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on Civil and
Political Rights**

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

Concluding observations of the Human Rights Committee

FRANCE

1. The Committee considered the fourth periodic report of France (CCPR/C/FRA/4) at its 2545th and 2546th meetings (CCPR/C/SR.2545 and 2546), held on 9 and 10 July 2008, and adopted the following concluding observations at its 2562nd meeting (CCPR/C/SR.2562), held on 22 July 2008.

A. Introduction

2. The Committee welcomes the fourth periodic report of France, including information addressing the Committee's previous recommendations (CCPR/C/79/Add.80), and appreciates the comprehensive written replies made to the Committee's additional list of questions on current issues (CCPR/C/FRA/Q/4/Add.1). The dialogue with the State party was open and constructive, and the Committee notes that the delegation included representatives of key government departments responsible for the implementation of the Covenant.

3. The Committee regrets that the report of France was submitted with a six-year delay, and urges the State party to submit future reports at regular intervals, in accordance with the requirements of the Covenant. The Committee also regrets that the report does not comply fully with its reporting guidelines, insofar as it lacks sufficient empirical information on issues such as the political participation of members of ethnic minorities, and does not contain sufficient information on the implementation of the Covenant in the French Overseas Departments and Territories.

B. Positive aspects

4. The Committee welcomes the State Party's ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, thus confirming France's prior decision to abolish death penalty.

5. The Committee takes note of the State party's creation of a *Contrôleur général des lieux de privation de liberté* to oversee prison modernization and the treatment of detainees, in an effort to improve prison conditions and prison overcrowding.

6. The Committee welcomes France's creation of the High Authority to Combat Discrimination and Promote Equality (*la haute autorité de lutte contre les discriminations et pour l'égalité*, HALDE), which has the power to receive individual complaints and act on its own initiative to remedy problems of discrimination based on national origin, disability, health, age, gender, family and marital status, trade union activity, sexual orientation, religious beliefs, physical appearance, surname, and genetic characteristics. HALDE is empowered, pursuant to Act No. 2004/1486 of 30 December 2004, to recommend statutory or regulatory changes to public authorities and to suggest settlements to private companies, and has described its activities in comprehensive annual reports.

7. The Committee takes note that France has defined a new criminal offence of trafficking in persons for purposes of sexual exploitation or by imposing living or working conditions inconsistent with human dignity. The State party convicted 130 offenders under this statute in the first four years following its creation.

8. The Committee welcomes the State party's new legislation on the punishment of domestic violence that extends aggravating circumstances to include abuse between partners in civil solidarity pacts and former partners, consolidates the jurisprudence on marital rape, and strengthens provisions for eviction of a violent spouse from the home (see Act No. 2006/99, adopted on 4 April 2006), as well as legislation that guarantees foreign nationals who fall victim to spousal abuse a right to stay in the country. In addition, the Committee notes the importance of the creation of a national hotline (3919) for reporting spousal abuse, the extension of unemployment benefits to women victims forced to change their place of residence as a result of spousal violence, and the priority for women victims in the assignment of state-funded housing.

9. The Committee appreciates that France now applies the same minimum age for marriage to both genders, thus raising the age of marriage for girls from 15 to 18 years of age, including in the Overseas Departments and Territories. It is also commendable that in the Overseas Territory of Mayotte, the State party has established principles of monogamous marriage, prohibited unilateral repudiation of marriage, and forbidden discrimination among children in matters of inheritance on grounds of sex or legitimacy.

C. Principal subjects of concern and recommendations

10. While appreciating the State party's commitment to review its interpretative declaration concerning article 14, paragraph 5 of the Covenant, in regard to the right to appeal from a criminal conviction, and its declaration concerning article 13 on the expulsion of aliens, nonetheless the Committee remains concerned by the breadth and number of the other reservations and declarations taken to narrow the application of the Covenant. These include the

reservation to article 4, paragraph 1 (claiming that the power of the President to take “measures required by circumstances” in a “state of emergency or state of siege” cannot be otherwise limited by the Covenant), as well as the reservation to articles 9 and 14 of the Covenant (stating that these articles cannot impede “enforcement of the rules pertaining to the disciplinary regime in the armies”).

The State party should review its reservations and interpretative declarations to the Covenant, with a view to withdrawing them in whole or in part.

11. The Committee, while welcoming the statement by the State party that the lack of official recognition of minorities within the territory of the State party does not prevent the adoption of appropriate policies aimed at preserving and promoting cultural diversity, remains unable to share the view of the State party that the abstract principle of equality before the law and the prohibition of discrimination represent sufficient guarantees for the equal and effective enjoyment by persons belonging to ethnic, religious or linguistic minorities of the rights set out in the Covenant. (articles 26 and 27)

The State party should review its position concerning the formal recognition of ethnic, religious or linguistic minorities, in accordance with the provisions of article 27 of the Covenant.

12. The Committee notes that the State party has failed to provide any statistical information that would allow the empirical assessment of effective access to private and public employment, public services, and political participation, on the part of persons belonging to racial, ethnic or national minorities, as well as members of different religious communities. The Committee observes that the absence of this information can mask problems of de facto discrimination, and impede the design of appropriate and effective public policies to combat all forms of racial and religious discrimination. (articles 2, 25, 26 and 27)

The State party should collect and report adequate statistical data, disaggregated on the basis of racial, ethnic, and national origin, in order to enhance the effectiveness of its efforts aimed at ensuring equal opportunity to persons belonging to these minority groups, and to meet the reporting guidelines of the Committee.

13. The Committee remains concerned that, despite legislative and policy measures adopted by the State party to promote gender equality, women are underrepresented in high-level and managerial positions in the State, territorial, and hospital civil service as well as in the private sector. The wage gap between men and women, the overrepresentation of women in part-time jobs, and high unemployment rate among women belonging to racial, ethnic or national minorities also continue to be significant. (articles 3 and 26)

The State party should strengthen its efforts to increase the representation of women in high-level and managerial positions, in the public as well as in the private sector, to narrow the wage gap between men and women, and to facilitate women’s access to full-time work.

14. While noting the threat to life posed by acts of terrorism, the Committee is concerned that Act No. 2006/64 of 23 January 2006 permits the initial detention of persons suspected of

terrorism for four days, with extensions up to six days, in police custody (*garde à vue*), before they are brought before a judge to be placed under judicial investigation or released without charge. It also notes with concern that terrorism suspects in police custody are guaranteed access to a lawyer only after 72 hours, and access to counsel can be further delayed till the fifth day when custody is extended by a judge. The Committee also notes that the right to remain silent during police questioning, in respect to any offence, whether related to terrorism or not, is not explicitly guaranteed in the Code of Criminal Procedure. (articles 7, 9 and 14)

The State party should ensure that anyone arrested on a criminal charge, including persons suspected of terrorism, is brought promptly before a judge, in accordance with the provisions of article 9 of the Covenant. The right to have access to a lawyer also constitutes a fundamental safeguard against ill-treatment, and the State party should ensure that terrorism suspects placed in custody have prompt access to a lawyer. Anyone arrested on a criminal charge should be informed of the right to remain silent during police questioning, in accordance with article 14, paragraph 3 (g), of the Covenant.

15. The Committee remains concerned about the use of long-term pre-trial detention in terrorism and organized crime cases, extending for periods up to four years and eight months. The Committee notes that there is access to defence counsel and periodic review of the custodial decision by “liberty and custody judges” (*juges des libertés et de la détention*) in regard to the factual basis and claimed necessity for detention, as well as a right of appeal. Nonetheless, the institutionalized practice of extended investigative detention, before proceeding to a final charge and criminal trial, is difficult to reconcile with the Covenant’s guarantee of trial within a reasonable time. (articles 9 and 14)

The State party should limit the duration of pre-trial detention, and reinforce the role of “liberty and custody judges” (*juges des libertés et de la détention*).

16. The Committee is concerned by the State party’s claim of authority under Act No. 2008/174 (25 February 2008) to place criminal defendants under renewable one-year terms of civil preventive detention (*rétenion de sureté*) because of “dangerousness”, even after they have completed their original prison sentences. While the Constitutional Council has prohibited retroactive application of the statute, and the judge who sentences a criminal defendant contemplates the possibility of future civil preventive detention as part of the original disposition of a case, nonetheless, in the view of the Committee, the practice may remain problematic under articles 9, 14 and 15 of the Covenant. (articles 9, 14 and 15)

The State party should review the practice of seeking to detain criminal defendants for “dangerousness” after they have served their prison sentences, in the light of the obligations imposed by articles 9, 14 and 15 of the Covenant.

17. While noting the significant efforts undertaken by the State party to renovate prison buildings, increase the number of places for criminal defendants, and develop alternatives to detention such as supervision in the community, the Committee remains concerned about overcrowding and other poor conditions in prisons. The plan to increase custodial facilities to a total of 63,500 places by the year 2012 will nonetheless apparently fall far short of the increase of prison population. In addition, while appreciating the plans of the State party to systematically

collect data on allegations of abuse by law enforcement officials, there are continuing concerns about unprofessional conduct by some prison personnel, including inappropriate use of solitary confinement and intra-prison violence. (articles 7 and 10)

The State party should multiply its efforts to reduce overcrowding in prisons, and enhance its monitoring of prisons in a proactive way, in order to guarantee that all persons in custody are treated in accordance with the requirements of articles 7 and 10 of the Covenant and the Standard Minimum Rules for the Treatment of Prisoners.

18. The Committee is concerned that large numbers of undocumented foreign nationals and asylum-seekers are detained in unsuitable airport waiting areas and administrative detention centres (*centres de rétention administrative* and *locaux de rétention administrative*). The Committee is further concerned about reports of overcrowding, lack of facilities for personal hygiene, and inadequate food and medical care, especially in the Overseas Departments and Territories, and that regular independent inspections are not carried out in such centres. The Committee is concerned about the status of unaccompanied children in such detention centres and the reported lack of arrangements for the protection of their rights, and safe return to their home communities. (articles 7, 10 and 13)

The State party should review its detention policy in regard to undocumented foreign nationals and asylum-seekers, including unaccompanied children. The State party should reduce overcrowding and improve living conditions in such centres, especially those in the Overseas Departments and Territories.

19. The Committee remains concerned about allegations that foreign nationals, including some asylum-seekers, while detained in prisons and administrative detention centres, are subjected to ill-treatment by law enforcement officials, and that the State party has failed to investigate and appropriately punish such human rights violations. The Committee notes the absence of detailed statistical information concerning such alleged incidents of ill-treatment of foreign nationals, including the sanctions imposed on the perpetrators. (articles 7 and 9)

The State party should have no tolerance for acts of ill-treatment perpetrated by law enforcement officials against foreign nationals, including asylum-seekers, who are detained in prisons and administrative detention centres. The State party must establish adequate systems for monitoring and deterring abuses and should develop further training opportunities for law enforcement officials.

20. The Committee appreciates the State party's statement that it seeks to honour the rule of "non-refoulement" to avoid the return of any persons to countries where they face the real risk of abusive treatment. Nonetheless, it is concerned by reports that foreign nationals have in fact been returned by the State party to such countries, and subjected to treatment that violates article 7 of the Covenant. The Committee has also received reports that foreign nationals are often not properly informed of their rights, including the right to apply for asylum, and often lack access to legal assistance. The Committee notes that foreign nationals are required to submit asylum applications within a maximum of five days after their detention, and that such applications must be drafted in French, often without the help of a translator. The right of appeal is also subject to a number of questionable restrictions, including a 48-hour time limit to lodge an appeal, and

absence of the automatic suspension of deportation pending appeal in “national security” removals. The Committee is also concerned that under the State Party’s so-called “priority procedure” (*procédure prioritaire*), physical deportation occurs without waiting for the decision of any court in removals to so-called “safe countries of origin” (*pays d’origine sûr*), apparently including Algeria and Niger. In addition, no recourse to the courts is available to persons deported from the overseas territory of Mayotte, involving some 16,000 adults and 3,000 children per year, nor in French Guiana or Guadeloupe. (articles 7 and 13)

The State party should ensure that the return of foreign nationals, including asylum seekers, is assessed through a fair process that effectively excludes the real risk that any person will face serious human rights violations upon his return.

Undocumented foreign nationals and asylum-seekers must be properly informed and assured of their rights, including the right to apply for asylum, with access to free legal aid. The State party should also ensure that all individuals subject to deportation orders have an adequate period to prepare an asylum application, with guaranteed access to translators, and a right of appeal with suspensive effect.

The State party should further recognize that the more systematic the practice of torture or cruel, inhuman or degrading treatment, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. The State party should exercise the utmost care in the use of such assurances and adopt clear and transparent procedures allowing review by adequate judicial mechanisms before individuals are deported, as well as effective means to monitor the fate of the affected individuals.

21. The Committee is concerned about the length of family reunification procedures for recognized refugees. It also notes that the procedure allowing the use of DNA testing as a way to establish filiation for the purpose of family reunification, introduced by article 13 of Act No. 2007/1631 of 20 November 2007, may pose problems regarding its compatibility with articles 17 and 23 of the Covenant, despite its optional nature and the procedural guarantees provided by the law. (articles 17 and 23)

The State party should review its family reunification procedures for recognized refugees, with a view to ensuring that applications for family reunification are processed as speedily as possible. The State party should also adopt all appropriate measures to ensure that the implementation of DNA testing as a way to establish filiation does not create additional obstacles to family reunification, and that the use of such testing is always subject to the prior informed consent of the applicant.

22. While acknowledging the important role played by the National Commission of Information Technology and Liberties (*Commission nationale de l’informatique et des libertés*, CNIL) in protecting the integrity and confidentiality of information concerning a person’s private life against any arbitrary or unlawful interference emanating from public authorities or private individuals or bodies, the Committee is concerned at the proliferation of different databases, and notes that according to reports received, the gathering, storage and use of sensitive personal data contained in databases such as EDVIGE (*exploitation documentaire et valorisation de l’information générale*) and STIC (*système de traitement des infractions constatées*) pose concerns with regard to article 17 of the Covenant. (articles 17 and 23)

The State party should take all appropriate measures to ensure that the gathering, storage and use of sensitive personal data are consistent with its obligations under article 17 of the Covenant. Taking into account general comment No. 16 (1988) on Article 17 (Right to privacy), the State party should in particular ensure that

- (a) The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, is regulated by law;**
- (b) Effective measures are adopted to ensure that such information does not reach the hands of persons who are not authorized by law to receive, process and use it;**
- (c) Individuals under its jurisdiction have the right to request rectification or elimination of information when it is incorrect or has been collected or processed contrary to the provisions of the law;**
- (d) EDVIGE is restricted to children above the age of thirteen who have been convicted of a criminal offence;**
- (e) STIC is restricted to individuals who are suspected in an enquiry of having committed a criminal offence.**

23. The Committee is concerned that both elementary and high school students are barred by Act No. 2004/228 of 15 March 2004 from attending the public schools if they are wearing so-called “conspicuous” religious symbols. The State party has made only limited provisions – through distance or computer-based learning – for students who feel that, as a matter of conscience and faith, they must wear a head covering such as a skullcap (or *kippah*), a headscarf (or *hijab*), or a turban. Thus, observant Jewish, Muslim, and Sikh students may be excluded from attending school in company with other French children. The Committee notes that respect for a public culture of *laïcité* would not seem to require forbidding wearing such common religious symbols. (articles 18 and 26)

The State party should re-examine Act No. 2004/228 of 15 March 2004 in light of the guarantees of article 18 of the Covenant concerning freedom of conscience and religion, including the right to manifest one’s religion in public as well as private, as well as the guarantee of equality under article 26.

24. The Committee is aware of the continued reports of serious anti-Semitic violence, directed at persons who are wearing visible symbols of the Jewish faith in public places or who are known to be members of the Jewish community, as well as inter-ethnic violence. (articles 2, 6, 18 and 26).

The State party should redouble its efforts to fight racist and anti-Semitic violence, and to undertake public education on the necessity for mutual respect among citizens of a democratic polity.

25. The Committee notes with concern that despite the measures adopted by the State party to combat discrimination in the field of employment, such as the recent adoption of Act No. 2008/496 of 27 May 2008 and the signature by several private companies of the Charter of

Diversity in Companies intended as an instrument to promote diversity in the workplace, nonetheless, persons belonging to ethnic, national or religious minorities – especially those with North African or Arabic names – face serious discriminatory practices that prevent or limit their equal access to employment. (articles 2 and 26)

The State party should reinforce its legislative framework and institutional mechanisms to exclude all discriminatory practices that prevent equal access to employment for persons belonging to ethnic, national or religious minorities – most notably, those with North African or Arabic names. In addition, the State party should start collecting statistical data disaggregated on the basis of ethnic or national origin on access to employment in order to evaluate better the progress made, and the obstacles encountered, towards the achievement of equal opportunities in the field of employment for persons belonging to ethnic, national and religious minorities.

26. The Committee notes with concern that persons belonging to racial, ethnic or national minorities are rarely selected for representative bodies, including the National Assembly, and may occupy few positions in the police, the public administration and the judiciary. (articles 2, 25 and 26)

The State party should facilitate the participation of persons who are members of minority groups in publicly elected bodies, including the National Assembly and local government. In particular, the State party should seek ways to increase the number of candidates belonging to minorities included in the list of political parties running for elections. The appointment of persons from minority backgrounds as members of the police, public administration and the judiciary, is also important to assure the representation of the needs of varied communities in the planning, design, implementation and evaluation of policies and programmes affecting them.

27. The State party should widely publicize the text of its fourth periodic report, the written answers it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations.

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

29. The Committee sets 31 July 2012 as the firm date for the submission of the fifth periodic report of France. It requests the State party to include in its next periodic report updated empirical information on all the Committee's recommendations and on the Covenant as a whole, including detailed information on the implementation of the Covenant in the French Overseas Departments and Territories. The Committee also requests that the process of compiling the fifth periodic report involve civil society and non-governmental organizations operating in the State party.
