

***Note by the CNCDH concerning the examination of France's fourth periodic report by the United Nations Committee on Economic, Social and Cultural Rights***

**6 May 2016**

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The National Consultative Commission on Human Rights (CNCDH) is the French National Human Rights Institution (NHRI), founded in accordance with the Paris Principles with 'A' accreditation from the United Nations.

The CNCDH has been entrusted with a general consultative and oversight role serving the government and Parliament within the field of human rights, international human rights law and human rights action. Within this framework, it contributes in a wholly independent capacity to draft reports by France to international bodies, and in particular to the United Nations Treaty Bodies, passing on to these bodies information concerning the respect for and effectiveness of human rights in France.

In addition to its opinions, which are intended to inform political decision-making, the CNCDH is an independent authority assessing public policy through its mandates as National Rapporteur on Racism, Anti-Semitism and Xenophobia Prevention, and on Human Trafficking.

These various endeavours are therefore central to the contribution of the CNCDH to the examination of France by the United Nations Committee on Economic, Social and Cultural Rights (hereafter "the Committee").

In the interests of succinctness and relevance, the CNCDH thought it expedient to return in a cover note to the list of points pertaining to the fourth periodic report by France set out by the Committee (E/C.12/FRA/Q/4), and to examine precisely the responses made by the French government in light of its fourth periodic report (E/C.12/FRA/4).

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**Summary of recommendations of the CNCDH**

The recommendations made by the CNCDH to the attention of the Committee for the Review of France are listed below. All the developments will be found after this introduction.

**I) Article 2, paragraph 2 - Ethnic statistics (Question No. 7)**

It would be of interest and useful for the Committee to recommend that France develop the initiatives undertaken to improve knowledge of discriminatory phenomena, particularly when the latter are based on origin. In more general terms, it would be useful for France to develop different tools for measuring discrimination with regard to accessing economic and social rights, regardless of the criterion on which the discrimination is based.

II) Article 2, paragraph 1 - International cooperation (Questions No. 5 and 6)

The CNCDH would encourage the Committee to remind France of its obligation to achieve the objective of allocating 0.7% of its gross national income to developmental aid and to ensure that the measures it puts in place to achieve this are entirely transparent from all angles.

The CNCDH feels that it would be useful for the Committee to recommend that France adopt a development approach based on human rights whilst ensuring that development initiatives aim to increase respect for human rights and incorporating participation on the part of the populations concerned as a principle of development policy.

It would be useful for the Committee to question France on the following up of the CNCDH's recommendations regarding the incorporation of human rights into the policies adopted by the COFACE and AFD groups. These recommendations must, of course, be given due consideration since their implementation would help ensure a certain consistency between public policies regarding aid for businesses and France's obligations in relation to human rights.

The Committee should encourage France to implement a policy on corporate responsibility with regard to human rights in order for it to fulfil its international commitments whilst ensuring that a duty of vigilance is effectively incorporated into the law, thus helping to prevent acts committed by subsidiaries or sub-contractors of businesses with their head offices in France. This policy should be implemented so as to offer potential victims of human rights violations effective access to justice.  
Furthermore, it could be useful for the Committee to question France on its genuine intention to participate in the United Nations working group on the production of an appropriate legally binding international instrument.

III) Specific problems encountered by women

1. Article 6 - Obstacles to the employment of women (Question No. 12)

The Committee could ask France what measures the government plans to introduce in order to achieve the objective of creating 275,000 new childcare solutions for children under 3 years of age by 2017, which would help improve women's access to employment.

2. Article 7 - Representation of women and wage equality (Question No. 14)

The Committee could ask about extending the objective of equality to all civic organisations.

The Committee could ask that the French government specify whether it plans to introduce a pay convergence policy with the aim of reducing the discrepancies observed within its own departments.

The Committee could submit a question regarding the government's desire to extend the scope of class action to gender-related discrimination both within and outside of the workplace.

3. Article 10 - Violence against women (Question No. 18)

The Committee could ask France about the possibility of modifying the French Criminal Code in order to give greater consideration to crimes committed against women simply because they are women.

The Committee could recommend that the French government draft and circulate a new criminal policy memorandum on violence against women and the use of the protective order.

The CNCDH considers it expedient for the Committee to request from France a presentation of the measures undertaken or to be undertaken so as to address the failures observed with regard to preventing and fighting violence against women.

The Committee could ask France to explain how it has taken on board the CNCDH's recommendations suggesting that it improve the gathering of primary data on female sexual mutilation, conduct quantitative and qualitative studies for the purposes of better assessing the risks of female sexual mutilation among second and third-generation immigrant women, develop training plans aimed at the professionals concerned and improve the criminal response to such practices.

IV) Specific problems encountered by those with disabilities - Article 2, paragraph 2 (Question No. 8)

The CNCDH feels that it would be useful for the Committee to ask France about the compliance of its national law with the International Convention on Disability, notably in light of the way in which it defines this notion. Furthermore, in order to fully respond to the question asked, the Committee could ask that France specify the deadlines for and progress made with regard to the measures that it cites and, in more general terms, when it expects to present its initial report to the United Nations Committee on the Rights of People with Disabilities, which has been significantly delayed.

V) Specific problems encountered by the Romany and traveller communities

1. Article 2, paragraph 2 - Stigmatisation of and discrimination against Romany populations (Question No. 9)

The Committee could ask that France introduce a plan designed to raise awareness with a view to informing and training civil servants and regional authority representatives, political leaders and local elected representatives, as well as all citizens, for the purposes of fighting the prejudices and preconceived ideas that exist with regard to the Romany people from a more educational perspective. Any measures introduced with this in mind

must, however, be implemented in partnership with the populations concerned if they are to be effective and relevant.

The Committee could seek clarification from France regarding the conditions governing access to services for job-seekers (on the parts of both the population and the departments concerned) and indeed to all professional integration schemes. With this in mind, reception agents should be able to receive training in dealing with low-skilled allophone populations<sup>1</sup>.

## 2. Article 11 - Right to housing and Romany populations (Question No. 24)

The Committee could ask that the government effectively and comprehensively apply the inter-ministerial memorandum of 26 August 2012, which should, in partnership with regional authorities and associations, result in the systematic offering of a dignified and permanent rehousing solution prior to any evacuation. Such offers should follow a comprehensive and individual diagnosis of the situation of the person or people in question.

Furthermore, the Committee could ensure that the government has put in place effective systems for the domiciliation of populations living in slums, as a prerequisite to accessing the range of economic and social rights to which they might be entitled.

The Committee could recommend that the government reiterate the law that applies with regard to the extension of rights to healthcare cover for European Union nationals and the law that applies with regard to domiciliation. Individuals should be able to enjoy healthcare coverage in accordance with the conditions provided for by law, with no further restrictions.

The Committee could also ask that France remove any obstacles to accessing healthcare and social welfare benefits put in place by certain social bodies and the systematisation of health mediation systems.

The Committee could recommend that France ensure that prefects and regional education officers remind mayors of their obligations with regard to the schooling of children living within their jurisdiction, these being as follows:

- all children of school age must be allowed to register at a school with no discrimination based on the absence of a fixed address or vaccination card;
- children that have registered should be welcomed within the school and should be allowed to benefit from all aspects of school life (canteen, supervised study, extra-curricular activities, school trips, etc.).

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<sup>1</sup> CNCDH, 22 March 2012, Opinion on 'Respecting the rights of 'travellers' and migrant Roms in light of France's recent responses to international bodies' (*Avis sur « Le respect des droits des « gens du voyage » et des roms migrants au regard des réponses récentes de la France aux instances internationales »*). 20 November 2014, Opinion on respecting the basic rights of populations living in slums (*Avis sur le respect des droits fondamentaux des populations vivant en bidonvilles*), JORF No. 0034 of 10 February 2015, text No. 92.

3. Article 11 - Right to housing and travellers (Question No. 25)

It could be useful for the Committee to ask that France effectively implement the Besson Law so as to eliminate the issue of illegal traveller sites. With this in mind, the Committee could seek assurance from France that prefectures are indeed fulfilling their mission of constructing traveller sites and supporting local authorities, and ensure that they are also effectively monitoring urban planning documents in which the caravan is all too rarely recognised as a housing solution and more often than not prohibited for no specified reason.

The Committee could also ask that France revoke Law No. 69-3 of 3 January 1969, the provisions of which discriminate against travellers, who constitute the only segment of French society that is required to hold a "*passport de l'intérieur*" ('domestic passport') that immediately identifies members of the travelling community as belonging to a supposed 'ethnic' group. With this in mind, the Committee could question France on the legislative future of the bill on the status of and the facilities and housing provided for travellers, which was adopted by the National Assembly in June 2015 and has since been blocked by the Senate.

Finally, the Committee could ask that the necessary consideration, which has thus far been absent from the various parliamentary work that has been conducted, be given to the recognition of the caravan as a housing solution in its own right, along with the relevant aid, in cases where individuals freely choose to live in a caravan rather than being forced to do so.

VI) Specific problems encountered by other particularly vulnerable groups

1. Article 6 - Employment discrimination against individuals belonging to minority groups (Question No. 11)

The Committee could encourage France to develop and expand the handful of initiatives already in place. Furthermore, it could recommend that the module designed to raise awareness of the fight against discrimination eventually be developed into an on-going training initiative for civil servants and that it be deployed as part of the initial and on-going training provided for public servants working in the hospital and territorial public services.

2. Article 9 - Access to social protection mechanisms for migrants and asylum-seekers (Question No. 17)

The CNCDH considers it expedient that the Committee ask France to extend the ADA allowance to minors, as well as to those who reject the material living conditions offered by the OFII. The Commission would also like to see France asked about the need to reassess the value of this allowance.

The CNCDH considers it expedient that the Committee ask for clarification regarding the policy implemented by France with regard to effective access to health insurance for foreign citizens living in the country legally. Furthermore, it is important that the Committee ask France about access for asylum-seekers to the PUMA and CMU-C systems, as

well as improving the information and support provided for migrants in transit with regard to extending entitlement to State Medical Aid (AME).

3. Article 11 - Fighting poverty (Question No. 20)

It might therefore be useful for the Committee to ask France about its intentions to pursue its commitment to incorporating a new criterion of discrimination regarding social instability into the law, in accordance with the Covenant on Economic, Social and Cultural Rights, or, failing this, to ask that it outline the reasons for the delay in the adoption of this law.

The Committee could ask France whether it plans to introduce any initiatives designed to improve negative discourse and representations regarding those who find themselves living in poverty. Furthermore, it would be useful to identify any participatory approaches that recognise the experience and knowledge of those who find themselves in positions of instability undertaken by the public authorities with regard to fighting poverty. It might notably prove beneficial to know what conclusions the public authorities have drawn from the implementation of measures included in the multi-year plan to combat poverty and promote social inclusion.

4. Article 11 - Discriminatory practices in access to housing (Question No. 22)

The Committee could welcome the efforts made on the part of the government whilst at the same time calling for vigilance with regard to factors of discrimination, mechanisms of exclusion and the various obstacles likely to hinder access to housing for vulnerable individuals in light of the discrepancies frequently observed between the relevant texts and actual practices.

VII) Articles 13 and 14 - Education for children belonging to vulnerable groups  
(Question No. 28)

1. Application of the three memorandums of October 2012: Allophone pupils

In light of these observations, the Committee could call for the effective and comprehensive application of the three memorandums of October 2012 regarding the schooling of children who find themselves in positions of instability and have no fixed abode. More specifically, the Committee could ask that the government provide a detailed description of the system in place for monitoring newly arrived allophone pupils, as well as the main trends that emerge from the national survey on the schooling of such pupils.

2. The schooling of disabled children

It might also be useful for the Committee to ask France about the measures put in place to promote mainstream education for disabled children whilst ensuring that particular attention is paid to the terms governing the implementation of education plans to ensure that they encourage increasing individualisation and equality of treatment.

VIII) Article 10 - People trafficking (Question No. 19)

The CNCDH considers it expedient that the Committee ask France to outline the measures already put in place or yet to be implemented with a view to resolving the shortcomings observed with regard to accommodation for victims of people trafficking and that it commit to effectively implementing the corresponding measures outlined in the Plan.

The Committee could ask France about any planned measures designed to ensure the effectiveness of the right of access to healthcare for victims of trafficking and notably question the government to establish whether any specific health-related provisions will be included in any future post-2016 National Action Plans.

The CNCDH takes the view that it would be expedient for the Committee to request from France a presentation of the measures undertaken or to be undertaken so as to address the lacunae in terms of access to employment and professional training for victims of people trafficking.

The CNCDH wishes to draw the attention of the Committee to the seriousness of the situation encountered by young persons who are victims of people trafficking and the low level of care they are afforded. In order to remedy this, the Committee could question France concerning the measures that it intends to take in order to implement the recommendations formulated by the CNCDH concerning this specific issue, in its capacity as national rapporteur in the field.

In order to ensure that sufficient relevant resources are provided to fight people trafficking and exploitation in France, the Committee could question the government regarding its proposed undertakings in human and financial terms in this regard.

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I) Article 2, paragraph 2 - Ethnic statistics (Question No. 7)

In its Opinion on ethnic statistics (*Avis sur les statistiques « ethniques »*) dated 22 March 2012<sup>2</sup>, the CNCDH states that it is not in favour of authorising statistics broken down by 'ethnic group'. It would, however, recommend that knowledge of inequalities relating to a person's origin be improved and qualified using objective factors such as their place of birth and nationality and the place of birth and nationality of their parents. This recommendation reflects the need for a census for the purposes of obtaining more accurate information regarding discrimination, better understanding its causes and effects and taking the appropriate measures. With this in mind, the CNCDH would like to see the appropriate quantitative tools introduced to help improve the implementation of the law of non-discrimination.

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<sup>2</sup> CNCDH, 22 March 2012, Opinion on ethnic statistics (*Avis sur les statistiques ethniques*).

As things currently stand, whilst a number of statistical tools that help measure discrimination have been identified and highlighted, they are still under-exploited and insufficiently developed by the French public authorities.

It would be of interest and useful for the Committee to recommend that France develop the initiatives undertaken to improve knowledge of discriminatory phenomena, particularly when the latter are based on origin. In more general terms, it would be useful for France to develop different tools for measuring discrimination with regard to accessing economic and social rights, regardless of the criterion on which the discrimination is based.

**II) Article 2, paragraph 1 - International cooperation (Questions No. 5 and 6)**

In accordance with Article 2 of the Pact, France has extraterritorial obligations that require it to implement certain policies and legislation with regard to international cooperation and solidarity. In the framework of these obligations, France adopted, on 8 July 2014, a bill concerning the steering and programming of development policy and international solidarity, on which the CNCDH submitted an opinion<sup>3</sup>. Although the CNCDH welcomes this initiative, it cannot help but note that the content of the law is of a primarily symbolic nature and is limited to the outlining of aspirations and objectives.

**1. Public development aid**

In both the fourth periodic report and the responses to the list of questions, the CNCDH notes that the amount of public development aid allocated every year by France has successively decreased following a series of vain attempts at an increase and undoubtedly lacks stability as a result of this. The CNCDH, however, has reiterated France's commitment to ensuring that the amount of public development aid accounts for 0.7% of its gross national income.

Furthermore, the CNCDH would point out that public development aid must go hand-in-hand with an obligation of transparency. Indeed, France has a duty to adopt a developmental aid policy that is both clear and transparent for both its people and the populations that benefit from it. In order to fulfil this obligation, it must be accountable and perfectly transparent with regard to the use of public aid in order to ensure that the latter is never embezzled, either by the private companies that handle this aid or by recipient States. That said, there is no denying the fact that the 2014 law remains somewhat occult with regard to the obligation on the part of both donor and recipient States to publicly account for public development aid.

The CNCDH would encourage the Committee to remind France of its obligation to achieve the objective of allocating 0.7% of its gross national income to developmental aid and to ensure that the measures it puts in place to achieve this are entirely transparent from all angles.

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<sup>3</sup> CNCDH, 30 January 2014, Opinion on the bill concerning the steering and programming of development policy and international solidarity (*Avis sur le projet de loi d'orientation et de programmation relatif à la politique de développement et de solidarité internationale*), JORF No. 0038 of 14 February 2014, text No. 104.

## 2. The application of development and international solidarity policy

### *- A policy designed independently of the human rights approach*

As far as the CNCDH is concerned, France's development policy should put human rights, as outlined in the international conventions to which France is party, at the heart of what it does. In other words, a development approach based on rights should form a conceptual and operational framework for development and international solidarity policies.

That said, the CNCDH believes that the aim of simply 'promoting' the human rights contained within the law appears to be insufficiently ambitious with regard to expressing a truly human rights-based approach. Such an approach, in aiming to prevent attacks on human rights and reinforce respect, does, however, ensure the efficiency, relevance and sustainability of development projects.

The other component of the human rights-based approach requires the active participation of the populations concerned. It therefore helps to place the emphasis on participatory mechanisms for use by individuals, who must not merely be viewed as beneficiaries but as rights holders and protagonists in their own development. In this respect, the CNCDH is concerned that the law fails to take this vital prerequisite into account. Indeed, the CNCDH finds it regrettable that the principle of participation on the part of the populations concerned does not feature heavily in France's development policy. Whilst certain players are mentioned in Article 4 of the law, however, nothing is said regarding the means for implementing the various partnerships, thus rendering this provision ineffective.

The CNCDH feels that it would be useful for the Committee to recommend that France adopt a development approach based on human rights whilst ensuring that development initiatives aim to increase respect for human rights and incorporating participation on the part of the populations concerned as a principle of development policy.

### *- Responsibility on the part of public economic players*

The provisions of both the Pact and of the United Nations Guiding Principles on Business and Human Rights emphasise the importance of ensuring consistency between state policy relating to businesses and the advocated principles for protecting human rights. There is, however, one blatant observation to be made, that being that nowhere near enough consideration is given to the risks associated with human rights with regard to public export insurance. Furthermore, it is very clear that public policy regarding aid for businesses needs to be consistent with the principles for protecting human rights.

Moreover, in order to enable France to act as an exemplary State when funding or serving as guarantor for projects, the CNCDH had formulated the following recommendations, which still apply, in 2013<sup>4</sup>:

- The adoption of measures aimed at encouraging the COFACE group (French export credit agency) and its clients to put in place a due diligence process where human

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<sup>4</sup> CNCDH 24 October 2013, Opinion on Business and Human Rights: report on the issues associated with the application of the United Nations' Guiding Principles in France (*Avis Entreprises et droits de l'homme : sur les enjeux de l'application par la France des Principes directeurs des Nations unies*), JORF No. 0266 of 16 November 2013, text No. 56.

rights are concerned, which should generally be made public for each project it guarantees;

- The process for obtaining information on and assessing the impact on human rights of operations guaranteed by the COFACE should fall within the remit of a ministry with departments that are in a position to provide an analysis of the situation for each country, such as the Ministry for Foreign Affairs and International Development, for example, which publishes 'information for travellers';
- France should fulfil its obligation to protect through its developmental aid network by imposing specifications that include exhaustive human rights impact studies;
- In order to remedy the potential impact on human rights of a project supported by the French Development Agency, a system should be put in place whereby any stakeholder can officially communicate any alerts, questions, recommendations and requests relating to projects and their impact to the AFD at any stage in the development and implementation processes.

It would be useful for the Committee to question France on the following up of the CNCDH's recommendations regarding the incorporation of human rights into the policies adopted by the COFACE and AFD groups. These recommendations must, of course, be given due consideration since their implementation would help ensure a certain consistency between public policies regarding aid for businesses and France's obligations in relation to human rights.

- *Responsibility on the part of private economic players*

Article 8 of the 2014 law directly targets businesses and their societal and environmental responsibility, whilst at the same time adopting a limited interpretation of said responsibility. The CNCDH finds it regrettable, however, that France's policy regarding businesses with head offices located within France is still only in its infancy.

France, of course, made its mark on the international stage by voting against the resolution of the Human Rights Council aimed at introducing new legally binding international standards with regard to multinational companies and human rights. Nevertheless, this opposition would appear to be less than firm, since France has announced its intention to sit in, as an observer, on the work of the intergovernmental group responsible for developing such an instrument, which has been produced by the Human Rights Council. That said, it will only perform its role as an observer if the European Union requirements by which its involvement is governed are favourably received. France therefore attended the first meeting of the working group for the purposes of enforcing the criteria imposed by the European Union.

Furthermore, it has still not yet published its national action plan aimed at implementing the United Nations Guiding Principles on Business and Human Rights.

Finally, whilst a bill on the introduction of a duty of vigilance with regard to parent companies and ordering parties is in the process of being examined, it has not yet been adopted and does not appear to be sufficiently ambitious to overcome the almost legal void that currently exists in France.

The Committee should encourage France to implement a policy on corporate responsibility with regard to human rights in order for it to fulfil its international commitments whilst ensuring that a duty of vigilance is effectively incorporated into the law, thus helping to

prevent acts committed by subsidiaries or sub-contractors of businesses with their head offices in France. This policy should be implemented so as to offer potential victims of human rights violations effective access to justice.

Furthermore, it could be useful for the Committee to question France on its genuine intention to participate in the United Nations working group on the production of an appropriate legally binding international instrument.

### III) Specific problems encountered by women

#### 1. Article 6 - Obstacles to the employment of women (Question No. 12)

##### - *Provision of childcare*

The link between appropriate high-quality care for young children and the employment of women has already been proven. In this respect, it is important to reiterate the fact that France has committed to bringing the rate of employment among women into line with that of men by 2025, bearing in mind that this gap currently stands at 9 points. Access to childcare helps fight instability among women and gives them better access to both positions of responsibility and independence.

In France, however, there is a significant shortage of childcare solutions for young children, meaning that the parents, and in the overwhelming majority of cases the mother, are very often solely responsible for caring for their children. This withdrawal from working life while raising young children has an impact on the careers of these women and has a negative effect of their future pension levels.

It is important to underline that the Agreement on Objectives and Management signed between the State and the National Family Allowances Fund (CNAF) for the 2013-2017 period provides for the creation of 275,000 new childcare solutions aimed at children under 3 years of age, which equates to the creation of 55,000 childcare places a year. In 2014, however, the CNAF revealed that only 3,500 new childcare solutions had been created, and these are the latest figures available. This is clearly, therefore, a long way off the objective set.

The Committee could ask France what measures the government plans to introduce in order to achieve the objective of creating 275,000 new childcare solutions for children under 3 years of age by 2017, which would help improve women's access to employment.

#### 2. Article 7 - Representation of women and wage equality (Question No. 14)

##### - *Social equality*

Since the constitutional reform of 1999, one of the objectives of which was to achieve equality, France has expanded its legislative and regulatory arsenal with a view to reaching a situation whereby power is shared equally by women and men. This objective applies not only to the political sphere but also to the economic sphere.

Nine political laws have since been introduced, enabling municipal councils of over 1,000 inhabitants, as well as departmental and regional councils, to be made up of equal numbers of men and women.

Two economic laws have also been introduced, resulting in a significant increase in the proportion of women sitting on the boards of directors of both private and public enterprises, although there is still a very long way to go in this respect.

With regard to the social sphere, the Law of 4 August 2014 aimed at achieving true equality between women and men reinforced and extended this principle of the sharing of power to organisations operating in the social sphere, such as sporting federations. Extending the principle of equality to all civic organisations is a major issue with regard to recognising the place of women within society as a whole.

The Committee could ask about extending the objective of equality to all civic organisations.

- *Wage equality*

Women generally find themselves in more unstable positions and are generally more vulnerable and subject to various forms of discrimination. A number of perfectly commendable initiatives have been implemented in conjunction with private players, but there is still significant room for improvement. With regard to government departments, few measures have been put in place to avoid discrimination, reduce wage gaps or reduce the glass ceiling. There is, however, evidence of pay gaps for equal work within government departments, some of which are greater than those observed in certain companies.

The Committee could ask that the French government specify whether it plans to introduce a pay convergence policy with the aim of reducing the discrepancies observed within its own departments.

- *Fighting discrimination*

The Act of 17 March 2014 regarding consumption introduced the principle of class action. This major legal breakthrough does not, however, currently serve to fight discrimination based on gender.

In order to effectively fight sexism, sexual harassment and wage inequalities, it would be wise to enable associations, such as feminist associations, and union organisations to represent a group of people who find themselves the victims of direct and/or indirect discrimination in the workplace. It would also be very useful to allow associations to bring class action suits outside of professional relations, such as for the purposes of denouncing sexist advertisements, for example, or even with regard to access to goods, to denounce 'women taxes', which are extra charges applied to consumer products aimed at the female market. With this in mind, it has been noted that although their income levels are far lower than those of men, women are required to invest more than men in obtaining goods and services for which the market has been segmented based on gender.

The Committee could submit a question regarding the government's desire to extend the scope of class action to gender-related discrimination both within and outside of the workplace.

3. Article 10 - Violence against women (Question No. 18)

a) Violence against women - general points

The growing awareness in France of the scale of the gender violence phenomenon has resulted in a number of new laws being adopted<sup>5</sup>. At the same time, a series of pro-active initiatives on the part of the public authorities have enabled four inter-ministerial plans for fighting violence against women to be adopted since 2005. Nevertheless, these developments, as real and significant as they may be, are still insufficient. The CNCDH will endeavour to develop a number of avenues of reflection that it would be useful for the government to pursue in order to further improve its legislative arsenal.

- *Incorporation of a gender-based aggravating circumstance into domestic law*

French law does not specifically recognise sexist murders, as is the case with homophobic or racist murders, for example. Not recognising the specific nature of certain sexist homicides, however, only serves to mask certain sexual relations and a gender-based social construction that is largely unfavourable to women. Furthermore, the CNCDH would recommend modifying paragraph 7 of Article 221-4 of the French Criminal Code to incorporate an aggravating circumstance 'based on the victim's gender'. Such a modification would help facilitate a greater understanding of and more effectively sanction murders of women, simply because they are women, that take place both within and outside of the marital sphere.

The Committee could ask France about the possibility of modifying the French Criminal Code in order to give greater consideration to crimes committed against women simply because they are women.

- *The protective order*

The protective order is a very comprehensive tool but one that is not yet implemented on a wide enough scale because it is insufficiently understood. Magistrates all too often demand a complaint as evidence of the likelihood of danger. Furthermore, the current average time frame for the issuing of a protective order (37 days) is too long for an emergency system. The CNCDH would recommend improving the application of the protective order by shortening the time it takes to issue one and encouraging the use of this measure by sending a new ministerial memorandum to family court judges with a view to encouraging a more frequent and appropriate use of the protective order.

The Committee could recommend that the French government draft and circulate a new criminal policy memorandum on violence against women and the use of the protective order.

- *Dialogue and cooperation between the various legal players from the reporting of incidents to dealing with victims and perpetrators*

It is vital that an appropriate jurisdiction policy involving all legal players be developed in order to ensure that each party is in possession of comprehensive information regarding the situation of the perpetrators of violence and their victims in good time. With this in

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<sup>5</sup> Law of 4 April 2006, Law of 9 July 2010, Law of 6 August 2012, Law of 5 August 2013, Law of 4 August 2014 and Law of 29 July 2015.

mind, it is primarily down to the prosecutor, who receives all reports filed, to ensure that such information is indeed exchanged, notably with the family court judge. The coordination of civil servants, supported by the clarification of reporting and communication channels under the impetus of the State Prosecutor, is likely to increase the guarantee of an appropriate criminal response being issued within a reasonable period of time.

- *Raising awareness of and training in gender-related violence*

Whilst significant efforts have been made with this in mind, the measures implemented out in the field vary somewhat from one profession and region to another, meaning that measures designed to ensure effective basic and on-going training for professionals are vital. Particular attention should be paid to the initial reception of the victim in question. The CNCDH would therefore recommend that efforts to train police and gendarme officers in dealing with complaints from women who find themselves victims of violence be stepped up, with the emphasis notably on respecting the confidentiality of the statement made.

The CNCDH considers it expedient for the Committee to request from France a presentation of the measures undertaken or to be undertaken so as to address the failures observed with regard to preventing and fighting violence against women.

b) The specific case of the resurgence in female sexual mutilation

The CNCDH, in its 2013 opinion<sup>6</sup>, noted that "*progress had been made in France in terms of fighting female sexual mutilation*". Nevertheless, many young girls, the vast majority of whom usually live within the country, still find themselves in a dangerous position. The practice of circumcision appears to have significantly declined within France, with young girls more often than not circumcised whilst on a temporary stay back in their home country.

The CNCDH formulates a number of recommendations in its opinion, underlining the importance of gathering data for the purposes of adapting the policy designed to raise awareness among at-risk populations in accordance with changes in the prevalences observed in the home territories of migrant families and the need to increase training and awareness of the practising of female sexual mutilation among the various players concerned, including medical professionals, social workers, the police and gendarme officers, and even magistrates.

The Committee could ask France to explain how it has taken on board the CNCDH's recommendations suggesting that it improve the gathering of primary data on female sexual mutilation, conduct quantitative and qualitative studies for the purposes of better assessing the risks of female sexual mutilation among second and third-generation immigrant women, develop training plans aimed at the professionals concerned and improve the criminal response to such practices.

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<sup>6</sup> CNCDH, 28 November 2013, Opinion on female sexual mutilation (*Avis sur les mutilations sexuelles féminines*), JORF No. 0287, 11 December 2013, text No. 81.

IV) Specific problems encountered by those with disabilities - Article 2, paragraph 2 (Question No. 8)

The CNCDH wishes to return to the claims made by France in its periodic report<sup>7</sup> on the compliance of the Law of 11 February 2005 with the International Convention on the Rights of Persons with Disabilities. Indeed, whilst this fact may have been contested by a number of specialist associations, it has nevertheless been put forward without any clarification as to whether this compliance has effectively been assessed.

Furthermore, the CNCDH does not subscribe to the claim that "*this law provided a legal definition of disability in France that largely reflects Article 1 of the Convention*". Indeed, whereas the International Convention recognises the social and societal aspects of disability, the French Law of 2005, despite representing a certain degree of progress in relation to previous laws, maintains an interpretation that places the utmost importance on the medical perspective. In order to implement consistent policies designed to fight discrimination based on disability, however, it is vital that this notion be correctly understood, which is not the case in France.

Finally, whilst the objectives set out by France in its responses to the list of questions would appear to partially account for the shortcomings that exist with regard to disability, there is no denying the fact that this list was produced following a National Conference on Disability and therefore has merely declaratory force, and moreover that it is not prioritised in any way, which makes it difficult to establish whether these actions have in fact been completed.

The CNCDH feels that it would be useful for the Committee to ask France about the compliance of its national law with the International Convention on Disability, notably in light of the way in which it defines this notion. Furthermore, in order to fully respond to the question asked, the Committee could ask that France specify the deadlines for and progress made with regard to the measures that it cites and, in more general terms, when it expects to present its initial report to the United Nations Committee on the Rights of People with Disabilities, which has been significantly delayed.

V) Specific problems encountered by the Romany and traveller communities

1. Article 2, paragraph 2 - Stigmatisation of and discrimination against Romany populations (Question No. 9)

- *Fighting the stigmatisation of and discrimination against Romany populations in France*

The CNCDH has been highlighting the continuous deterioration in the image of the Romany community in France for a number of years, to which the hate speech pronounced against them in the political sphere and the media, which only serves to trivialise racial discourse, contributes. It is important to underline the fact that the majority of French political leaders reject this racist rhetoric, although it is concerning to note that political leaders can still resort to such measures without necessarily being prosecuted and sentenced.

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<sup>7</sup> E/C.12/FRA/4, §47

It should, however, be noted that whilst prejudices, stereotypes, poor understanding and feelings of fear and hostility are still combined with particular strength and intensity in the case of Roms, compared with other marginalised groups, the trend does, nevertheless, appear to be improving<sup>8</sup>.

In general terms, it is vital that basic work on perceptions and prejudices be undertaken for the purposes of fighting the stigmatisation and discrimination to which they are sometimes subjected.

The Committee could ask that France introduce a plan designed to raise awareness with a view to informing and training civil servants and regional authority representatives, political leaders and local elected representatives, as well as all citizens, for the purposes of fighting the prejudices and preconceived ideas that exist with regard to the Romany people from a more educational perspective. Any measures introduced with this in mind must, however, be implemented in partnership with the populations concerned if they are to be effective and relevant.

- *Access to the rights of migrant Romany populations since the lifting of the interim measures for Romanian and Bulgarian nationals*

The lifting of the interim measures applicable to Romanian and Bulgarian nationals since 1<sup>st</sup> January 2014 theoretically puts an end to the obligations to hold both a residence permit and a work permit. Romanians and Bulgarians are now no longer subject to specific conditions when seeking employment in France, registering with the *Pôle Emploi* employment agency or applying for job-seekers' welfare benefits.

The CNCDH has nevertheless regrettably observed that there are still a number of administrative difficulties when it comes to Romany populations integrating into the job market. The various departments of the *Pôle Emploi* are not always up to date with the latest regulations in force with regard to these nationals, and ask them to fulfil certain formalities that are no longer necessary.

The Committee could seek clarification from France regarding the conditions governing access to services for job-seekers (on the parts of both the population and the departments concerned) and indeed to all professional integration schemes. With this in mind, reception agents should be able to receive training in dealing with low-skilled allophone populations<sup>9</sup>.

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<sup>8</sup> CNCDH, 2015 Report on Fighting Racism, Xenophobia and Anti-Semitism (*Rapport sur la lutte contre le racisme, la xénophobie et l'antisémitisme*), Part II - 'The perspective of researchers on racism phenomena' (*Le regard des chercheurs sur les phénomènes de racisme*), Chapter 5 - More moderate feelings towards the Romany community (*Des sentiments envers les Roms plus nuancés*): In late 2013, over 87% of the population considered the Romany community to be a 'separate group' within society, representing an increase of 21 points since 2011. By January 2016, only 74% of those surveyed felt this way. Likewise, only 57.4% of those surveyed as part of the CNCDH barometer thought that the Romany community, and more specifically migrant Roms, did not wish to integrate, as opposed to 77% in December 2014.

<sup>9</sup> CNCDH, 22 March 2012, Opinion on 'Respecting the rights of 'travellers' and migrant Roms in light of France's recent responses to international bodies' (*Avis sur « Le respect des droits des « gens du voyage » et des roms migrants au regard des réponses récentes de la France aux instances internationales »*). 20 November 2014, Opinion on respecting the basic rights of populations living in slums (*Avis sur le respect des droits fondamentaux des populations vivant en bidonvilles*), JORF No. 0034 of 10 February 2015, text No. 92.

2. Article 11 - Right to housing and Romany populations (Question No. 24)

- *Measures put in place to improve access to housing for migrant Roms and end forced evacuations in the absence of a decent and adequate rehousing solution*

The United Nations High-Commissioner for Human Rights has publicly denounced "a systematic national policy for the forced expulsion of Roms" <sup>10</sup> in France since 2012. Indeed, as far as the CNCDH is concerned, the partial and heterogeneous application at national level of the inter-ministerial memorandum of 26 August 2012 regarding the anticipation of and support for operations to evacuate unlawful camps is concerning, particularly as the repressive element has replaced social integration and support initiatives. Rehousing solutions and social support are not, in fact, systematically offered or indeed implemented, and sometimes even fail to reach the individuals concerned. Furthermore, this situation is all the more concerning for Romany women and girls who are particularly heavily affected by this lack of stability, which can result in a lack of education, forced marriage and gender-related violence.

Settlements considered by the public authorities to be 'unlawful camps' are makeshift occupations, owing to the lack of housing and accommodation accessible to those on very low incomes and administrative obstacles to accessing social housing. The discrimination that Romany populations can sometimes encounter with regard to accessing education, employment and healthcare stems partially from their difficult housing conditions. Housing insecurity can, indeed, have major consequences, since housing stability is a pre-requisite to the exercising of various rights in France.

More specifically, failure to respect the right to domiciliation remains one of the major obstacles to the integration of Romany populations. The CNCDH has identified many cases in which this right is not effectively enforced, with certain social action community centres (CCASs) refusing domiciliation and others with excessively long response times or even failing to respond to applications altogether. In some cases, approved bodies are simply overwhelmed and stop accepting new applications.

In this respect, the State undeniably has a role to play, in terms of both spurring local players to act and supporting the efforts already deployed out in the field by certain associations and regional authorities, some of which lament the "*organised abdication of the State*" <sup>11</sup> in this respect.

The Committee could ask that the government effectively and comprehensively apply the inter-ministerial memorandum of 26 August 2012, which should, in partnership with regional authorities and associations, result in the systematic offering of a dignified and permanent rehousing solution prior to any evacuation. Such offers should follow a comprehensive and individual diagnosis of the situation of the person or people in question.

<sup>10</sup> United Nations High-Commissioner for Human Rights, press release, Zeid Ra'ad Al Hussein urges France and Bulgaria to end the forced expulsion of Roms (*Zeid Ra'ad Al Hussein exhorte la France et la Bulgarie à arrêter les expulsions forcées de Roms*), 11 September 2015.

<sup>11</sup> *Ledauphine.com, Slums of Grenoble : Eric Piolle warns François Hollande* ('Bidonvilles à Grenoble: Eric Piolle alerte François Hollande'), 8 July 2015.

Furthermore, the Committee could ensure that the government has put in place effective systems for the domiciliation of populations living in slums, as a prerequisite to accessing the range of economic and social rights to which they might be entitled.

- *Measures taken to improve access to healthcare for Romany populations*

France boasts a legislative arsenal that complies with international law regarding access to healthcare for unstable foreign populations. That said, this protection is far from effective. The CNCDH has, in fact, noted that the majority of migrant Roms have no health cover, for reasons that are common to all migrants that do not hold a residence permit, and also owing to certain specific administrative obstacles that are paradoxically linked to their status as citizens of the European Union, which complicates their access to State medical aid.

Likewise, the actions of certain social bodies and obstacles to domiciliation further hinder access to healthcare for populations living in slums. Certain primary healthcare funds (CPAMs), for example, impose more restrictive conditions than the law provides for (and the need to produce a radiation certificate for the country of origin in particular), and certain CCASs refuse to domicile people living in slums or impose abusive conditions, whilst prefects are failing to fulfil their role of coordinating the domiciliation offering within their respective territories, thus creating a discriminatory situation that prevents effective access to healthcare.

The preliminary, comprehensive and individual diagnosis provided for in the memorandum of 26 August 2012, which should guarantee the continuity of the healthcare pathway, is reduced to a simple and ineffective census process. Appropriate support measures identified following the diagnosis are based solely on the mediation work undertaken by the handful of associations and groups operating out in the field.

The Committee could recommend that the government reiterate the law that applies with regard to the extension of rights to healthcare cover for European Union nationals and the law that applies with regard to domiciliation. Individuals should be able to enjoy healthcare coverage in accordance with the conditions provided for by law, with no further restrictions.

The Committee could also ask that France remove any obstacles to accessing healthcare and social welfare benefits put in place by certain social bodies and the systematisation of health mediation systems.

- *Measures designed to end practices on the part of local authorities that hinder Romany children's access to education*

The implementation of the right to education is a matter for the State, mayors and the families concerned. In the case of newly arrived allophone pupils, memorandum No. °2012-141 of 2 October 2012 states that "*the schooling of allophone pupils is a matter of common law and compulsory education. The Republic and its schools have a duty to ensure that allophone pupils arriving in France enjoy the best possible conditions for their integration*". In this respect, problems relating to the academic exclusion of allophone Romany children and those who have recently arrived in the slums of France are concerning.

Excessive demands for documentation on the part of town councils and refusals of registration owing to the fact that the populations concerned have no stable place of residence or the fact that these families are unable to produce certificates of domiciliation or vaccination cards are certainly a problem and represent voluntary barriers put in place by local authorities with regard to access to education for children living in slums.

It is possible to appeal to the prefect<sup>12</sup> or directly to the headteachers in question, who have the power to provisionally admit the child<sup>13</sup> () and have effectively allowed a number of children to receive an education despite the fact that the mayor may have refused their registration. That said, this is by no means automatic and the waiting times can be particularly detrimental to the children concerned, who are already in an unstable position to begin with.

The Committee could recommend that France ensure that prefects and regional education officers remind mayors of their obligations with regard to the schooling of children living within their jurisdiction, these being as follows:

- all children of school age must be allowed to register at a school with no discrimination based on the absence of a fixed address or vaccination card;
- children that have registered should be welcomed within the school and should be allowed to benefit from all aspects of school life (canteen, supervised study, extra-curricular activities, school trips, etc.).

### 3. Article 11 - Right to housing and travellers (Question No. 25)

The CNCDH believes that the Besson Law is still only very partially implemented, whilst the ban on travellers parking up on the vast majority of land has become the rule for travellers, it has become easier to expel such communities, and the penalty for unlawful parking has been unpleasantly imposed.

Whilst the capacities of traveller sites have indeed been increased, they still fail to meet expectations<sup>14</sup>. The power of substitution on the part of prefects with regard to creating such sites has also not yet been implemented. The reality of the facilities provided for travelling communities therefore relies all too often on the presumed goodwill of the neighbouring town, resulting in major regional inequalities. For the purposes of balance and equality, it is important that the possibility of reinforcing the legal framework bestowing powers of substitution on the part of prefects with regard to construction of traveller sites when a town opposes such an initiative be considered. The construction of traveller sites provided for in departmental plans must therefore be continued in order to accommodate the travelling practices of certain 'travellers' and achieve the quantitative objective initially set. This objective must, however, incorporate a qualitative dimension since there is evidence of a very strong intolerance on the part of many 'travellers' of the standards and facilities provided for them.

<sup>12</sup> Article L.2122-34 of the *Code Général des Collectivités Territoriales* ('Local and Regional Authorities Code')

<sup>13</sup> Memorandum No. 2014-088 of 9 July 2014

<sup>14</sup> A report produced in late 2013 on the production of departmental plans listed 1,084 permanent traveller sites accounting for 25,886 places, and a new place creation rate of 67% in relation to the original specifications

Furthermore, the construction of temporary traveller sites does not meet the need on the part of semi-settled travellers or those in the process of becoming settled on 'family land', the development of which is as yet anecdotal, to put down roots in the local area. It has been demonstrated that the housing needs of travellers have changed considerably over the past ten years, both for economic reasons and out of convenience. It is important now that rented family land be taken into consideration in the French housing system in order to adapt the responses provided by the public authorities to the need on the part of travellers to 'put down roots'. Departmental plans should therefore also take such developments into account and offer alternative housing solutions that are not limited to merely increasing the number of parking spaces available on traveller sites.

It is therefore important to take family land into account in common law urban planning systems with regard to both public urban planning tools and local development plans (PLUs) and indeed the plan for improving access to housing for the disadvantaged (PDALD). Furthermore, the provisions introduced by the ALUR Law are still insufficient in that whilst the text does open up a number of avenues with regard to the consideration given to all permanent housing solutions across the country, it does not incorporate light/mobile housing into common law by recognising its status as housing.

Furthermore, the CNCDH strongly condemns the fact that a measure as discriminatory as the obligation for travellers to hold a specific travel permit is still in force, particularly given the lack of and difficulties accessing traveller sites, owing notably to the partial implementation of the law, as well as the practical obstacles to the exercising of their rights to vote and to education.

It could be useful for the Committee to ask that France effectively implement the Besson Law so as to eliminate the issue of illegal traveller sites. With this in mind, the Committee could seek assurance from France that prefectures are indeed fulfilling their mission of constructing traveller sites and supporting local authorities, and ensure that they are also effectively monitoring urban planning documents in which the caravan is all too rarely recognised as a housing solution and more often than not prohibited for no specified reason.

The Committee could also ask that France revoke Law No. 69-3 of 3 January 1969, the provisions of which discriminate against travellers, who constitute the only segment of French society that is required to hold a "*passport de l'intérieur*" ('domestic passport') that immediately identifies members of the travelling community as belonging to a supposed 'ethnic' group. With this in mind, the Committee could question France on the legislative future of the bill on the status of and the facilities and housing provided for travellers, which was adopted by the National Assembly in June 2015 and has since been blocked by the Senate.

Finally, the Committee could ask that the necessary consideration, which has thus far been absent from the various parliamentary work that has been conducted, be given to the recognition of the caravan as a housing solution in its own right, along with the relevant aid, in cases where individuals freely choose to live in a caravan rather than being forced to do so.

## VI) Specific problems encountered by other particularly vulnerable groups

### 1. Article 6 - Employment discrimination against individuals belonging to minority groups (Question No. 11)

A number of interesting avenues of action designed to help fight discrimination in accessing employment have been highlighted by inter-ministerial committees on equality and citizenship and in the framework of the *Egalité et Citoyenneté* ('Equality and Citizenship') Bill. The government has focused its efforts particularly on the discriminatory mechanisms that come into play at the point of recruitment. It is important that systems also be put in place to ensure true equality of opportunities with regard to appointment and career progression.

Furthermore, the General Directorate of Administration and Civil Service (DGAPF) and the Inter-ministerial Delegation for the Fight Against Racism and Anti-Semitism have been working on a project aimed at introducing a module designed to raise awareness among all new public servants of the fight against discrimination, with particular emphasis on discrimination based on origin and religious beliefs, since April 2013. As far as the CNCDH is concerned, such training could represent real added value, since the formation of subconscious biases found within the individual can help highlight prejudices and, eventually, target any resulting direct or indirect discriminatory practices<sup>15</sup>.

The Committee could encourage France to develop and expand the handful of initiatives already in place. Furthermore, it could recommend that the module designed to raise awareness of the fight against discrimination eventually be developed into an on-going training initiative for civil servants and that it be deployed as part of the initial and on-going training provided for public servants working in the hospital and territorial public services.

### 2. Article 9 - Access to social protection mechanisms for migrants and asylum-seekers (Question No. 17)

#### - *With regard to the specific allowance paid to asylum-seekers*

The asylum-seeker's allowance (ADA) was introduced by Law No. 2015-925 of 29 July 2015 on the asylum law reform and replaced the temporary waiting allowance (ATA) and monthly subsistence allowance (AMS) as of 1 November 2015. In accordance with Articles L. 744-9 and L. 744-10 of the CESEDA Code, any asylum-seeker who has submitted an application for asylum in France, any asylum-seeker covered by the procedure outlined in the Dublin III. Regulation, and any foreign national who finds themselves the victim of a people-trafficking operation and who is in possession of a temporary residence permit, in accordance with Article L. 316-1 of the CESEDA Code, can now claim ADA.

Firstly, the CNCDH, which firmly believes in asylum-seekers being able to freely choose their housing solution, laments the fact that the new system is reserved exclusively for

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<sup>15</sup> Report on the Charter for Promoting Equality and Fighting Discrimination in the Civil Service signed on 17 December 2013 by the Minister for the Decentralisation of the Civil Service and the Defender of Rights, 2015 edition (<http://urlz.fr/2OGI>).

those who have agreed to the material reception conditions offered by the French Office of Immigration and Integration (OFII) once the administrative authority has registered their application for asylum<sup>16</sup>. Indeed, the Court of Justice of the EU does not explicitly impose any limitations of this kind in its interpretation of the 'Reception' Directive<sup>17</sup>.

Secondly, Articles L. 744-9, L. 744-10 and D. 744-18 of the CESEDA Code stipulate that in order to receive ADA, claimants must be "over 18 years of age". National<sup>18</sup> and European<sup>19</sup> case law nevertheless shows that all asylum-seekers, without distinction, should be able to receive such an allowance. This being the case, the CNCDH can only lament, as indeed it has done a number of times with regard to the ATA<sup>20</sup>, the fact that minors cannot obtain the ADA. It is therefore absolutely vital that the age condition be withdrawn.

Thirdly, in the framework of the new provisions, family composition is now taken into account when it comes to calculating the amount of the ADA allowance payable, as the CNCDH had recommended<sup>21</sup>. This being the case, the way in which ADA is calculated does not reflect the requirements of Article 17.5 of the 'Reception' Directive, which provides that when States grant material reception conditions in the form of financial allowances, the value of such allowances is fixed in accordance with the level set in the Member State in order to guarantee an appropriate standard of living for its nationals. Indeed, Article 2 of Decree No. 2015-1329 of 21 October 2015 regarding the asylum-seeker's allowance sets the scale for ADA payments, although it is evident to the CNCDH that these amounts do not enable asylum-seekers to meet their basic needs. Whether or not they are in accommodation is somewhat irrelevant given the extreme inadequacy of the method by which it is calculated. It is important, therefore, that the amounts of ADA allowance payable be reassessed. In this respect, it is important, first and foremost, to note that, owing to the saturation of housing schemes (CADA/HUDA)<sup>22</sup>, asylum-seekers will not be able to survive on ADA alone, despite the fact that the Court of Justice of the EU recently stated that the financial allowance should enable them to find accommodation on the private rental market, if need be<sup>23</sup>.

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<sup>16</sup> CNCDH 20 November 2014, Opinion on the Asylum Reform Bill (*Avis sur le projet de loi relatif à la réforme de l'asile*), JORF No. 0005, 7 January 2015, text No. 57, §76.

<sup>17</sup> See CJEU 27 February 2014, *Federal Agency for the Reception of Asylum-Seekers v. Selver Saciri & others*, No. C-79/13.

<sup>18</sup> EC 16 June 2008, *CIMADE*, No. 300636, EC 7 April 2011, *CIMADE and GISTI*, No. 335924, EC17 April 2013, *CIMADE and GISTI*, No. 335924.

<sup>19</sup> CJEU, 4<sup>th</sup> Chamber, 27 September 2012, *CIMADE and GISTI*, C-179/11.

<sup>20</sup> CNCDH 27 November 2013, Opinion on the Common European Asylum System (*Avis sur le régime d'asile européen commun*), JORF No. 0287 of 11 December 2013, text No. 82, §96; CNCDH 20 November 2014, Aforementioned Opinion on the Asylum Reform Bill (*Avis sur le projet de loi relatif à la réforme de l'asile*), §73.

<sup>21</sup> CNCDH 27 November 2013, Aforementioned Opinion on the Common European Asylum System (*Avis sur le régime d'asile européen commun*), §98.

<sup>22</sup> Having highlighted the structural inadequacies of reception systems (CNCDH 15 December 2011, Opinion on the reception of asylum-seekers in France (*Avis sur l'accueil des demandeurs d'asile en France*), available online at [www.cncdh.fr](http://www.cncdh.fr) and CNCDH 28 November 2013, Aforementioned Opinion on the Common European Asylum System (*Avis précité sur le régime d'asile européen commun*), §§89-94), the CNCDH welcomed the creation of new places, even though it believes the efforts made to be largely insufficient (CNCDH 2 July 2015, Opinion on the situation of migrants in Calais and the Pale of Calais (*Avis sur la situation des migrants à Calais et dans le Calaisis*), JORF No. 0157 of 9 July 2015, text No. 102, §19).

<sup>23</sup> See CJEU 27 February 2014, aforementioned case.

The CNCDH considers it expedient that the Committee ask France to extend the ADA allowance to minors, as well as to those who reject the material living conditions offered by the OFII. The Commission would also like to see France asked about the need to reassess the value of this allowance.

- *With regard to access to health cover*

As the law currently stands, access to 'Universal Health Protection' (PUMA) and 'Additional Universal Health Cover' (CMU/C) require the individual to be living legally in the country. There is, however, one system that is reserved for foreigners who fail to meet this criterion, this being State Medical Aid (AME), access to which requires the individual to have lived in France for three months - a condition that does not, however, apply to minors<sup>24</sup>.

The first observation to be made is that, with regard to the PUMA, the CNCDH has been informed that a draft decree regarding the monitoring of individuals in receipt of social security benefits provides that rights to health protection would no longer be systematically granted for one year, since the periods for which these rights were granted would now be calculated based on the duration of residence permits (some of which are valid for only 3 months). The introduction of new provisions is also likely to result in countless breaches of rights when it comes to renewing residence permits, and the withdrawal of occupational accident cover in particular.

The second observation is that the CNCDH has claimed, on a number of occasions, that the specific nature of the right to asylum is not compatible with the condition regarding the length of time an individual must have been living in France before they can receive State Medical Aid<sup>25</sup>. The CNCDH would point out that the obligations outlined in Article 19 of the 'Reception' Directive are minimal and that all asylum-seekers, without distinction, should immediately have the opportunity to be affiliated to the general health insurance system and benefit from additional cover<sup>26</sup>.

The third and final observation relates to AME (State Medical Aid). The CNCDH has been informed that migrants passing through Calais and Grande-Synthe in particular rarely have any health cover. Despite the fact that they could be eligible for AME, few of them pursue this option<sup>27</sup>. It is therefore vital that the existing support system be improved. Indeed, in the absence of any health cover, such individuals have no access to the common law health system and are only eligible for emergency care, which does not include treatment for any long-term conditions.

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<sup>24</sup> EC 7 October 2006, *Association Aides & autres*, No. 285576.

<sup>25</sup> CNCDH 27 November 2013, Aforementioned Opinion on the Common European Asylum System (*Avis précité sur le régime d'asile européen commun*), §§108-109, and CNCDH 20 November 2014, Aforementioned Opinion on the Asylum Reform Bill (*Avis précité sur le projet de loi relatif à la réforme de l'asile*), §82.

<sup>26</sup> See CJEU 30 May 2013, *Arslan*, No. C-534/11, which underlines the notion that asylum-seekers should not be considered to be living in the country illegally: "(...) the terms, the economics and the purpose of Directives 2005/85 and 2008/115 clearly state that an asylum-seeker has (...) the right to remain within the Member State concerned at the very least until their application has been rejected in the first instance and should not, therefore, be considered as living in the country illegally under the terms of Directive 2008/115, which aims to drive them out of the country".

<sup>27</sup> Defender of Rights, *Exilés et droits fondamentaux : la situation sur le territoire de Calais*, October 2015, p.34. See also M. Abt, *Recours à la médecine générale des patients migrants en Nord-Pas-de-Calais : attentes, déterminants et résultats de consultation somatiques et psychologiques*, Thesis submitted at the University of Lille 2, 2015.

The CNCDH considers it expedient that the Committee ask for clarification regarding the policy implemented by France with regard to effective access to health insurance for foreign citizens living in the country legally. Furthermore, it is important that the Committee ask France about access for asylum-seekers to the PUMA and CMU-C systems, as well as improving the information and support provided for migrants in transit with regard to extending entitlement to State Medical Aid (AME).

### 3. Article 11 - Fighting poverty (Question No. 20)

The CNCDH refers, in a 2013 opinion<sup>28</sup>, to those forms of discrimination that are not covered by criminal law and are based on prejudices against those who find themselves living in poverty. In order to deal with this situation, it would recommend incorporating the criterion of discrimination on the grounds of 'social instability' into Article L. 225-1 of the French Criminal Code and into the Law of 27 May 2008 *outlining various measures for adapting Community law with regard to fighting discrimination*. The addition of a twenty-first criterion of discrimination into the French Criminal Code would offer the advantage of recognising the prejudice to which those in positions of social instability can be subjected and making the discriminating parties understand that their behaviour and discourse cannot be tolerated in a State of law. It would also reflect the stipulations of various international texts. Although a bill to this effect was submitted in 2015, however, it has not yet come to fruition following its adoption by the Senate.

It might therefore be useful for the Committee to ask France about its intentions to pursue its commitment to incorporating a new criterion of discrimination regarding social instability into the law, in accordance with the Covenant on Economic, Social and Cultural Rights, or, failing this, to ask that it outline the reasons for the delay in the adoption of this law.

In the same opinion, the CNCDH appeals to the responsibility of the public authorities with regard to certain discourses that refer to 'welfare dependency' in a stigmatising and demagogic manner. Repressive measures should therefore be supplemented with preventive initiatives. The launch of information campaigns, the development of cultural initiatives and even reciprocal training between those working in the public services and responsible for receiving the individuals concerned, social workers and elected representatives, and those who find themselves excluded would serve to advance not only the relevant practices but also representations and mutual familiarity. With regard to the implementation of such measures, it is important to recognise the experience and knowledge of those individuals who find themselves in positions of instability in the framework of a truly participatory approach.

The Committee could ask France whether it plans to introduce any initiatives designed to improve negative discourse and representations regarding those who find themselves living in poverty. Furthermore, it would be useful to identify any participatory approaches that recognise the experience and knowledge of those who find themselves in positions of

<sup>28</sup> CNCDH, 26 September 2013, Opinion on discrimination based on social instability (*Avis sur les discriminations fondées sur la précarité sociale*), JORF No. 0235 of 9 October 2013, text No. 40.

instability undertaken by the public authorities with regard to fighting poverty. It might notably prove beneficial to know what conclusions the public authorities have drawn from the implementation of measures included in the multi-year plan to combat poverty and promote social inclusion.

#### 4. Article 11 - Discriminatory practices in access to housing (Question No. 22)

The government has demonstrated its desire to make the right to decent housing a matter of priority for public action through the various laws adopted in the field.

This commitment goes further still, in fact, with regard to increasing the effectiveness of the texts in force, with a number of measures designed to effectively fight discrimination and encourage social diversity having been announced at the three inter-ministerial committees on equality and citizenship. Furthermore, the Equality and Citizenship Bill that is currently in the process of being discussed in Parliament incorporates a number of provisions that should help significantly increase the effectiveness of the relevant legislation. This policy represents a three-pronged approach: incorporating better management of social housing allowances, the creation of a new low-rent social housing offering and better distribution of the social housing offering.

Finally, France has appointed an inter-ministerial delegate for social diversity in housing who is notably responsible for the use of the State's land capacity and for supporting prefects in the implementation of the measures provided for by the Law of 13 December 2000<sup>29</sup>. It is important to note that, for the first time and for the purposes of transparency, the conclusions drawn from the aforementioned law and the list of those towns in which shortfalls have been observed is accessible to all.

Nevertheless, a number of studies have highlighted the persistence of various forms of discrimination when it comes to accessing housing. The shortage of housing, and of affordably priced social housing in particular, is a source of discrimination in that it requires a choice to be made - a choice of which the most vulnerable of individuals are very often the first victims. Discrimination can occur when it comes to recognising DALO urgent priority status and indeed throughout the social housing allocation chain:

- Decrease in the DALO recognition rate;
- Inequality in the processing of applications: unreasonable grounds for rejection, inconsistency in practices between allocation committees, the opaque, arbitrary and unregulated pre-selection of applications by the investigating departments, etc.

Without questioning the progress represented by the systems in place, and those stemming from the DALO and ALUR Laws in particular, the CNCDH would underline the fact that a number of these are poorly, if at all, applied, for example:

- Failure on the part of grantors to observe quotas: by way of illustration, Action Logement has failed to meet its objective of 25% for rehousing priority populations;
- Withdrawal of the universal rental payment guarantee (GUL) scheme provided for by the ALUR Law in favour of systems that exclude part of the population (and notably the unemployed);

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<sup>29</sup> Law No. 2000-1208 of 13 December 2000 on urban solidarity and renewal.

- Certain provisions of the ALUR Law are relatively unknown and rarely applied, and this is particularly true of Article 99, which consists of using the solidarity rent supplement (SLS) collected by HLM social housing bodies to reduce rents for vulnerable populations;
- The capping of rent charges in tense areas, as provided for by the ALUR law, applies only in Paris, where it remains partially theoretical in that owners are easily circumventing it.

Furthermore, it is important to highlight that it is difficult for those without adequate housing to gain access to the law. The procedures that apply to such households, which often have to rely on various associations to exercise their rights (DALO recognition, application for social housing, judicial appeal against a demand or compensatory appeal), are complex. Applicants have little active involvement in the allocation process and there is very often a lack of contact centres that are available to inform and support households in their efforts. Furthermore, dematerialisation is likely to result in those who are not computer-literate not taking advantage of the help available.

The Committee could welcome the efforts made on the part of the government whilst at the same time calling for vigilance with regard to factors of discrimination, mechanisms of exclusion and the various obstacles likely to hinder access to housing for vulnerable individuals in light of the discrepancies frequently observed between the relevant texts and actual practices.

**VII) Articles 13 and 14 - Education for children belonging to vulnerable groups**  
(Question No. 28)

*1. Application of the three memorandums of October 2012: Allophone pupils*

The CNCDH, in its 2012 opinion<sup>30</sup>, looked at the reasons behind repeated breaches of the right to education, such as the refusal on the part of certain towns to enrol such pupils at schools, the distances between reception sites and schools, and forced evacuations resulting in short or long-term disruption of the child's education.

The follow-up work undertaken by the Inter-Ministerial Delegation for Accommodation and Accessing to Housing (DIHAL) in September 2013 indicated that only around a third of children of school age were actually in school, and that, furthermore, this schooling was highly unstable. Observations on the part of players operating in the field have confirmed the discrepancies that exist in this respect between the texts and their effective application.

The Reorganisation Law of 8 July 2013 and the three ministerial memorandums of 11 October 2012 on the schooling of allophone pupils promote a school that is inclusive of all pupils with specific educational needs, the aim being to educate them in a mainstream environment. In order to gauge these schooling processes and monitor academic inclusion, the Ministry of National Education decided to conduct a survey on the schooling of newly arrived allophone pupils (EANAs), with the aim of repeating it on a regular basis.

<sup>30</sup> CNCDH, 22 March 2012, Opinion on respecting the rights of 'travellers' and migrant Roms in light of France's recent responses to international bodies (*Avis sur « Le respect des droits des « gens du voyage » et des roms migrants au regard des réponses récentes de la France aux instances internationales »*).

As far as the CNCDH is concerned, however, such monitoring will not enable pupils to be distinguished based on their nationality but will instead provide valuable information on the academic pathways of allophone children. This will then help determine the percentage of children who are not yet in school, their distribution by form and any specific systems in place, such as 'newly arrived allophone pupil teaching units' (UPE2As).

There are also obstacles to education where reception facilities with the capacity to receive allophone pupils are concerned. Memorandum No. 2012-141 provides that "*inclusion in ordinary classes is the most important aspect of schooling. It is the ultimate goal, even if it requires certain short-term adjustments to be made and special systems to be put in place*".

There are indeed certain specially adapted systems in place, but the CNCDH believes that these are insufficient to meet the demand and has observed that this position of saturation results in excessively long waiting times with regard to enrolling and allocating places to children living in slums.

Furthermore, when children are allocated school places, they are sometimes allocated places in inappropriate classes that do not provide these pupils with the right conditions in which to learn and that are likely to result in them disrupting the class and inflaming, or even reinforcing, the rejection to which they have already been subjected.

Furthermore, cases of children living in slums being grouped together at certain locations that are separate from any schools and moreover entirely unsuited to the material needs of the pupils concerned (gymnasiums, police stations, etc.) have been reported. Such systems that derogate from common law are openly discriminatory and stigmatising.

Finally, the material obstacles facing families who find themselves in positions of great instability are also a significant factor that contributes to the poor rate of schooling. Overcrowding in slums, the distances between the slums and the nearest schools, the lack of electricity and therefore of light for doing homework in the evening and the lack of running water for getting ready in the morning, and the unavoidable costs associated with school attendance (transport, insurance, stationery, cafeteria costs, school trips, etc.) are all very practical and very real hindrances to effective schooling.

In light of these observations, the Committee could call for the effective and comprehensive application of the three memorandums of October 2012 regarding the schooling of children who find themselves in positions of instability and have no fixed abode. More specifically, the Committee could ask that the government provide a detailed description of the system in place for monitoring newly arrived allophone pupils, as well as the main trends that emerge from the national survey on the schooling of such pupils.

## 2. The schooling of disabled children

In a previous opinion<sup>31</sup>, the CNCDH lamented the fact that the implementation of the Law of 11 February 2005 still presents a number of difficulties, particularly where the schooling of disabled children is concerned. The law introduces an enforceable right to education, with the alternative of a more appropriate teaching system should the needs of the child so require. Such an approach requires a number of measures to be put in place. The

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<sup>31</sup> CNCDH, 6 November 2008, Opinion on the schooling of disabled children (*Avis sur la scolarisation des enfants handicapés*).

CNCDH, however, believed such measures to be insufficient at the time, notably highlighting the poor numbers of disabled children in mainstream education in the private sector as opposed to the public sector. It also emphasised the lack of clarity of statistical data on mainstream schooling in that whilst, on the whole, the number of such pupils in education was satisfactory, it failed, in fact, to highlight a significant proportion of those in part-time, or even very part-time education and on which no official study has been conducted.

More recently, whilst the CNCDH is delighted at the growing rate of education among children with disabilities and the measures put in place to ensure that this situation continues, it has nevertheless highlighted a number of shortcomings with regard to the introduction of suitable personal education plans. Indeed, regarding the adaptation of education plans, the CNCDH has noted that the *Maisons départementales des personnes handicapées* ("regional centres for the disabled") responsible for making decisions relating to education appear to be experiencing some difficulty in fulfilling their role of assessing and outlining an individual plan. This is believed to stem from, among other things, their composition, which would encourage a medical approach over an educational one. Furthermore, a number of inequalities of treatment resulting from the highly inconsistent practices adopted by different departments have been highlighted.

It might also be useful for the Committee to ask France about the measures put in place to promote mainstream education for disabled children whilst ensuring that particular attention is paid to the terms governing the implementation of education plans to ensure that they encourage increasing individualisation and equality of treatment.

#### VIII) Article 10 - People trafficking (Question No. 19)

In order to meet the various challenges associated with preventing trafficking and exploitation, the French government adopted, in May 2014, a 'National Action Plan on Human Trafficking Prevention', which the CNCDH welcomed. Measure 23 of this Plan creates a national rapporteur mechanism and entrusts the mission to the CNCDH. In its first assessment report on the national action plan (published in March 2016), the CNCDH found it regrettable that the Plan was still far from being fully implemented and that many measures had not, at that stage, been implemented. Victims of trafficking and exploitation are entitled to safety and the full re-establishment of economic and social rights. The CNCDH has, however, observed a number of shortcomings in this respect, which it will seek to expand upon.

##### - *Accommodation*

The housing offering is, in practice, heterogeneous across the different departments and many individuals, despite being identified as current or past victims of trafficking, do not have access to safe accommodation. Over the course of recent years, the total number of places available in accommodation facilities has decreased whereas the number of applications for shelter for victims of trafficking who find themselves in danger is on the rise.

The Plan provided for regional diagnoses to be performed in order to take stock of the needs for places and support aimed specifically at victims of trafficking in each

department, based on a joint method developed at national level, with a view to adapting the accommodation solutions available to victims of trafficking. The Plan also provided for the appointment of a trafficking advisor within any organisation that might be required to host such victims. Nevertheless, the CNCDH fears that such provisions have thus far failed to come to fruition.

Furthermore, whilst the CNCDH has noted that the "reinforcement information" component of the Ac.Sé system has indeed been implemented, it nevertheless laments the fact that there is not, as yet, any evidence of the Ac.Sé system being extended. This is proving particularly important given that the system is better known and therefore more in demand and that it is now reaching saturation.

In this regard, the CNCDH recommended in its report that the provision of accommodation at an accommodation and social reintegration centre (CHRS) not be dependent upon the victim living in the country legally, that access to accommodation not be prioritised based on the type of exploitation the individual has suffered, and that additional places at CHRS establishments be created in response to the saturation of existing reception facilities and to offer appropriate safe accommodation for victims within a reasonable time frame, among other things.

The CNCDH considers it expedient that the Committee ask France to outline the measures already put in place or yet to be implemented with a view to resolving the shortcomings observed with regard to accommodation for victims of people trafficking and that it commit to effectively implementing the corresponding measures outlined in the Plan.

- *The right to health*

The CNCDH is concerned to note that the National Action Plan largely fails to address the issue of the right to health on the part of victims of trafficking and exploitation.

Foreign victims of trafficking or exploitation who are financially destitute and who are subject to common law experience a number of difficulties in accessing healthcare and extending their rights, particularly when they are living in the country illegally. The criteria for claiming universal health cover (CMU) and State Medical Aid (AME), both common law health systems, would appear to be incompatible with the specific situations of victims of people trafficking and exploitation. Indeed, the individual concerned must first establish their identity, although it is common for them not to be in possession of identity documents (which are often confiscated by the networks concerned) or other documents usually issued by administrative authorities (owing to the length of time it takes to obtain them). Secondly, they must prove that they have been living in France for over three months and state the value of the funds they have available, both of which are difficult for victims of trafficking to do. Despite the fact that some victims might benefit from one or the other of the aforementioned health systems, this will not cover all of the health costs that the victim is required to pay given their physical condition due to the trafficking operations in which they have been involved. Likewise, the psychological help that they should receive is rarely provided for one main reason, this being that consultations in certain foreign languages are becoming increasingly rarely offered.

The Committee could ask France about any planned measures designed to ensure the effectiveness of the right of access to healthcare for victims of trafficking and notably

question the government to establish whether any specific health-related provisions will be included in any future post-2016 National Action Plans.

- *The right of access to professional training and to the job market*

The Plan is almost as silent concerning the pathway out of exploitation towards social integration, since measure 9 concerns only pathways out of prostitution, and fails to address other forms of exploitation. Access to the job market for victims of trafficking is, however, severely limited. The particular attention placed on pathways out of prostitution is detrimental to the global fight that must be carried out against all forms of people trafficking and exploitation. It is important, therefore, that measures designed to care for all victims of trafficking and exploitation be extended, regardless of the type of exploitation in question.

Furthermore, the CNCDH would recommend encouraging independence on the part of victims of trafficking by guaranteeing them access to the job market, professional training and education, particularly with regard to learning French, based on the system as applicable to refugees, so as to avoid keeping them in a position of vulnerability or dependency.

In order to achieve this, the CNCDH would recommend, among other things, introducing tailored support for all victims of trafficking and making them a totally autonomous player in the creation and implementation of their own inclusion plan, granting the benefit of all assistance and protection measures provided for by the National Action Plan to all persons who are victims of trafficking, without discrimination based on gender or the type of exploitation, and providing material and financial resources for specialist organisations responsible for caring for victims of trafficking and exploitation.

The CNCDH takes the view that it would be expedient for the Committee to request from France a presentation of the measures undertaken or to be undertaken so as to address the lacunae in terms of access to employment and professional training for victims of people trafficking.

- *The specific case of minors who are victims of people trafficking*

The CNCDH wishes to underline the poor level of care provided for such minors. Indeed, within the framework of French law, neither the mechanisms for care of unaccompanied foreign minors, nor the Child Welfare mechanism (ASE), nor the Youth Legal Protection Programme (PJJ) make provision for specific support for and care of minors who are victims of trafficking and exploitation.

With this in mind, the CNCDH calls upon the public authorities:

- to ensure that full protection is extended to minors who are victims of trafficking.
- to ensure that these minors receive unconditional support and care that is adapted to their circumstances. Close and constant coordination between the public services and the associations working with minor victims or potential victims is imperative.
- to ensure that reparation mechanisms are set in place for these minor victims and that such systems are maintained in the long term.

The CNCDH wishes to draw the attention of the Committee to the seriousness of the situation encountered by young persons who are victims of people trafficking and the low level of care they are afforded. In order to remedy this, the Committee could question France concerning the measures that it intends to take in order to implement the recommendations formulated by the CNCDH concerning this specific issue, in its capacity as national rapporteur in the field.

- *Providing adequate funding for fighting people trafficking*

The funding provided for the prevention of people trafficking is inadequate. The CNCDH takes the view that the coordinating body must possess the human and financial resources needed in order to operate well. Furthermore, the CNCDH is concerned that for 2016 almost all (80%) of the credits allocated to the prevention of people trafficking were in fact only allocated to prostitution prevention and the supporting of prostituted persons. The CNCDH also laments the fact that the public authorities are not sufficiently involved in effectively fighting all forms of people trafficking.

In order to ensure that sufficient relevant resources are provided to fight people trafficking and exploitation in France, the Committee could question the government regarding its proposed undertakings in human and financial terms in this regard.