

Note from the CNCDH for the review of the fifth periodic report on France by the United Nations Committee on the Rights of the Child

15 December 2015

The National Advisory Committee on Human Rights (CNCDH - *Commission nationale consultative des droits de l'homme*) is the French national institution that promotes and protects human rights (INDH), in accordance with the Paris Principles, and has been granted 'A' status.

The CNCDH has been entrusted with an advisory and supervisory role under the Government and Parliament in the field of human rights, international humanitarian law, and humanitarian action. In this context, it independently contributes to the draft report presented by France to international bodies¹, particularly the UN treaty bodies, and provides these bodies with information on the compliance with human rights in France.

Beyond its opinions intended to clarify policy decisions, the CNCDH is an independent authority for evaluating public policies in its capacity as National Rapporteur on Fighting Racism, Anti-Semitism and Xenophobia, and on Fighting Trafficking in Human Beings. These various works are thus the core of the CNCDH's contribution to the review of France by the UN Committee on the Rights of the Child (hereinafter "the Committee").

For the sake of brevity and relevance, the CNCDH felt it appropriate to opt for a cover note on the list of points concerning the fifth periodic report on France sent by the Committee (CRC/C/FRA/Q/5), and to study in a precise manner the responses that were provided by the French Government (CRC/C/FRA/Q/5/Add.1) in light of its fifth periodic report (CRC/C/FRA/5).

General comments

In general, the CNCDH regrets the fact that the Government's responses to the Committee's questions focus on describing the existing legal framework and the established public policies, while addressing the practical realities of their implementation more succinctly.

As such, the CNCDH recalls that the treaty bodies as a whole, have, on several occasions, expressed their desire to have more concrete and quantitative information to assess the effectiveness of the described measures.

Moreover, given the technicality and precision of certain issues addressed by the Committee, some questions remain unanswered. As such, the CNCDH will focus, in its

¹ The CNCDH has been, as such, consulted by the Government during the preparation of the draft response to the questions of the UN Committee on the Rights of the Child.

contribution to the Committee's work, on addressing the missing elements that may constitute a new question on the latter's part.

I. Application of the International Convention on the Rights of the Child in France - and the special case of local authorities (CRC/C/FRA/Q/5 §1)

The CNCDH believes that the Government has adequately and relevantly presented the mechanisms in place to monitor the implementation of the Convention.

Nevertheless, as regards the question posed by the Committee on the control exercised by the State on the implementation of the Convention by the departmental councils, the CNCDH notes that it is satisfactorily explained, without however citing concrete examples that would illustrate the point. Indeed, the Government formally refers to the control exercised by the prefects, while in practice it is revealed that the latter intervene only in case of problems already identified, and not as a preventive measure.

Also, in order to get a complete answer to its questions, the Committee could also ask the Government to complement its answer with concrete examples.

On this occasion, the Committee could also question France regarding the schedule planned for the ratification of the Optional Protocol to the CRC, after its signing in November 2014.

II. Comprehensive national strategy for children (CRC/C/FRA/Q/5 §1)

The CNCDH welcomes the Government's contention according to which it "systematically takes into consideration the rights of children [...] when drafting texts and public policies that could have an impact on children"².

However, it reiterates its commitment to the practice of national action plans that make it possible to meet the requirements of a comprehensive and coherent strategy, and ensure better compliance with France's international commitments in matters of the rights of the child. This is why it wishes that a process to be initiated by France with a view to adopting a national action plan dedicated to the rights of the child.

More specifically, the CNCDH is concerned about the mention of a High Council on Family Affairs (*Haut Conseil de la Famille, de l'Enfance et de l'Âge*), established by the bill on "Adapting society to the ageing of the population".

In order to further clarify the logical link between this institution, created as part of a law on the elderly, and its tasks taking into account childhood, the Committee should request for further details on the mandate of this High Council from the French Government.

Furthermore, while the CNCDH considers the elements mentioned in i), ii) and iii)³, relating to child protection and support for vulnerable children and families, to be highly relevant, it nevertheless feels that these issues do not resolve the question raised by the Committee, the latter demanding an explanation on the mainstreaming of children's rights in the policies and laws concerning them.

As such, the Committee may ask the Government to prepare its response on this point.

² Fifth periodic report on France, CRC/C/FRA/5, 28 January 2015, §61

³ Answers provided by France to the list of issues, CRC/C/FRA/Q/5/Add.1, 11 November 2015, §5 et seq.

III. Children and family environment (CRC/C/FRA/Q/5 §10)

A) Child protection

Since the decentralisation that began in 1983, the General Councils have become actively involved in the field of child protection and have been entrusted with child welfare services (*ASE - aide sociale à l'enfance*). The law of 5 March 2007 confirms the central role assigned to the departments, which themselves seek help from the voluntary sector for the execution of their tasks. Owing to this territorialisation and the variety of stakeholders involved, inequalities in treatment between the territories have been observed, particularly when reporting situations of children in danger. Given the current territorial reform, the Committee should question France regarding the impact this will have on child protection.

In this domain, the State is responsible for the legal protection of young persons.

The CNCDH feels that the Government, in its responses to the Committee, does not provide sufficiently substantiated information about the effective functioning of the law of 5 March 2012, in particular on organisational procedures for the transmission of information between departments, when the child concerned by the protection measure relocates.

The Committee may seek clarification from the Government, as well as solutions that it intends to implement in order to overcome the difficulties that have been encountered on this point in several cases of abuse.

Moreover, the Government may be asked to clarify how the 2015-2017 road map, which it cites, will be implemented in the event that the proposed law on the protection of children is not adopted.

B) Child placement

The CNCDH is satisfied by the system adopted by France to ensure that every child is properly informed, able to express his or her views, and is taken into account in decisions relating to placement outside the family environment.

Nevertheless, although this obligation is applied satisfactorily in judicial decisions relating to placement by the courts in family affairs, the CNCDH noted in an opinion of 2013⁴, that this was not always the case for administrative placement decisions.

While the law mandates the development of a plan for children, since this is the subject of a protection measure, in practice, it is revealed that parents, like children, were rarely associated with the development of such a plan, and many of them felt that this plan was imposed on them, without being truly adapted to their special situation. Yet, the CNCDH recalls that a plan for children is intended to build and combine the objectives and procedures of the various socio-educational interventions in relation to the needs of the child and his or her family, and that it should be thus developed with the parents as well as the child concerned by the measure in mind.

⁴ CNCDH, Opinion on the right to respect for private and family life and child placements in France, 27 June 2013, JORF (Official Journal of the French Republic) No. 0176, Text No. 103, NOR: CDHX1320089V

As such, the Committee could ask the French Government about the reality of such practices, as well as the measures taken or planned to address the issue.

This topic is of particular concern since the Government has recently gone back to the existing provisions in force concerning the plan for children, with a new version adopted on second reading by the National Assembly and the Senate. The new system provides that the project will be solely prepared by the President of the Department Council. The parents will be consulted, but they will have no specific role in this dialogue and they will no longer co-sign the plan, although they continue to have parental authority.

Regarding the correlation put forth by the Government, between the social background of the parents and the cases of child placement, the CNCDH, without ruling it out, considers that it is beneficial for the Committee to question France on all the measures implemented to address this phenomenon thus identified, to prevent a child's placement, including in the fight against poverty.

On this occasion, the Government could also clarify how it understands the difficulties related to poverty as well as the composition of the systems in place to combat it, which would give effect to the fundamental rights of families placed in such a situation, including in matters related to housing and work, among others.

Regarding ad hoc administrators, the CNCDH agrees with the Government, which considers, in its responses to the Committee's questions, that they are not the only guarantors of the right of representation and welfare for children subject to a placement measure. This means that their appointment is not systematic, since their role is to only intervene when the interests of the child and its legal representatives are in conflict.

However, in order to better clarify its analysis, the Committee could request information from the French Government on the status of ad hoc administrators and their tasks, their number, their mode of recruitment, their remuneration, and their training.

IV. Children and exploitation of human beings

In the context of this theme, the CNCDH would, above all, like to inform the Committee, since no mention was made of it, that the French Government adopted a national action plan against trafficking in human beings in May 2014, by which it was designated an independent National Rapporteur to assess the policy pursued in this domain.

As such, it will publish a report assessing the French policy for the implementation of this plan in 2016.

A) Businesses and the rights of the child (CRC/C/FRA/Q/5 §2)

In an opinion of 2013⁵, the CNCDH spoke of the adoption of a French action plan implementing the United Nations Guiding Principles on Businesses and Human Rights. In this context, it had rejected the content of the French company law positing the legal autonomy of companies, which prevented the parent companies from being held

⁵ CNCDH, Opinion on the issues in application by France of the United Nations Guiding Principles (Businesses and Human Rights), 24 October 2013, JORF No. 0266, Text No.56, NOR: CDHX1327410V

accountable for violations of human rights committed by their subsidiaries, although they controlled them.

As such, the CNCDH can only welcome the approach initiated by the French Government, with the passing of the bill by the National Assembly with regard to the establishment of a duty of care borne by the parent as well as initiating companies⁶.

To concretise this political will of holding parent and initiating companies accountable in case of violations of the rights of the child, and more generally human rights, the Committee could encourage France to complete the adoption of the proposed bill and ensure its effective implementation.

B) Human trafficking and the rights of the child

In its response to the Committee's questions, the French Government refers to the law of 5 August 2013 on the prevention of trafficking in human beings and the fight against the phenomenon as well as the protection of victims.

The CNCDH is satisfied by the progress made possible by this law, which allows a better understanding of various forms of exploitation, especially with regard to children.

However, the CNCDH considers that, with regard to the application in the provisions on trafficking, these initiatives can be further developed. The Government could initiate penal reform aimed at extending the possibility of prosecuting a person suspected of having committed a trafficking offence abroad, when his habitual residence is in France, as well as when the victim's habitual residence is in France. This reform is all the more desirable as it would allow the French Government to comply with the requirements of European Directive 2011/36/EU.

The Committee could then question France on its intentions with regard to these European requirements on trafficking, which have a clear impact on the protection of child victims of this phenomenon.

Regarding the Committee's questions on the laws relating to exploitation offences, the CNCDH considers that the Government could further substantiate its response.

The Committee could thus solicit information from France on prosecutions that could have been initiated against French persons who have been found guilty, abroad, of prostitution or child abuse. It would also be relevant to identify whether such prosecutions have led to the dismantling of crime networks.

Concerning the specific surveillance system for workers aged under eighteen, it could be useful to ask the French Government to clarify this in greater detail, so that the Committee can ensure that the protection of child workers in France is in accordance with the Convention. In this sense, France could specify the body in charge of this system, the procedures of this surveillance, the budget allocated for its functioning, and in particular, besides naming them, the control measures implemented by labour inspectors in safeguarding children's rights in the workplace.

C) Children and sexual exploitation (CRC/C/FRA/Q/5 §19)

⁶ Bill on the duty of care of parent companies and initiating companies, No. 2578

In general, the CNCDH notes that some answers provided by the Government on issues related to sexual exploitation of children echo the National Action Plan against trafficking in human beings. This Plan contains specific and new measures that are intended to meet current requirements. Therefore, the CNCDH considers that the Government had at its disposal sufficient evidence to expand its answer.

It would thus be appropriate for the Committee to ask the Government to substantiate its response and complement it in order to best respond to the Committee's questions.

On the issue of accommodation, the Government again cites the National Action Plan, by mentioning, among other things, that it provides "adequate protection to minors [along with] suitable accommodation". The CNCDH believes that this response could be further developed.

Thus, the Committee could request additional information on the issue of accommodation of child victims of sexual exploitation, particularly with regard to the procedures and beneficiaries thereof. On this occasion, the Government could also provide additional information on experimental initiatives currently under way in Paris, to which it referred in its answers.

On the provision of appropriate care, the CNCDH has already had the opportunity to comment on the lack of effective and satisfactory management of aid provided to the victims of trafficking and exploitation, both physically and psychologically, and all the more so in cases of minors⁷.

To respond to this observation, the Government could be asked to explain the different health protection systems implemented for these minors, and their access procedures. In addition, it is also essential to clarify the manner in which it ensures that all these guarantees, particularly the continuity of care, are implemented for all minors coping with a situation of sexual exploitation.

Regarding the aid provided by trained staff, the CNCDH regrets that the Government makes no mention of the National Action Plan, particularly its measure No. 2, as well as the various training programmes that are being considered and the tools considered for, inter alia, the training of professional investigators, social workers, judges, medical staff in contact with victims of exploitation, including minors.

As such, in light of these diverse elements, the Committee may repeat its question and solicit the Government's responses from the perspective of the National Action Plan against trafficking, so that the questions asked are fully understood.

On social reintegration measures, it would be beneficial, for the Committee's consideration, to draw up a situational analysis of the guarantees that lead to appropriate and individualised support for minors, stating in particular the manner in which unaccompanied foreign minors - who constitute a large part of minors exploited in France - are involved in the reintegration process. Indeed, on this point, the CNCDH found that they do not always have access to a translator or an ad hoc administrator during the implementation of their accompaniment.

⁷ J. Vernier, "La Traite et l'exploitation des êtres humains en France", *CNCDH studies*, 2010

Regarding the current situation of the prosecution of customers of child prostitution, the Government mentions “a small but relatively constant number of offences” that resulted in convictions between 2008 and 2013.

At this point, the CNCDH wishes to draw the attention of the Government and the Committee to the fact that cases of child prostitution are difficult to identify and that the phenomenon must not be neglected in view of certain figures, which could prove to be far short of reality.

In its opinion of 2014⁸, the CNCDH considers that real attention to addressing the crimes committed against these underage victims of sexual exploitation was much needed, reiterating that the circumstance of minority of the victims is not always considered in the classification of pimping offences. In the same opinion, the CNCDH wished for police and judicial practices to be harmonised throughout the territory. Returning to these observations, the Committee could ask the Government to explain the manner in which all these guarantees are provided.

Finally, as regards the protection of child victims during judicial proceedings, the CNCDH feels that the Government presents a very brief and partial situational analysis of the existing legal framework, without demonstrating the effective application of the latter.

Thus, the Committee could request the Government to shed some light on this point.

Furthermore, the Government could, even briefly, outline the guidelines provided in the “guide regarding the care of child victims” to which it refers, as well as elaborate on the proper dissemination and practical application thereof.

Similarly, the CNCDH would like France to provide more details on Medical-Judicial Units (UMJ - *Unités d’Accueil Médico-judiciaire*), in that they are one of the most suitable mechanisms that can be used in the care provided to minors. In this regard, it would be beneficial for the Government to indicate the number of hospitals equipped with such a unit as well as those that are in the process of being equipped. Similarly, the Government could clarify how “the child’s statement” is taken when there are no UMJs, and if the investigators are careful not to increase the number of hearings.

- Sexual exploitation perpetrated by French soldiers (CRC/C/FRA/Q/5 §20)

The CNCDH regrets that the Government provides merely a brief presentation of the status of the ongoing investigation, without addressing all aspects of the question posed by the Committee.

Thus, the Committee could repeat its question by asking the Government to provide more information on the servicemen concerned by these allegations, and on the implementation and progress of the investigation, while respecting the presumption of innocence and confidentiality of the investigations. Finally, the Government could provide information stating whether or not a military investigation has been opened and information on the disciplinary and preventive measures that have been implemented.

V. Domestic violence and child abuse (CRC/C/FRA/Q/5 §7)

⁸ CNCDH, Opinion on the bill strengthening the fight against the prostitution system, 22 May 2014, JORF No. 0136 of 14 June 2014, Text No. 70, NOR: CDHX1412845V

In its responses to the Committee's questions on domestic violence and child abuse, the Government indicates that a Comprehensive Action Plan scheduled for 2015-2017 will help address these issues. However, the CNCDH considers that France has not provided sufficient information, given the importance of the subject, on the specific measures envisaged in this plan.

Similarly, the Government states that the question of the impact of conjugal violence on children will be studied as part of the plan to prevent and combat violence against women, without specifying in what measure this evaluation will be followed up.

As such, the Committee, in order to obtain further details from France on these phenomena, could request more precise information on these points of contention.

VI. Female sexual mutilation

In its *opinion on female sexual mutilation* of 28 November 2013, the CNCDH noted that “*progress had been made in France in terms of fighting female sexual mutilation*”. Nevertheless, many young girls, the vast majority of which usually live within the country, still find themselves in a dangerous position. Moreover, field associations are concerned about a resurgence of the phenomenon. Consequently, many girls who are from countries where the prevalence of this phenomenon is very high, or who are second generation immigrants, find themselves under threat, with many among them at risk of being mutilated during a stay in their country of origin.

The CNCDH formulates a number of recommendations in its opinion, underlining the importance of gathering data for the purposes of adapting the policy for creating awareness among people at risk according to the changes in the prevalence in territories of origin of the migrated families, the need to increase training and improve awareness on the practice of female sexual mutilation among the various players concerned, including medical professionals, social workers, the police and gendarme officers, and 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.

VII. Discrimination and the school system

The fifth periodic report on France presents an arsenal of mechanisms to combat racism and discrimination in schools. These efforts are welcomed by the CNCDH. However, it has been able to identify a number of challenges that lie ahead⁹.

A) Stereotypes, discrimination, harassment and stigmatisation at school

1) Harassment in schools (CRC/C/FRA/Q/5 §8)

⁹ V. CNCDH, Opinion on the introduction of moral and civic education, JORF No. 0266 of 16 November 2013, Text No. 56, NOR/CDHX1327419V and CNCDH, Opinion on Liberty, Equality, Fraternity: enforcing the values of the Republic, JORF No. 0157 of 9 July 2015, Text No. 103, NOR: CDHX1516251V

Regarding mechanisms to fight against harassment in schools, the CNCDH considers that the Government makes an interesting and adequate presentation in the documents submitted to the Committee.

However, to understand this phenomenon and the means implemented to fight it in the most precise manner, the Committee may request that the French Government provide concrete examples and actual results. For example, France could indicate the number of student ambassadors and their upper secondary schools.

2) Moral and civic education, and teaching methods

The CNCDH acknowledges that the Government has undertaken pertinent deliberation on the reforms required in the school system, which would help strengthen the fight against discrimination. This political will has led to the adoption of various texts and policies aiming to integrate moral and civic education in schools¹⁰.

It is thus expected that the fight against racism and xenophobia, and the educating of people on tolerance, respect for differences, beliefs and convictions be mainstreamed across all the various subjects taught.

Nevertheless, despite these laudable initiatives, the CNCDH believes that these newly established initiatives vis à vis education do not fully fulfil the Government's ambition. For example, the History of Immigration, which has shaped France, is still too vaguely mentioned in the struggle against prejudice, which can project a negative image of these phenomena. The same can be said about the lack of historical education on Roma people and Travellers in Europe, who are the subject of persistent stereotyping.

Furthermore, the CNCDH had noted in its opinion of 2015¹¹, that mere theoretical education was insufficient in itself to ensure effective combating of racism, antisemitism and xenophobia, if it is not accompanied by a renewal of educational methods. Education in France remains essentially didactic, not allowing students to engage in active learning, which is nevertheless necessary for building a critical mind. The CNCDH also noted that school life could be improved, "by encouraging student participation and promoting knowledge of their rights, their effectiveness, as well as the history of these rights".

As such, in view of the above, and since the Government was not able to mention the introduction of this new educational initiative, as it was adopted after the presentation of its fifth periodic report, the Committee could give it the opportunity to explain how these texts contribute to the fight against stereotyping, discrimination and stigmatisation in schools. On this occasion, the Committee could also ask the Government if an evaluation of this new educational initiative is planned.

¹⁰ For example: Law No. 2013-595 of 8 July 2013 on guidance and planning for the rebuilding of French public schools; the National Action Plan against racism and anti-Semitism for 2015-2017, Fourth axis on "Educating citizens through the transmission of education and culture"; the Plan on "Greater mobilisation for schools and its partners for the values of the Republic" of 22 January 2015.

¹¹ CNCDH, *Opinion on Liberty, Equality, Fraternity: giving substance to the values of the Republic*, 2 July 2015, JORF No. 0157, Text No. 103, NOR: CDHX1516251V

3) Discrimination based on gender, identity, and sexual orientation (CRC/C/FRA/Q/5 §3)

In recent years, the Government has put in place a number of actions to combat discrimination and stereotyping based on gender, identity, and sexual orientation, which it refers to in its report. However, the Committee could encourage France to intensify the public policies implemented in these two areas of concern.

Regarding gender discrimination, the CNCDH recognises that the measures taken to eliminate it are satisfactory, and show genuine consideration of the phenomenon by the French Government. Nevertheless, the CNCDH believes that France could provide more information on the Action Plan for equality between girls and boys, particularly in the methods used to further promote this. It could also specify, besides the brief review that it provides, the specific instruments of the ABCD system for equality which were adopted and why others were excluded.

Regarding discrimination based on sexual orientation and identity, the CNCDH regrets that the information provided by the French Government relating to this phenomenon, as well as the resulting stigmatisation and harassment for the children concerned, is confined to a brief presentation of isolated and scattered actions, with no reference to the general framework within which they operate.

As such, the Committee could request an overview of the French public policies aiming to eliminate discrimination at school from the Government, by explaining the manner in which special cases of LGBTI children and teenagers are taken into consideration, while specifying the objectives, challenges and results.

Moreover, the Government could also be requested to present the instruments that allow it to measure these phenomena, while not failing to mention, as repeatedly noted by the CNCDH, their low degree of representation and the general ineffectiveness of the measurement tools.

4) Discrimination based on the financial situation of families

The CNCDH wishes to inform the Committee of the recent rejection by the Senate of the bill to guarantee the right of access to catering. This could have put an end to the discriminatory practice followed by some schools of refusing children with at least one unemployed parent access to the canteen¹². It may, in particular, have the effect of stigmatising families in difficult financial situations, and of complicating the search for employment of the parent concerned.

B) Inequality and academic success (CRC/C/FRA/Q/5 §15)

The CNCDH recognises the Government's ambition and the objectives it has set in order to reduce inequalities in academic success.

Nevertheless, the CNCDH notes that the Government, in its responses, does not mention the considerable disparities that exist based on districts, their financial and human

¹² <https://www.atd-quartmonde.fr/senat-refuse-laces-de-a-cantine-scolaire/>

resources, and their political choices in the implementation of a territorial educational project, which result, inevitably, in unequal treatment of children.

Also, the Committee could question the Government on the measures it intends to take to limit, or even eliminate, such inequalities.

Regarding the issue of social diversity in schools, the CNCDH notes that the Government has provided a very short and sketchy answer. While the law of 2013 on the Rebuilding of French Public Schools establishes the principle that “the public service of education must also ensure the social diversity of school children in educational institutions”, the CNCDH noted that the reality could be different¹³. In addition, the CNCDH wishes to draw the Committee's attention to the practice of class levels that can result in children belonging to minorities, or a similar social condition, coming together in the same class. Yet, this phenomenon can only have negative consequences for the future of young people, in that it leads to the establishment of marginalisation and breakdown vis à vis society as a whole. As such, the CNCDH regretted that there is no national indicator that can be used to measure social segregation in schools, which leads to poor knowledge of the subject and consequently, inappropriate public policy decisions.

Thus, the CNCDH considers that it is important, in order to help the Committee's work, to mention the lack of social diversity that harms the academic success of children from working-class backgrounds. In this sense, the Committee could request additional information from the Government on how it intends to take into account social diversity in schools, particularly by setting up indicators that provide a precise assessment.

C) Inclusive education (CRC/C/FRA/Q/5 §13)

In general, it could be useful for the Committee, in order to fully understand this phenomenon, to ask the French Government for statistical data in order to have a clear picture of the number of out-of-school children in France.

1) Students with disabilities

The CNCDH welcomes the increasing enrolment of students with disabilities, and the measures taken to perpetuate this situation and ensure the implementation of customised and tailored projects for schooling.

However, as regards the adaptation of schooling projects, the CNCDH noted that the regional centres for disabled people, which are responsible for making pedagogical decisions, encountered difficulties in fulfilling their role of evaluation and definition of an individualised plan¹⁴. This is the result, inter alia, of their composition, which would favour a medical approach to a pedagogical approach.

Moreover, it was able to observe disparities in treatment resulting from highly heterogeneous practices between departments.

¹³ In this regard, refer to the opinion of the Economic, Social and Environmental Council, *Une école de la réussite pour tous (A school centred on success for all)* of May 2015 which reiterates the extent to which social inequalities weigh on academic success. Also refer to the report of the National Council for the Evaluation of the School System that highlights the extent of social segregation facing our education system.

¹⁴ <http://www.modernisation.gouv.fr/sites/default/files/fichiers-attaches/3-enfantshandicaprapport.pdf>

As such, the Committee may relevantly ask the Government to clarify the procedures for implementation of schooling projects for children with disabilities and how they must always tend towards more individualisation and equal treatment.

In parallel, as regards the staff responsible for the accompaniment of these students, the Committee could ask the Government to provide more details on this, particularly by indicating the number of people involved. Similarly, France could enlighten the Committee on the contents of the courses that are offered in the field.

2) Newly arriving allophone children and children from homeless and Traveller families

The CNCDH acknowledges the positive initiative taken by the Government with three circulars dated 12 September 2012 providing for and organising inclusive education for newly arriving children who are non-speakers of the local language and children from itinerant and Traveller families. However, the CNCDH regrets that the mechanisms put in place¹⁵ are not sufficient in relation to the demand. This saturation causes registration waiting times and the allocation of children to unsuitable classes, which does not allow them obtain adequate education.

As such, the Committee could question the Government on this situation, and on its intention to remedy the situation, particularly by providing additional resources or by creating new systems.

In parallel, in order to ensure that the education given to these children is adapted to their requirements, the Committee could take this opportunity to ask the Government to provide it with clarification on the geographical distribution of care centres adapted to the requirements of non-French speaking children, such as language assistance centres (CLA - *Centres linguistiques adaptées*) and special classes conducted at primary level (CLIN - *classes d'initiation*). Similarly, the Government could also state the adequacy of these structures in relation to the places of residence of the beneficiaries.

It is, however, important to note the decision of the Ministry of Education aiming to conduct a national survey on *the schooling of newly arrived allophone students (EANA - élèves allophones nouvellement arrivés)*, which will allow, among other things, an assessment of the Ministry's policy vis à vis schooling of these children.

Finally, it might be appropriate for the Committee to request the French Government to shed light on the problems - in view of the schooling of children - caused by the policy of expulsion at the border of undocumented young adults or families of minors.

VIII. Childhood and disability

A) Inhuman and degrading treatment in specialised institutions (CRC/C/FRA/Q/5 §6)

¹⁵ This includes, among others, the Academic centres for the education of newly arrived allophone children and children from itinerant and Traveller families (CASNAV - *Centres académiques pour la scolarisation des enfants allophones nouvellement arrivés et les enfants issus de familles itinérantes et de voyageurs*) and teaching units for allophone students.

The CNCDH regrets that France's report does not mention the inhuman and degrading treatment that children with disabilities in specialised agencies may be subjected to, and that the Government addresses only the case of inhuman and degrading treatment experienced by detained children. The details brought to the attention of the Committee on this subject are, in fact, only present in the Government's responses to the list of questions.

It would be pertinent to question the Government on whether it intends to introduce a bill to prohibit the exercise of a professional activity with children when there has been prior conviction for such an offence.

This question will allow the Government to respond to the Committee's question on the measures that have been taken to ensure that such acts of inhuman and degrading treatment are not repeated in the future.

Finally, the CNCDH wishes to note that while the Government provides some answers to the question of "criminal proceedings initiated against those responsible for inhuman and degrading treatment of children [...] in specialised institutions", it does not mention the measures taken to "effectively and consistently monitor these institutions".

The Committee could thus reiterate its question to the French Government, and question it on the failure to mention the monitoring of specialised institutions in the bill on child protection.

B) Children with autistic spectrum disorder (CRC/C/FRA/Q/5 §12)

In its responses to the Committee on the situation in France of children with autistic spectrum disorder, the French Government merely evokes the 2013-2017 Autism Plan dedicated to diagnosis and intervention from a very early age.

Although the CNCDH welcomes the fact that such a plan exists, it believes it would be useful, in order to ensure that the plan functions in a manner consistent with the Committee's questions, to ask the French Government for concrete examples of measures taken with regard to the matter. For example, France could provide information on the practicalities of the approach within the "Departmental Centre for Disabled Persons" ("*Maison départementale des personnes handicapées*"). This includes procedures for application, management, monitoring, and transmission of information, among others.

On this occasion, it would also be beneficial to question the Government about the differences in treatment faced by children based on the department in which they reside.

IX. Children belonging to vulnerable groups

A) Children living below the poverty line (CRC/C/FRA/Q/5 §16)

Beyond the monetary aspects, discussed in detail by the Government, the Committee could suggest that the latter expand its responses to the social component elements of the multiannual plan for the fight against poverty, particularly in view of the measures taken

with regard to health, housing, and access to educative recreational activities during extracurricular time for children and young people who are the most estranged.

Also on children belonging to economically disadvantaged backgrounds, the CNCDH had, in an opinion in 2013¹⁶, recommended that the Government include in Article 225-122 of the Penal Code and Law No. 2998-496 of 27 May 2008, the criterion of discrimination on the grounds of “social insecurity”. A proposed bill along those lines was indeed passed in the Senate in June 2015 but is still absent from the agenda of the National Assembly.

As such, given the significant implications that this legislative amendment would have on children in situations of social insecurity, the Committee could question the Government on the schedule for adoption of this law.

More generally, the CNCDH would like to inform the Committee about the situation of people seeking accommodation and emergency shelters. The number of families without access to housing is constantly increasing¹⁷ and emergency accommodation units are currently insufficient, creating a worrying situation for children in these families, and especially for those who find themselves “homeless”.

As such, the Government should indicate the manner in which it intends to remedy this concern. In addition, the Committee should question the Government on the social support mechanism for these people.

B) Minor and unaccompanied asylum seekers (CRC/C/FRA/Q/5 §17)

As a preliminary matter, the CNCDH notes that the support mechanisms for unaccompanied foreign minors in France suffer from many shortcomings, which do not ensure the effectiveness of their rights under the International Convention of the Rights of the Child. In addition, the CNCDH feels it should be noted that these young people are badly affected by the surrounding climate, which carries a highly negative image towards them, as well as comments by politicians, which often allude to security and at times xenophobia. These different aspects provoke an atmosphere of generalised suspicion against them.

Moreover, and as the Committee regularly points out, public action suffers from the lack of data, thus preventing an understanding of the reality and complexity of the problem of acceptance of unaccompanied foreign minors.

On the question addressed by the Committee concerning access to education and health care for migrant children, the CNCDH is concerned that the Government responds only evasively on access to education in general.

It would thus be helpful for the Committee to ask the Government to supplement its response with more precise information on the measures specifically taken for these children.

¹⁶ CNCDH, *Opinions on discrimination based on social insecurity*, 26 September 2013, JORF No. 0235 of 9 October 2013, Text No. 40, NOR: CDHX1324396V

¹⁷ In this regard, Secours Catholique reported 30,000 families accommodated at the hotel in the Ile-de-France region, including 15,000 children; Secours Catholique Caritas France, from hotel to housing, it's possible! Survey on hotel accommodation in the Ile-de-France, February 2015 (http://www.secours-catholique.org/sites/scinternet/files/publications/rapport_idf_logement.pdf)

For example, it would be beneficial for the Government to inform the Committee about the measures taken to address the barriers faced by unaccompanied foreign minors, who, sometimes are not admitted to a school on the grounds that they have no registered address or passport. The CNCDH reiterates that it had noted the existence of these barriers in its opinion of 2013 on the procedures for the support of unaccompanied young foreigners¹⁸.

In addition, clarification could also be requested by the Committee on access to degree courses for unaccompanied foreign minors.

Furthermore, the CNCDH encourages the Committee to request the Government to substantiate its response on the access to care for unaccompanied foreign minors before they are given assistance, as the Government only cites the situation of school children in its responses.

Similarly, the CNCDH noted a lack of places for children from Mayotte and unaccompanied foreign minors in overseas schools, where, incidentally, twenty schools are currently closed due to non-compliance with safety standards.

As such, it would be appropriate for the Committee to raise this issue during the interactive dialogue with the French Government.

Regarding the situation of unaccompanied minors seeking asylum, the Government asserts that “entry into the asylum procedure is facilitated for unaccompanied minors”, without explaining how this was indeed the case.

As such, the Government should be asked to clarify in what concrete means such an assertion is reflected, particularly in view of contrary information that was reported to the CNCDH. A joint report of the United Nations High Commissioner for Refugees and the Council of Europe stresses that the acceptance of these minors in France is “inadequate or insufficient [and] affects the effective access of unaccompanied foreign minors to a fair asylum procedure”¹⁹.

Moreover, while the Government indicates that the appointment of an ad hoc administrator, when a foreigner declares himself/herself as a minor at the border, facilitates his or her request for asylum, it does not present the status of the situation of minors who are only identified once they enter French territory; yet, this is, in practice, most common circumstance.

Given these details, the Committee could ask the Government to provide answers on access to asylum requests for these minors and on the possibility of benefiting from legal assistance and being represented by an ad hoc administrator.

Concerning the Committee’s questions relating to the protection of these minors, the CNCDH considers the Government’s response unsatisfactory in that it does not provide a

¹⁸ CNCDH, Opinion on the situation of unaccompanied foreign minors present on the national territory. Status report one year after the circular of 31 May 2013 on procedures for support of unaccompanied foreign minors, 26 June 2014

¹⁹ UNHCR / Council of Europe, *Unaccompanied and separated asylum-seeking and refugee children turning eighteen: what to celebrate?* UNHCR / Council of Europe field research on European State practice regarding transition to adulthood of unaccompanied and separated asylum-seeking and refugee children, Strasbourg March 2014

more detailed status report of the functioning and malfunctions of the mechanism for sheltering, assessment, and guidance.

As such, the Committee could repeat its question on this point by asking the Government for an explanation of the criteria for allocation of minors between departments and a clarification on how it intends to fight illegal practices in some departments that refuse any support for foreign unaccompanied minors. Similarly, the Government could provide information on the measures it intends to implement to address the disputed practices of some associations, which are delegated the task of ensuring the initial sheltering of the young children by the local department councils. This practice is quite reprehensible in that it entails detrimental consequences for the protection of the minors involved. While the General Council may not delegate the decision to admit a minor to the child protection system, in practice, several associations, assessing and accepting themselves a majority of some young people, do not report them to Child Welfare Services (*Aide Sociale à l'Enfance*), and thus isolate them from the sheltering system²⁰.

Finally, on the issue of bone tests, the CNCDH found that, contrary to the circular plan and protocol²¹, the practice of Public Prosecutor's offices is to systematically request medical expertise, even if the minors are in possession of their identity documents, or, failing that, a civil status record. In addition, young people over sixteen are sometimes obliged to undergo multiple bone examinations to establish that they are not underage.

It should also be noted that medical assessments are not always limited to bone tests, but are sometimes accompanied by additional tests, such as those of hair growth, teeth and even genitals, without their consent, or that of their legal representative, which constitutes a serious infringement on the dignity and privacy of the person.

As such, the CNCDH would request that the Committee ask the French Government for precise information on the practice of medical tests to evaluate whether the unaccompanied children are minors, and if they are carried out in accordance with their fundamental rights.

C) Roma children (CRC/C/FRA/Q/5 §18)

The human rights situation of Roma children is most worrying, despite repeated claims to the contrary by the Government.

The CNCDH is unable to concur with the Government's assertion that the "evacuation operations are part of the extension of judicial decisions whose compliance cannot be questioned and is based on a proactive and support-based approach". It had denounced, in an opinion²², the manner in which the interministerial circular of 26 August 2012 was

²⁰ See to that effect: Decision of the Defender of Rights (DDD - *Défenseur des droits*) MDE-2014-127, of 29 August 2014; CNCDH, Opinion on the situation of migrants in Calais and the Pale of Calais, 2 July 2015; CNCDH, Opinion on the situation of unaccompanied foreign minors present in the national territory. Status report one year after the circular of 21 May 2013 on procedures for support of unaccompanied foreign minors JORF No. 0156, 8 July 2014, Text No. 92

²¹ Circular JUSF1314192C of 31 May 2013 on support procedures for unaccompanied foreign children: national system for sheltering, evaluation and guidance; Protocol of 31 May 2013, national system for sheltering, evaluation and guidance of unaccompanied foreign minors signed by three ministers (Minister of Home Affairs, Minister of Social Affairs and Health and Minister of Justice) and the President of the ADF. This protocol provides for the geographical distribution of MIEs between departments according to the demographics of the population aged under 19.

²² CNCDH, Opinion on respecting the basic rights of populations living in slums - Putting an end to the violation of rights of 20 November 2014, JORF No. 0034 of February 2015, Text No. 92

applied, whose “law enforcement measures superseded the social support and integration measures”²³.

In this regard, the Committee could ask the Government to elaborate on its answer when it says that court decisions are anticipated to offer social support and housing solutions. In connection with this, the Government could thus inform the Committee about the concrete form that this social support takes, by indicating the manner in which the requirements expressed by the people in their search for alternative housing are taken into account, or the manner in which the best interests of the child are taken into account.

In addition, the CNCDH feels that the Government's response to the question of the access to education of children living in slums is insufficient, especially as it has already ruled on this issue by considering it necessary that “the illegal barriers that block the effective compliance with the right to education of children in slums be eliminated”²⁴. There are many reasons that contribute to the exclusion of Roma children from the school system. Firstly, the practice of evacuation of slums leads, in most cases, to isolation from the place of schooling, which results in an interruption in the schooling process and creates a chaotic academic situation. Moreover, their enrolment in school and their assignment to a class are regularly hampered. As such, the CNCDH noted that some municipalities put up voluntary barriers to their enrolment, by refusing their enrolment on the grounds that the families are not able to produce a declaration of address or vaccination certificates. However, the law provides that in such cases, temporary admission must still be offered to the children concerned.

The CNCDH thus believes that it is essential for France to provide a more concrete response for the measures taken to address the barriers faced by children in their access to education. As such, the Committee could ask the French Government to explain these reported practices, and if true, how it plans to address them.

X. Juvenile criminal justice (CRC/C/FRA/Q/5 §21)

Regarding the Committee's question on the minimum age of criminal accountability, the CNCDH considers that it does not seem appropriate for the French Government to respond to this question by stating the objectives contained in the proposed reform of the juvenile criminal justice. Indeed, the latter is in the preparatory phase, and only broad principles have been raised in relation.

As such, the Committee could note the tangibility of the information provided by France, and recommend it to stick to positive law or legislative proposals being adopted, so that it satisfactorily responds to the Committee's questions.

In addition, the CNCDH regrets that there is no mention by the French Government of correctional courts for juveniles, which, although they are not implemented in practice, remain enshrined in the law, even though they are contrary to the principle of specialisation of juvenile criminal justice, provided in the 1945 Order. In this regard, it

²³ The expulsion at the end of August of the oldest slum in Ile-de-France, the Samaritain at La Courneuve, which housed approximately 200 people, is an example of the gap between reality and what the circular promotes. Only a dozen solutions for accommodation have been offered by the prefecture, for a few days only, despite the slum clearance proposed by associations, the schooling of children, even though some adults have a job.

²⁴ CNCDH, *Opinion on respecting the basic rights of populations living in slums - Putting an end to the violation of rights*, 20 November 2014, op. cit.

would also be pertinent to question the Government on the progress of the reform of the 1945 Order, notably in that it expressly provides for the abolition of correctional juvenile courts as well as the removal of summary trials.

Regarding the question on measures taken to combat violence, the CNCDH considers that the Government's assertion that the phenomena of violence in prison of a guardian on a minor would be exceptional does not reflect the reality on the ground which has been noted by civil society.

As such, the CNCDH wishes, as part of the questions posed by the Committee, for this aspect to be substantiated by the French Government.

Furthermore, CNCDH regrets that the answer to the question of education in closed educational centres provides only general information on the matter, on what is provided by law. Yet, faced with such a question, the CNCDH believes it would have been beneficial for the Committee's work if the French Government provided concrete answers, such as the number of hours of classes children receive per week, or the organisational details of these classes depending on the schooling level.

Similarly, the CNCDH noted that the objective school hours do not correspond to the number of hours of schooling followed, as, these hours include the time taken to assemble in and disperse from the classroom.

The Committee could thus ask for explanations to be made on these points.

Finally, the CNCDH regrets that the Government did not address the issue of access to healthcare for children in detention, even though this remains a problem today. The CNCDH reiterates that in many detention centres, access to healthcare remains difficult, in particular due to the remoteness of some of these centres.