



COMMISSION NATIONALE CONSULTATIVE
DES DROITS DE L'HOMME

**Note on the implementation in France of the priority concluding observations by the
Committee against Torture of 10 May 2010**

27 July 2011

1. In the report by the Committee against Torture (CAT) following its examination in May 2010 of France's 4th, 5th and 6th periodic reports, the Committee called on France to submit a reply within a year on its implementation of six of the concluding observations and recommendations.
2. As part of its remit, the French National Consultative Commission on Human Rights (CNCDH) examines the follow-up of comments made to France by international bodies. On this basis, it took the initiative of organising a meeting on 7 February 2011 with the various ministries involved in implementing CAT's concluding observations and recommendations, in order to assess the current situation in the lead-up to France's reply to CAT in May 2011. CNCDH was then consulted by the Government on its draft reply, in connection with which it submitted its observations for the Government's final reply to CAT.
3. Some of the observations submitted by CNCDH were taken on board, however most were not followed up. CNCDH is now therefore letting the Committee against Torture know of its observations based on the French Government's reply of 9 June 2011, so as to provide a more complete overview of the follow-up of the Committee's priority observations.
4. In general, France's reply is lacking in concrete information about implementation of the existing legislative and regulatory provisions in practice. The majority of the explanations provided are given in the form of theoretical discussions which give no account of how the measures described are actually implemented. The Government often restricts itself to describing the legislation. Whilst it is true that these instruments are mostly considered to be compliant with the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ('the Convention'), their practical implementation often shows up real weaknesses in the protection against ill treatment. CNCDH had asked the Government to provide CAT with information about the implementation of its legislation in practice, so that the Committee could produce an informed analysis of how the Convention is adhered to in France. Whilst the Government supplied some practical details, especially in the sections on prison conditions and its criminal justice policy, the rest is unsatisfactory.

NON REFOULEMENT (Concluding Observation 14)

5. In its concluding observation on *non-refoulement*, the Committee made two recommendations: 1) the first calls on the French Government to '*introduce an appeal with suspensive effect for asylum applications conducted under the priority procedure*'; 2) the second '*recommends that situations covered by article 3 of the Convention be submitted to a thorough risk assessment, notably by ensuring appropriate training for judges regarding the risks of torture in receiving countries and by automatically holding individual interviews in order to assess the personal risk to applicants*'.

6. As regards the **appeal with suspensive effect**, the government's reply essentially repeats the points it made in the report presented to CAT last year, which consisted in describing the legal provisions currently in force, without presenting any evidence of how effective the supposed protection against 'high-risk deportation' is in practice. In addition, by stating on page 1 that whilst asylum seekers do not have the right to an appeal with suspensive effect against a decision against them by OFPRA (*Office Français de Protection des Réfugiés et Apatrides*) they do have the right to appeal against a removal order, the Government is confusing two very different types of appeal which each protect separate rights and are not interchangeable. Equating the two in this way is liable to interfere with proper compliance with the right to asylum and the absolute prohibition of torture, as witnessed by cases that have been brought to the attention of CNCDH which demonstrate that the protection in place is not effective¹.

7. Furthermore, contrary to what the Government states (page 2), it is incorrect to view asylum seekers who have been assigned to the **priority procedure** as being covered by the same assurances regarding the examination of their case by OFPRA. Assurances provided within the framework of the 'ordinary' procedure, which in practice takes 145 days² cannot be identical to those provided within the framework of a fast-track procedure that takes no more than 20 days. It should also be pointed out that the reasons for assigning a person to the priority procedure prejudice the application purely on the basis of evidence that is external to the asylum application and to the intrinsic reasons for the application. It cannot therefore be claimed, as the French authorities have done (page 1) that this priority procedure is based on a genuine attempt to strike a balance between requirements connected with respect for the right to asylum and the need for appropriate procedural tools, when it is the absolute prohibition of torture and high-risk removal that are at stake.

8. As regards the **training received by administrative judges** on the right to asylum and international protection, CNCDH has already expressed its concern over the way in which administrative judges assess the risks associated with removal to the country of origin³. Whilst introducing elements of information in the reply is a positive development, it is important to note that those are not sufficient and that the administrative judge is not the asylum judge. As pointed out above, the Government continues to equate the appeal with suspensive effect against a removal order before the administrative court with the appeal against a decision by OFPRA before the National Asylum Court. Whilst it is obviously necessary for administrative judges to be trained in the risks of torture in the countries of destination, such training will never be a substitute in every situation for an appeal with suspensive effect before the National Asylum Court. Moreover, decisions by the National Asylum Court and decisions by the administrative courts do not have the same effect, since whilst the National Asylum Court is able to grant refugee status and hence State protection, the administrative courts can only prevent the person from being removed from the country.

TRAINING FOR LAW ENFORCEMENT OFFICERS (Concluding Observation 21)

9. The Committee made two observations on cases of ill treatment by public law enforcement officers: The first aims to '*ensure that all allegations of ill-treatment at the hands of law enforcement officers are promptly investigated in the course of transparent and independent inquiries, and that the perpetrators receive appropriate punishment*' 2) the second calls on the government to provide CAT with '*information about the Note apparently circulated by the Office of the Inspector-General of the National Police in October 2008 concerning the methods used by law enforcement agencies to restrain suspects or persons against whom removal orders have been issued, which have already resulted in cases of death by asphyxiation*'.

¹ These are cases of individuals who have been recognised as refugees by the National Asylum Court (Appeal Section) even though they were about to be removed (see for example the case pending before the ECHR *I.M. versus France*, application No 9152/09) or who have been granted an interim measure by the European Court of Human Rights. It is worth noting that between 2008 and 2010 France had the third highest number of interim measures under Article 39 granted, with 316 applications upheld.

² See OFPRA [rapport d'activité 2010](#) [2010 Annual Report].

³ [Opinion](#) of 15 April 2010 on implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in France.

Allegations of ill treatment and the duty to conduct a transparent, independent inquiry

10. As regards the **allegations** made to CAT, it is important that the Committee forwards the information it has on these cases to the Government as quickly as possible so that the Government can then inform the Committee of the action that has been taken on the cases.

11. As regards **the obligation to conduct a transparent, independent inquiry** into these allegations, once again, the Government's reply goes into a theoretical presentation of French criminal procedure, without addressing how it is implemented in practice in the case of alleged ill treatment by law enforcement officers. It simply describes the various judicial remedies available against misconduct by law enforcement officers but gives no details as to numbers of prosecutions and convictions. This is all the more regrettable since reports by various bodies, including those by the body responsible for overseeing this subject, the *Commission Nationale de la Déontologie de la Sécurité* (National Commission on Security Ethics – CNDS), report allegations of police violence that have ended in cases being dropped⁴. It is often noted in practice, moreover, that the Public Prosecutor's unwillingness to act forces victims to bring civil actions if their cases are to have a chance of being heard. It is also reported that complaints leading to criminal convictions are frequently brought against victims of ill treatment on the grounds of contempt of court, resisting the police or false accusation. It is possible that complaints of this nature are being used as tactics to discredit the charges and reports of ill treatment⁵. In its 2009 and 2010 annual reports, CNDS describes several cases that have been referred to it which illustrate the difficulties encountered in conducting effective investigations into individuals working for the security forces, due to a number of problems such as frequent unwillingness to file a complaint⁶. Furthermore, CNDS reports many instances in which there has been no effective investigation or a superficial investigation only, due primarily to the disappearance or falsification of documents or other evidence or the absence of medical certificates describing the injuries. It appears moreover that the judicial investigations are sometimes based solely on the disciplinary inquiry or on statements by representatives of the security forces, without looking at any other evidence⁷.

12. The **procedure** itself is also questionable, in that whilst the authorities responsible for the investigation are above the police bodies in hierarchical terms and are independent in organisational terms, they work in close liaison with them. It is even possible for the investigation to be entrusted to the department in which the alleged perpetrator works. In this respect, and specifically in relation to the Public Prosecutor, it would be more appropriate to entrust this type of investigation to independent judges who are not answerable to the executive authorities. At present, these investigations are not seen to have the necessary independence and impartiality and the fact that the Public Prosecutor answers to the

⁴ For example, the International Observatory on Prisons (OIP) has reported several instances of situations of ill treatment following which no serious investigation was followed through. For example in 2009, the organisation reported the failure to pursue a prosecution for violence committed against prisoners in November 2003 by prison officers at the Moulins-Yzeure high security prison following a hostage situation. CNDS had described the events as *'unjustifiable and unacceptable violence'* and called for disciplinary proceedings against the prison wardens involved and their supervisors. In addition, following the receipt of two complaints by prisoners in January 2011 for *'unprovoked violence'* while detained at Lyon-Corbas remand centre and in relation to the fact that the Public Prosecutor had dropped a similar case in September 2010, on 10 February 2011 OIP called for a judicial investigation into repeated allegations of violence by special prison force officers (ERIS) at Corbas remand centre.

⁵ Amnesty International has received a growing number of complaints by individuals claiming to have been the victims of reprisals in the form of arrest, detention or unfounded charges of insulting police officers and resisting authority and has been told many times by victims or their lawyers that although they believed they had legitimate grounds for complaint against a police officer they did not intend to press charges, as they felt that the complaints investigation procedures both within law enforcement bodies and in the criminal courts were not impartial and hence ineffective – See Amnesty International, *France – des policiers au dessus des lois [France – police officers above the law]*, April 2009.

CNDS, which has been aware of such tactics for several years after investigating complaints that have been referred to it, has also denounced these practices – see for example the CNDS Opinion *Avis 2006-29*.

⁶ [Rapport 2009](#) de la CNDS [Annual Report 2009], p.37 et seq.; [Rapport 2010](#) de la CNDS [Annual Report 2010], p.51 et seq.

⁷ See Amnesty International, *France - des policiers au dessus des lois [France – Police Officers above the Law]*, April 2009.

executive authorities should mean at the very least that if (s)he decides not to prosecute, (s)he should be instructed to do so in the case of alleged ill treatment or violence by law enforcement officers.

13. Furthermore, contrary to the claim that the Ministry of Justice offices *'take on board all the necessary points from the opinions and recommendations of CNDS'*, throughout the 11 years it has been in existence, CNDS itself has continuously deplored the *'difficulties it encounters in making itself heard by the authorities concerned'*⁸. In a brochure published in the wake of the Government's announcement that it was to be abolished, the Commission once again emphasised the problems it had encountered in its relations with the authorities, in terms of both problems with cooperation by the judicial authorities regarding passing on evidence, or problems with the follow-up of its opinions and recommendations by the ministers concerned. It states that, *'generally speaking, criticisms by an outside body are not well received and the ministers tend to want to protect their own department. Their reactions to the opinions are often characterised by indifference or resistance. The two-month deadline allowed for their reply is usually not adhered to'*⁹. As CNDS states in its 2009 Annual Report, at best, *'whilst recommendations of a general nature may have been taken on board by the senior management of the security forces and resulted in circulars or instructions being issued, this is unfortunately not the case with suggestions of a specific nature relating to undertaking disciplinary [or criminal] action against those responsible for the irregularities that have been reported'*¹⁰. This tendency is confirmed in the 2010 CNDS annual report, in which it concludes that, *'there is little evidence of any willingness on the part of the oversight authorities to combat certain practices in particular'*. CNDS adds that, *'certain actions, such as failure to produce accurate reports, failure to act fairly in an inquiry or disproportionate use of force often do not result in sanctions. More worrying still, some actions are never subject to disciplinary action: for example, as far as CNDS is aware, not a single police officer whom the Commission considered to have handcuffed or performed a full body search on a person without good reason has ever had disciplinary action taken against them'*¹¹.

PRISON CONDITIONS AND CRIMINAL POLICY (Concluding Observation 24)

14. In its concluding observations, CAT recommends that France should *'carry out a major review of the effects of its recent criminal policy on prison overcrowding, in the light of articles 11 and 16 [of the Convention]'*, that it should *'aim for wider use of non-custodial measures as an alternative to the prison sentences handed down at present'*, and that it should *'provide details about specific action taken regularly to implement the recommendations issued by the Inspector-General of places of deprivation of liberty following visits, including in the case of detainees suffering from psychiatric disorders'*.

Examination of the effects of recent criminal policy on prison overcrowding, in the light of articles 11 and 16 of the Convention

15. The Government's reply begins with a long discussion on building new prisons and the building programme it has undertaken. It makes no mention of any forthcoming *'review of the effects of its recent criminal policy on prison overcrowding'* recommended by CAT, even though at present the criminal policy it is pursuing is not leading to a reduction in the prison population: as at 1 June 2011, the sentenced population reached its highest ever level (73 277). The measures aimed at modifying sentences and making provisions for non-custodial sentences therefore do not appear to have had the impact that was anticipated.

16. The very fact that the Government states that its intention is to *'reduce the prison population'* except in *'particular circumstances'* that *'could lead to the temporary introduction of stricter sentencing'* clearly illustrates the ambiguity of its **policy on imprisonment and developing alternatives**. This ambiguity can be seen in the contradictory instructions given to judges, which on one occasion call on them to develop alternative measures and on the next to do the opposite, as certain events develop and are given a high media profile, to which politicians often react by going too far in one direction. As CNCDH stated in its

⁸ CNDS, [Bilan des six premières années d'activité 2001-2006](#) ['Report on its first six years' work, 2001-2006'].

⁹ [La CNDS en 2009](#) [CNDS in 2009], p.35.

¹⁰ [Rapport 2009](#) de la CNDS [Annual Report 2009], p.65.

¹¹ *Ibid.*, pp.16 and 17.

2007 study on alternatives to imprisonment, *'the variability in the legal instruments and views expressed mean that it is difficult to identify a clear, stable criminal justice policy, especially for judges, who are criticised one minute for their overuse of prison sentences and criticised the next for not using them enough. In order to develop an effective, coherent criminal justice policy, consistency and clear guidelines are vital'*¹². Furthermore, the progress that was made with the 2009 'Prison Act' [*loi pénitentiaire*], in particular in increasing the threshold from one to two years for sentences that could come under the alternative sentencing procedure from the judgment stage onward, already seems to be under threat from the Government majority¹³. Alternative sentencing policy therefore appears to be particularly fragile and the Government does little to take ownership of it and explain it in the public debate.

17. Whereas in the Government's draft reply, it used the terms *'decent accommodation conditions'* to describe the new prison facilities, the use of the term *'improved accommodation conditions'* in its final reply would seem to reflect a lack of willingness on the part of the French authorities to guarantee **prison conditions that respect human dignity**. Speaking about prison conditions in its reply, the Government describes a series of measures undertaken in the latest building programme. The 'strong points' it lists only relate to physical aspects, whereas the Inspector-General criticised the 'increasingly inhuman' aspects in these establishments, which he said contribute to exacerbating violence¹⁴. Several accounts have also described the way in which the huge prison facilities being built are leading to a variety of problems for both inmates and prison staff¹⁵.

18. The Government's presentation of its new prison building programme must be qualified and even contradicted in the light of certain facts:

- For example, the assurances it announces (page 9) concerning compliance with the **European Prison Rules and the provisions of the national Prison Act** must be taken in context, as they will only affect establishments that are renovated or built as part of the new building programme; in other words a total of 14 280 new places out of the 70 000 places announced.
- As regards the rate of **single cell accommodation**, the government's reply suggests it anticipates that the rate of 95% will only be adhered to once the new building programme has been completed, in other words by 2018¹⁶, whereas the commitments made under the Prison Act implied that the provisions on single cell accommodation would be adhered to as of 25 November 2014¹⁷. It is unlikely that the level will be adhered to even by 2018, since the prison service's forecasts for how many inmates will be accommodated already appears to be lower than the level achieved by 1 June 2011 (64 971¹⁸). Considering that the deadline for compliance with single cell accommodation, which was first set in the Law of 15 June 2000, has already been extended twice, the Government's reply once again demonstrates the low priority it attaches to this 'target'.
- As regards the government's announcement of **8.5m² cells** in the new establishments, this standard appears to be below the guidelines of the European Committee for the Prevention of Torture: *'Whilst the CPT has never directly set a standard on the subject, the evidence suggests that it considers a suitable size for an single cell to be between 9 and 10 m²'*¹⁹. The area of 8.5m² is also smaller than the

¹² CNCDH Studies, *Les prisons en France*, Volume 2, [Alternatives à la détention : du contrôle judiciaire à la détention](#), [*Alternatives to imprisonment: from supervision orders to imprisonment*], a study by Sarah Dindo, La Documentation française, 2007, p.9.

¹³ See for example the [Report More effective sentence enforcement](#), presented by MP Eric Ciotti in June 2011.

¹⁴ CGLPL, [Annual Report 2009](#), p.108.

¹⁵ See in particular the journal of the Prison Officers' Union (Union Générale des Syndicats Pénitentiaires - UGSP) [Expressions pénitentiaires](#), September 2010.

¹⁶ [Nouveau programme immobilier pénitentiaire](#), press release by the Justice Ministry, 5 May 2011.

¹⁷ Article 100 of the *Loi pénitentiaire* (Prison Act) introduced a five-year moratorium for the implementation of the principle of single cell accommodation, starting from publication of the Act on 24 November 2009.

¹⁸ Statistics from the Justice Ministry.

¹⁹ Commentary on European Prison Rule No 18.

area that was laid down in the specifications for the previous building programme (13200) which described 10m² cells. The savings made in this way in the context of a costly construction programme seem to be highly inappropriate, especially in view of the failure to comply with the principle of single cell accommodation.

- As regards the **provision of activities**, the Government gives no details as to what budget resources will be devoted to achieving the stated target of five hours' activity per day in the future 'active rehabilitation' establishments. This lack of information is a source of concern since we recall the provisions that were announced in the lead-up to the opening of the establishments under the last building programme, as compared with the actual resources that were released after the establishments were commissioned from late 2008 onwards. For example the total number of prison teaching staff rose by only 12.8% in eight years, to 676 full-time equivalent staff in September 2009, whilst the prison population rose by over twice that percentage over the same period. Most of the posts requested by the local teaching units between 2005 and 2009 were turned down by the regional educational authorities on the grounds of budget savings. Only 47 full-time posts were created, even though the assessment had identified a requirement of 122 posts. This lack of investment is present in the area of vocational training also. Since the trainees' training allowance has not been raised since 2007, the proportion of paid training hours (at a rate of EUR 2.26 per hour up to a maximum of 120 hours per month) has continuously decreased, falling from 93% in 2005 to 87.5% in 2006 and then to 84% in 2008 and 82% in 2009, with especially high reductions in some establishments.
- The Government's reply papers over this crisis affecting schemes aimed at putting into practice **the right to education and vocational training**. Even though the Prison Act of 24 November 2009 introduced a duty to provide occupation for inmates, the prison service is currently not in a position to provide education or vocational training of even one hour per week for more than four out of ten inmates. The level of general education provision has been lower than 25% for many years and the level of vocational training less than 10%. As for the rate of employment in prison, it is still below 30%.
- In the area of **maintaining family ties**, the Government's reply states that several 'residential family units' and 'family visit rooms' are being built that should satisfy the requirements of the Prison Act, which guarantees all inmates (in both remand centres and prisons) access to a visitors' room four times per year in either a residential family unit or a family visit room. The systems governing these two types of facility are very different. Family visit rooms are supposed to be mid-way between a traditional visitors' room and a residential family unit. They are small rooms approximately 10m² with a small bathroom with toilet and shower, a sofa and a television, in which inmates can see visitors; however this is only for a few hours. Residential family units are type F2 or F3 apartments with an outdoor area, in which inmates and their families can spend some everyday family time for periods of between 6 and 48 hours and once a year up to 72 hours. However, contrary to the Government's claim not all inmates will be able to have access to these units. In the first instance, the prison service has always put forward the excuse of architectural constraints to explain why it is impossible to create these units. As part of the new building programme, the closure of 30 run-down prisons was certainly announced, however 15 of these are going to be kept and despite the announcement of renovations, there is nothing to guarantee that the former constraints claimed to be an obstacle will disappear. In addition, in the most recent building programme (13200), not all establishments were equipped with these facilities²⁰. It seems, moreover, that no plans have been made to extend access to the residential family units to all inmates (both those on remand and convicted prisoners). Budget constraints may also delay the use of these facilities. There is therefore a strong likelihood that in many establishments, only family visit units will be available and that the four times per year minimum laid down in the Prison Act could quickly become a maximum in practice.

19. As regards the prison **occupancy ratio**, the Government goes on to state that the figure is arrived at by '*working out the ratio of the number of inmates (living) in prisons at a given moment to the number of places available at that moment*'. On this basis, it states a ratio of '*110.7 inmates to 100 places*' as at 1

²⁰ There are none in the new Saint-Denis prison on Reunion Island.

January 2010 and 107.4% as at 1 January 2011. It is important to bear in mind that this occupancy ratio refers to the average population density across all establishments. For example, for 1 January 2010 the ratio of 110.7% is the mean between an occupancy ratio of 124.0% in remand centres (and remand wings) and young offenders' institutions (EPMs) and an occupancy ratio of 90.4% in prisons. Added to this, the rate of 124% in remand centres and EPMs is itself an average of the densities identified by the different interregional prison directorates²¹. It is important to point out then that this method of calculating the occupancy ratio results in a measurement of the level of overcrowding in terms of numbers of inmates in relation to numbers of official places as opposed to a true measurement of overcrowding. According to the Prison Act, which forcefully reaffirmed the goal of single cell accommodation, a more accurate measurement of prison overcrowding is obtained by working out the ratio of the number of inmates to the number of cells. As at 1 January 2011, the prison service had 189 penal establishments with total capacity of 56 358, split between 48 354 cells. The absence of official data on the number of single cells among these means that at present it is not possible to proceed any further with a calculation of the actual level of overcrowding in French prisons.

Developing alternatives to prison sentences

20. In terms of its policy on developing alternative sentences, in its reply to CAT the Government simply lists the sentences described in the *Code pénal* (Criminal Code). Some recent cases have brought to light the lack of resources available to the Probation and Rehabilitation Services (*Services Pénitentiaires d'Insertion et de Probation*) for implementing alternative sentences. The services are lacking not only in staff, considering that each officer has between 60 and 250 people to follow up depending on the *département*, but also in training, evaluation tools and support methods based on research findings. Unlike many other European and North American countries, France makes no investment whatsoever in research similar to the 'What Works?' research aimed at following up control groups to determine which types of measure and support are most effective in preventing re-offending and helping to rehabilitate offenders.

Developing modifying sentences

21. As regards modifying sentences, a policy to develop such measures has certainly been undertaken over the last few years, however the Government's reply must be qualified in the light of certain negative points. Most of the resources and schemes undertaken actually concern **placing prisoners under electronic surveillance**, which is seen as '*a way of enforcing a prison sentence outside the prison establishment*'. The measure therefore consists of nothing more than monitoring the person's movements, which is viewed as carrying out the prison sentence in their own home. This means that in most cases, people under electronic surveillance do not benefit from any form of socioeducational support. Searching questions must be asked about the value of this kind of measure and its anticipated impact on preventing reoffending and rehabilitating offenders. A recent study confirms that parole, which is based more on an approach of support than surveillance, leads to lower re-conviction rates (39%) than modifying custodial sentences (55%)²². More widely, international research has shown many times that '*close surveillance of offenders via electronic means had no impact on re-offending rates*' (equivalent rates among probationers whether electronically tagged or not).

22. It is also worth questioning the claim (page 18) that the **new end-of-sentence electronic surveillance method** would benefit '*a new type of target group after their final release without probation*', even

²¹ For example, the Bordeaux region reported an occupancy ratio of 99.4% whilst the rate in the Rennes region was 140.1%. There are also similar discrepancies between different remand centres or wings within the same inter-regional directorate. Within the Rennes inter-regional area, the Vannes remand centre had a density of 95.5% whereas the Fontenay le Comte and Roche sur Yon centres reported densities of 212.8% and 232.5% respectively. Overall, at the time of the January 2010 survey, eight centres or wings had a density of 200% or higher; 26 had a density of 150% or higher; 50 a density of between 120% and 150% and 36 a density of between 100% and 120%. Only 116 establishments had a density below 100%, meaning that over half of all the remand centres or remand wings had a higher than normal population density (over 100%).

²² Annie Kensey and Abdelmalik Benaouda, *Les risques de récidive des sortants de prison. Une nouvelle évaluation* ['Re-offending risk among prison leavers: a new evaluation'], *Cahiers d'études pénitentiaires et criminologiques*, May 2011.

though the Government provides no figures on the use of this measure. Despite the fact that according to the legal texts the new measure may be applied to any offender serving a sentence of less than five years with four months remaining, it seems that in practice the scheme is very little used, although it entails a considerable workload for the Probation and Rehabilitation Services.

23. As for widening the scope of the **conditions for granting the measures**, even though it is no longer necessary to have a job on release from prison since a modifying sentence can be decided on if the person can show they will be under '*a rehabilitation or integration scheme aimed at preventing the risk of reoffending*' or '*undergoing medical treatment*' for example, in practice many magistrates have not altered their practice and continue to require a promise of employment in particular.

24. Finally, all these measures together have not led to a **reduction in the number of people in custody**, although it is impossible to tell what the prison population would have been if they did not exist. In the period from 1 October 2005 to 1 October 2010, the Government states that the number of modifying sentences increased by a factor of 3.6. In the same period, the number of people in custody rose from 57 163 to 61 142, which is a 7% increase. Whilst the sentenced population not actually in custody increased dramatically between 1 January 2009 and 1 January 2011 (from 3 296 to 6 431), this spectacular increase of almost 64% did not have a comparable effect on the population in custody itself, which fell by 2 % between 1 January 2009 and 1 January 2010 (62 252 as opposed to 60 978) and by 0.7 % between 1 January 2010 and 1 January 2011 (60 978 as opposed to 60 544), among an overall sentenced population that remained relatively stable (66 178 on 1 January 2009, 66 078 on 1 January 2010 and 66 975 on 1 January 2011). Furthermore, the changes observed over the first quarter of 2011 provide further evidence that it is impossible to establish a correlation between the size of the sentenced population not in custody and that of the population in custody. It cannot be claimed, therefore, as the Government has attempted to do, that '*we are beginning to notice the impact of the provisions of the Prison Act, which aimed to further increase the use of modifying sentencing and hence to achieve a proportionate reduction in the sentenced population in custody*' (page 17).

25. The data supplied in the '*Forecast for the sentenced population, the population in custody and the population under electronic surveillance*' for the next three years (Table 1, page 19) should be questioned: not only do they differ significantly from the data shown in the 31 January and 28 February 2011 editions of the monthly tables published by the prison service but they also do not reflect the very high increases in the sentenced population and the population in custody seen during the first quarter of 2011. The Government forecasts a **population in custody** of 59 408 on 1 January 2012. This figure has certainly been revised upwards from the level stated in the Tables (59 062), however it is below the level of 60 544 in custody on 1 January 2011 and more significantly still, below the level of 64 971 people in custody on 1 June 2011. In the light of these figures, the population forecast for 1 January 2012 can be considered extremely unrealistic, as are those for 1 January 2013 and 2014 (60 506 and 61 659 respectively).

26. This assessment is even more relevant to the forecasts for the **sentenced population**. A sentenced population of 70 002 is forecast for 1 January 2012, which at first sight appears to be lower than both the figure stated in the tables (70 837) and the figure recorded for 1 June 2011 (73 277, which at present is higher than the forecast for 1 January 2013). A projected sentenced population of 71 611 and 73 279 for 1 January 2013 and 2014 respectively therefore seems to be grossly underestimated, whilst the figures stated in the tables are probably closer to the probable levels (estimated at 72 699 and 74 562 respectively).

Implementation by the Government of the recommendations of the independent General Inspector of Custodial Facilities (Contrôleur Général des lieux de privation de liberté)

27. In its observations, CAT asked France to '*provide details about specific action taken regularly to implement the recommendations issued by the Inspector-General of places of deprivation of liberty following visits, including in the case of detainees suffering from psychiatric disorders*'.

28. In its reply to the Committee, however, the Government only addresses the observation on implementing the General Inspector's recommendations from the point of view of those

recommendations relating to people suffering from mental health problems. Since the recommendation by CAT is not restricted to these cases only, in fact far from it, the Government's reply is therefore very incomplete and largely inadequate in the light of the subjects that the Inspector-General has addressed since the role was introduced in 2008²³.

BODY SEARCHES (Concluding Observation 28)

29. The Committee *'recommends that the State Party exercise strict supervision of body search procedures, especially full and internal searches, by ensuring that the methods used are the least intrusive and the most respectful of the physical integrity of persons, and in all cases in compliance with the terms of the Convention'*. It also recommends *'the implementation of the electronic detection methods announced by the State Party, and the widespread use of such mechanisms, in order to eliminate the practice of body searches altogether'*.

30. Beyond the theoretical explanations supplied, the question remains as to whether or not Article 57 of the Prison Act and its implementing decree are actually put into practice. Many of the provisions described seem to be too vague.

31. CNCDH wishes to draw attention to the standpoint it adopted on body searches on the occasion of its communication to the Council of Europe Committee of Ministers on the follow-up to the enforcement of the Judgment *Frérot V France*. In its communication, CNCDH deplored in particular the failings of the legal framework governing body searches provided by the Prison Act. It called for greater control of the use of body searches (where necessary and reasonable) to be put in place and for strict monitoring of search procedures to be carried out. By focusing in particular on circumstances in which personal safety and order within the establishment could be compromised, the implementation circular does not provide sufficient guarantees that body searches will not be used as a matter of routine. The situation of family visits is a good example. According to the circular, *'areas in which family visits take place are susceptible areas within the prison establishment'* and hence *'it is justified to require prisoners to undergo appropriate search procedures'*. The wording of the document does not go far enough to encouraging a change of practice among the officers responsible for implementing it, especially in the light of practices that have been reported in some establishments despite the legal provisions that have been introduced²⁴. Whilst the government's reply does provide some useful information, it is still too vague. It states that it is necessary to *'abolish the routine use of search procedures'* and that there is a need for *'a change in professional practices which until now have been based on provisions laying down the circumstances in which searches could be routinely practised'*, however the situations in which these routine searches will no longer be carried out are not mentioned. For example, no information is given as to what will happen to the full body search routinely carried out on inmates placed in the punishment wing or on inmates leaving the prison to be taken to Court or to hospital. The Government therefore needs to clarify the system in the light of this document, especially in terms of the implementation envisaged in the various different situations.

32. Although on the surface the control framework appears to be stricter, the focus still seems to be on maintaining the practice of routine full body searches in specific circumstances. The Government speaks about striking the right balance between security needs and respect for prisoners' dignity. However, if security is always given priority over dignity, it seems to be slipping back into old practices and this will not fulfil the objective of abolishing body searches.

33. The Government also announces (page 23) that the possibility of installing millimetre wave body scanners in prison establishments is to be looked into. In the first instance, it is important to ask what the Government's precise intentions are regarding the development of this technology and the purpose of the

²³ See [rapport annuel d'activité 2010](#) du Contrôleur général des lieux de privation de liberté [2010 Annual Activity Report of Inspector General], *Principales pistes de progrès à engager pour la prise en charge des personnes privées de liberté*, pages 289 à 296.

²⁴ For example, the International Observatory on Prisons (OIP) has received several accounts from people who have witnessed the systematic use of full body searches before visits to the family visit room and has also observed that some establishments had still not amended their internal rules, either on the basis of rules of procedure that were not amended or of notices on display which suggest that the practice is still being carried out on a routine basis.

discussions that are to take place, in order to ensure that this is a genuine shift towards a policy of replacing full body searches, rather than simply an alternative. The Government provides no assurances on this point. Furthermore, in the light of the announcements concerning the closure of watchtowers, it might be useful for the Government to clarify whether this type of installation is among the systems being considered to compensate for the closure²⁵.

USE OF ELECTRIC STUN GUNS IN CUSTODIAL FACILITIES (Concluding Observation 30)

34. CAT described ‘*a lack of detailed information on their use, the status of persons who have already used them, and specific precautions, such as training and supervision of staff concerned*’. Repeating once again its concern ‘*that the use of these weapons may cause severe pain, constituting a form of torture, and in some cases may even lead to death*’, the Committee ‘*would welcome up-to-date information from the State Party on the use of this weapon in places of detention*’.

35. In its opinion of 15 April 2010, CNCDH recommended ‘*that the use of stun guns and flashballs be banned in custodial facilities (prisons, immigration holding centres, etc.) and in the context of forced removal of aliens*’.

36. In the first instance, the Government’s reply is too vague in relation to both concrete situations in which stun guns are used.

37. In addition, whilst members of the special prison forces (ERIS) receive six training modules each lasting a week, one of the modules being entitled ‘Arms, devices and security equipment in prisons’, delivered over the course of a week by the *Ecole nationale d’administration pénitentiaire* (National Prison Service Training College), it is not specified what proportion of the week is devoted to training in use of the electric stun gun. As regards ERIS officers, it is also not specified whether the arms are allocated individually or on a group basis and if they are allocated individually, whether the individuals authorised to use them are the governors of the prison facility, deputy governors, head wardens, wardens or members of the four prison officer grades.

38. In its reply, the Government only refers to situations in prisons, whereas the term ‘custodial facilities’ used by CAT may be taken to cover all types of facility in which people are detained. The Government should therefore also provide information on the conditions of use of stun guns in immigration holding centres for example, especially in view of the fact that cases have already been reported of the use of stun guns in these establishments²⁶.

HUMAN TRAFFICKING (Concluding Observation 36)

39. CAT recommends that the Government should ‘*adopt a national plan aimed at combating the trafficking of women and children in all its forms, which would include both measures of criminal justice concerning the prosecution of traffickers and measures for the protection and rehabilitation of victims*’ and that it should ‘*strengthen its international cooperation with the countries of origin, trafficking and transit, and see to the allocation of sufficient resources for policies and programmes in this area*’.

40. In its reply, the Government mentions that a **National Action Plan to combat Trafficking** has been drawn up. However, whilst this plan was indeed finalised in June 2010, it has not come into force as yet and has not even been officially approved. The working party set up in 2008 produced a draft national

²⁵ In his reply to the written question by MP Michel Liebgott, published in the Official Gazette (Journal Officiel) of 4 January 2011 (question 92024), the Justice Minister stated that, ‘*As regards the prison service, the new phase of the general review of government policy is looking at modernising the way it is structured and run. A team of experts will be conducting a wide-reaching survey of prison establishments. Its purpose will be to identify solutions that will enable us to close down watchtowers while maintaining the same level of security as at present in the establishments concerned by introducing other specific systems. Depending on the findings of this expert study, the removal of watchtowers in certain establishments will be considered with a view to streamlining the use of human resources and maintaining security at the facilities in question*’.

²⁶ See [rapport de 2009 de la CNDS](#) [CNDS Annual Report 2009], page 40, concerning a victim of unwarranted use of the Taser at the immigration holding centre in Vincennes.

action plan that was handed to the Interior and Justice Ministers, together with a proposal for a decree establishing a national coordinating body. In December 2010 it was announced that the measures proposed by the working party would be published on the ministerial website, however this does not appear to have been done as yet. No details are provided as to the timetable for the adoption of the plan and the implementation of the measures it sets out. CNCDH was not consulted over the draft plan, despite the fact that it had gained a sound body of expertise during the detailed evaluation of the national system covering trafficking and exploitation in France, which it performed in its opinion of 18 December 2009 on human trafficking and exploitation in France and the eponymous study published in October 2010.

41. As regards the legislative measures detailed in its reply, the Government emphasises that Article 225-4-1 of the *Code pénal* [Criminal Code] and Article L316-1 of the CESEDA [*Code de l'entrée et du séjour des étrangers et du droit d'asile*] support effective control of trafficking in France. Nonetheless, the report from the information gathering mission into prostitution in France published on 13 April 2011²⁷, like the study by CNCDH, highlights the fact that these articles have no significant effect in the area of human trafficking.

42. It should also be noted that the **offence of trafficking** (Article 225-4-1 of the *Code pénal*) is only one article among the many provisions on the problem that needs to be combated. Article 225-4-1 actually covers a narrow interpretation of the actions involved in trafficking in that it does not cover the situations of exploitation that traffickers facilitate. However, several other provisions are applicable to the acts involved in exploitation, whatever form it may take, although CNCDH believes there are serious gaps in these provisions. Under French law, the offence of trafficking specifically makes it a crime to facilitate the exploitation of a person. The situations preceding or surrounding the act of exploitation are rarely established unless the act of exploitation is also established. As emphasised by CNCDH in its work, the most important thing at present is not that Article 225-4-1 of the *Code pénal* should be effectively applied, but rather that the actions involved in exploitation should be prosecuted as such and should be prosecuted in proportion with the seriousness of the actions concerned. However the current provisions whereby exploitation can be punished are very unsatisfactory. Sexual exploitation is the only exception, due to the existence of offences relating to procuring and sexual assault.

43. As regards practical measures, the Government states that since trafficking is a crime, this can **confer particular rights on victims**. In addition to the fact that CNCDH had already shown that it was not beneficial to make respect of the fundamental rights of victims of trafficking or exploitation conditional upon application of the offences of trafficking (in the narrowest sense) or procuring alone, it is important to remember that the offence of trafficking only covers the act of facilitating the exploitation of a person and not the exploitation itself, and that procuring only covers the exploitation involved in prostitution and hence many victims of exploitation are not covered by the above-mentioned provisions.

44. As regards **international cooperation on trafficking**, it should be pointed out that OCRTEH, the *Office central pour la répression de la traite des êtres humains* (Central office for the control of human trafficking) is a central office that specialises only in combating procuring and trafficking of adults for that purpose. Other forms of trafficking and exploitation come under the jurisdiction of various other national offices, the main ones being the central offices for controlling illegal immigration and illegal employment channels. The purpose of these offices is not to identify victims of trafficking or exploitation but to uncover people smugglers and employers who are breaking employment law. Little attention is paid to victims in that the offices are asked to assign illegal workers found on the inspected premises to fast-track deportation procedures. France has been criticised several times on this subject by the Committee of Experts on the application of the ILO conventions and recommendations for its breach of Convention No 81 on labour inspection due to the incompatibility of illegal immigration control with the methods and objectives of labour inspection²⁸.

45. Furthermore, the Government's reply clearly shows that France has focused primarily on the exploitation involved in prostitution. However, the international legislation also condemns exploitation in

²⁷ [Rapport d'information](#) [Information survey report] on prostitution in France, by the Law Commission of the *Assemblée nationale*, April 2011.

²⁸ For the most recent of these comments Cf. [the committee's 2011 report](#), page 584 et seq.

other sectors (domestic work, farm work, etc.). The Government's reply falls short therefore since it restricts itself to describing the work done by OCRTEH on combating procuring and sex tourism.

46. In addition, whilst OCRTEH and the child protection services are able to identify children who are being sexually exploited, there is no central government department to cover cases of trafficking and exploitation of minors other than sexual exploitation.

47. As regards **granting temporary residence permits**, CNCDHS had pointed out that in practice, prefects rarely grant them or refuse to renew them, making use of their discretionary powers and sometimes adding conditions that are not provided for in the law. However, no mention is made of any measures taken to remedy these practices.

48. On the subject of the **support given to voluntary sector organisations**, attention should be drawn to the fact that in the first instance, the public grants allocated to many of the associations specialising in areas such as support for victims of trafficking or exploitation have been drastically reduced and in the second instance, there have been serious delays in paying the grants, which has placed the associations in serious financial difficulties to the extent that some have considered closing, making staff redundant or cutting out some of their programmes. It would also have been useful if the sums anticipated for the 2011 grants had been listed in the reply.

49. Another gap is the fact that the **figures** provided by the authors only relate to actions involved in trafficking for the purposes of sexual exploitation but no mention is made of the absence of specific offences covering all forms of slavery, forced labour or constraint. As French law stands at present, it is impossible to estimate how many victims of trafficking and exploitation there are in France.

50. Lastly, as regards the **residence permits** issued to victims, the information provided in the reply is lacking in precision and no clear picture of the situation can be obtained from it. No distinction is made between the number of residence permits issued for the first time and the number of permits renewed. Similarly, no details are given as to how many permits were issued in the context of exploitation for prostitution and how many in the context of other forms of exploitation.