authority, by any natural person or legal entity, including a minor, as well as by the dependents of the person whose rights are at stake. The Defender of Rights may also decide to launch investigations into a case.

Reply to the recommendations in paragraph 34 of the concluding observations

304. In paragraph 34 of its concluding observations, the Committee expressed concern about the consequences of establishing the Defender of Rights, given that it would be taking on the mandates of the Ombudsman of the Republic, the Children's Ombudsman, the National Commission on Security Ethics and the Inspector-General for Detention Facilities. Accordingly, the Committee invited the French authorities to ensure the effective and uninterrupted functioning of these mechanisms which, it emphasized, have an essential part to play in monitoring rights, thereby ensuring the implementation of the Convention, each in their particular field of expertise.

305. Organic Law No. 2011-333 of 29 March 2011 on the Defender of Rights states that the remit of this independent constitutional authority is to:

- Defend rights and liberties in the context of relations with the State authorities, local authorities, public institutions and public service groups;
- Defend and promote the best interests and the rights of the child as enshrined in law or in an international agreement ratified or approved by France;
- Combat direct or indirect discrimination prohibited by law or by an international agreement ratified or approved by France and promote equality;
- Ensure that persons providing security services in the French Republic comply with the rules of professional ethics.

306. The Defender of Rights has thus replaced the Ombudsman (Médiateur) of the Republic, the Children's Ombudsman, the National Commission on Security Ethics and the High Authority to Combat Discrimination and Promote Equality, the rights and obligations of which have been transferred to it without any interruption in mandates.

Reply to the recommendations in paragraph 35 of the concluding observations

307. In paragraph 35 of its concluding observations, the Committee, recalling that rule 108 of its rules of procedure is intended to give meaning and scope to articles 3 and 22 of the Convention, urged the French authorities to consider requests for interim measures made by the Committee in good faith.

308. With regard to the interim measures requested by the Committee under rule 108 of the rules of procedure, the Government can only reiterate its intention to, in general, respond favourably to this type of requests, while once again emphasizing that they are not legally binding on States parties.

Reply to the recommendations in paragraph 36 of the concluding observations*

309. In paragraph 36 of its concluding observations, the Committee recommended that the French authorities adopt a national plan to combat the trafficking of women and children in all its forms, covering criminal justice mechanisms, measures for the

protection and rehabilitation of victims, the strengthening of international cooperation with the countries of origin, trafficking and transit and the allocation of sufficient resources for programmes in this area. The Committee expressed the wish to be kept informed of developments in this respect.

310. The French Government has the honour to refer to the information contained in its reply of 22 June 2011 (CAT/C/FRA/CO/4-6/Add.1, paras. 129 to 160) and to provide the following details.

(a) National action plan to combat human trafficking (2014-2016)

311. As stated in the reply dated 22 June 2011 (CAT/C/1/CO/4-6, paras. 129 to 132), a national action plan to combat human trafficking was developed in June 2010.

312. For the first time, this plan lays the foundations for a cross-cutting public policy to combat human trafficking and all forms of exploitation: procurement, enslavement, domestic servitude, forced labour or services, trafficking in organs, forced begging and forced commission of crimes. The aim is to mobilize all the resources of the State and its partners in favour of clear priority actions, both in the national territory and abroad.

313. This plan, the details of which may be found in annex 18 of this report, comprises 23 measures which fall under the following three priorities:

- Identify and support victims of trafficking;
- Mobilize and coordinate all means of investigating the networks;
- Establish a fully fledged public policy to combat human trafficking.

(b) First round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings

314. Developed through a series of Council of Europe initiatives to combat trafficking in human beings, the Council of Europe Convention on Action against Trafficking in Human Beings (STCE No. 197) was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005. It was ratified by France on 9 January 2008 and entered into force on 1 May 2008.

315. This Convention was inspired by the international instruments to combat trafficking in human beings and contains provisions to strengthen the protection established therein. It also provides for the establishment of a Group of Experts on Action against Trafficking in Human Beings to oversee the implementation of the Convention by States parties.

316. To that end, the Group of Experts on Action against Trafficking in Human Beings visited France from 26 to 30 March 2012, after which, on 28 January 2013, it adopted a report which was forwarded to the Committee of Parties to the Convention. On the basis of this report, the Committee of Parties adopted a recommendation, CP (2013)1, on 15 February 2013, in which it welcomed the measures taken by the French authorities to combat human trafficking and formulated a number of recommendations which were taken into account in the preparation of the national action plan submitted on 14 May 2014.

317. The report of the Group of Experts and the recommendation of the Committee of Parties are attached, as annexes 19 and 20 to this report, to provide the Committee with full details.

Reply to the recommendations in paragraph 37 of the concluding observations

318. In paragraph 37 of its concluding observations, the Committee recommended that the French authorities include in the present report data disaggregated by age, gender and ethnicity on the number of complaints received containing allegations of torture or other cruel, inhuman or degrading treatment or punishment; and the corresponding number of investigations, prosecutions and convictions for such acts.

319. Information is provided in annex 21 to this report regarding the number of reports of torture or cruel, inhuman or degrading treatment or punishment received between 2009 and 2013 in metropolitan France, disaggregated by sex and age group.

Reply to the recommendations in paragraph 38 of the concluding observations

320. In paragraph 38 of its concluding observations, the Committee took note of the fact that law enforcement officials have the right to lodge complaints on their own behalf against what they consider to be libellous or defamatory allegations, but it requested information on specific measures taken by the State party to provide protection against acts of intimidation, particularly in the form of complaints of defamation or possible reprisals, to persons who report violence by law enforcement officials.

321. With regard to complaints of defamation filed by law enforcement officials, and as indicated by the French Government in its responses to the list of issues prior to the consideration of its previous report (CAT/C/FRA/Q/4-6/Add.1, paras. 244 and 245), the provisions of article 43, paragraph 2, of the Code of Criminal Procedure provide for the possibility of processing a complaint in a different jurisdiction to prevent a public servant who has connections with the judges of a particular court from being tried by that court.

322. Article 43, paragraph 2, of the Code of Criminal Procedure ensures full protection of the rights of persons against whom law enforcement officials may lodge complaints, by guaranteeing an impartial review by a court other than one with which the officials may have connections as part of their professional duties.

Reply to the recommendations in paragraph 39 of the concluding observations

323. In paragraph 39 of its concluding observations, the Committee expressed the wish to receive information concerning the implementation of the Convention in territories where the French armed forces are deployed.

324. In general, the French armed forces take all necessary measures to ensure respect for the applicable rules of international humanitarian law and international human rights law, particularly Article 3 common to the Geneva Conventions of 12 August 1949, Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Additional Protocol II of 8 June 1977), and the provisions of the Convention.

325. The guidance provided to the French forces engaged in overseas operations incorporates this rule of respect for the applicable international law and is

implemented with the backing of legal advisers who are systematically assigned to accompany senior officials.

326. These rules are particularly applicable when the French forces may be required to detain individuals, on an exceptional basis, within the context of events that unfold during overseas operations. In that respect, whenever the French forces detain a person during a military operation, this must be recorded in a detailed report to be submitted to the senior authorities, who must issue an authorization to detain. The procedures relating to the treatment of persons detained explicitly refer to the information that must be communicated to outside parties, in particular the International Committee of the Red Cross.

327. In addition, agreements are systematically concluded with the countries where French forces are deployed, setting out the conditions under which persons detained by the French forces may be transferred to the authorities of the countries concerned, and the safeguards applicable to them.

328. The Agreement between the Government of the French Republic and the Government of Mali determining the status of Operation Serval, signed through an exchange of letters at Bamako on 7 March 2013 and Koulouba on 8 March 2013,[12] serves as an example.

Reply to the recommendations in paragraph 40 of the concluding observations

329. In paragraph 40 of its concluding observations, the Committee recommended that the French authorities widely disseminate the Committee's conclusions and recommendations, in all appropriate languages, through official websites, the press and non-governmental organizations.

330. Special attention is given to the dissemination of the Committee's work, including its concluding observations and recommendations, which the Ministry of Foreign Affairs transmits to all relevant administrative bodies and to the highest courts of the two judicial branches (the Council of State and the Court of Cassation), whose respective documentation services in turn ensure dissemination of the documents to all the lower courts.

331. In addition, the Committee's observations and recommendations are published in a specific section on the website of the Ministry of Foreign Affairs, with a link to the Committee's website.

332. Finally, the systematic participation of the National Consultative Commission for Human Rights during the preparation of reports and the review process with the Committee guarantees that first-hand information is provided by the civil society organizations represented in that Commission.

[12] Annex 22 to this report.