

Description of the Institution

The *Commission nationale consultative des droits de l'homme* (National Consultative Commission on Human Rights - CNC DH) is the French human rights institution with A accreditation from the International Coordinating Committee of National Human Rights Institutions (NHRI)¹. The CNC DH was created in 1947 with a role of advising and sensitizing the Government and Parliament through vigilance, monitoring, and proposals on all subjects relating to human rights and international humanitarian law.

Since 2007², the Commission comprises 64 members, representing the principal **non-governmental organisations** working in the area of human rights and international humanitarian law, but also members of the main **trade union organisations**, representatives of **religious organisations** and **individuals chosen either for their acknowledged competence** in this area or because they are **independent experts** within an international human rights organisation or body. Thanks to this pluralist composition and its collegiate method of working, the institution is able to fulfil its mission completely independently.

The Government may refer to the Commission any question of general interest that fits within the Commission's competence with either a national or an international impact. The Commission may also act on its own initiative. The position adopted by the Commission is given in reports, studies or opinions. During the 2009-2012 mandate, 29 opinions were given by the CNC DH. Three annual reports were published concerning the fight against racism, anti-Semitism and xenophobia, two reports were published on international insights and recommendations on human rights in France, a study of corporate responsibility in the area of human rights was issued, as well as a study on the fight against human trafficking and exploitation in France.

As part of its international mandate, the CNC DH contributes to the preparation of reports that France presents to the international organisations and cooperates, while keeping to its mission, with the international organisations dealing with human rights and international humanitarian law. The CNC DH also participates in the monitoring of observations and recommendations concerning France made by these authorities. The report on the international insights and recommendations on human rights in France, published as part of this work, offers a collection and analysis of the recommendations made in the past two years, and identifies several themes which should be given priority

¹ This accreditation testifies to the CNC DH's level of compliance with the Paris Principles. The Paris Principles relate to the status and functioning of national institutions for promotion and protection of human rights enshrined in Resolution No. 48/134 of the General Assembly of the United Nations (20th December 1993).

² [Loi n°2007-292 du 5 mars 2007](#) [Law No. 2007-292 dated 5th March 2007] concerning the National Consultative Commission on Human Rights and [décret n°2007-1137 du 26 juillet 2007](#) [decree No 2007-1137 dated 26th July 2007] concerning the composition and functioning of the National Consultative Commission on Human Rights.

consideration by the Government³. The contribution set out below has in large part been modelled on the conclusions in that report.

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³ CNCDH, *Les droits de l'homme en France – Regards portés par les instances internationales [Human rights in France - International insights and recommendations]* 2009-2011 Report, La Documentation française, Paris 2011.

Contribution of the CNCDH to the 2nd cycle of the UPR of France

*4 January 2013**

A- CONTEXT

1. France is currently experiencing a serious economic crisis with a high rate of unemployment and increased levels of poverty and social exclusion. In these circumstances, certain fundamental rights tend to be reconsidered for an increasing number of people among the most vulnerable categories of the population, especially women living alone¹. Asylum seekers, migrant workers and people of no fixed abode are particularly affected². Such people are frequently the subject of disparaging comments suggesting that they alone are responsible for their situation, thereby reinforcing the sense of prejudice and exclusion³. Whereas the law concerning social exclusion⁴ maintains that enjoying basic rights is fundamental to fighting exclusion, austerity budgets tend to push solidarity policies into the background, hampering the efforts in terms of housing and healthcare, as well as reducing the funding available for those people and organisations who work directly with such vulnerable sections of the population⁵. **In this situation, maintaining a social security system that guarantees access to basic rights for all would seem to be a priority.**
2. The CNCDH has never ceased to remind people that the common ideal of a Republic that is "one and indivisible" implies the universal implementation of all human rights and an effective application of the principles of equality and non-discrimination. This also requires the commitment of the authorities at a local level and taking into account the specific nature of the overseas territories and their populations, too often neglected in effective implementation of human rights.
3. The new Government will need to face up to several challenges, notably through the drafting of new legislation concerning human rights, on which the CNCDH needs to be consulted in line with the commitment made during the 1st UPR cycle⁶, and which to date has been little used⁷.

B- EVOLUTION OF THE INSTITUTIONAL FRAMEWORK FOR HUMAN RIGHTS PROTECTION

4. Since 2008, the system for protecting human rights has been significantly modified.

** This contribution has been slightly modified since it's been sent to the HCHR in July 2012, in order to update it in the light of recent changes.*

5. The mechanism of the *Question prioritaire de constitutionnalité* (QPC) (priority ruling on constitutionality) allows any citizen the right to contest the constitutionality of a law *a posteriori*⁸. This reform was considered to be a major advance for the Rule of law. As a result of the Constitutional Council ruling that certain texts did not comply with the Constitution, several major reforms have been launched concerning, notably, police custody⁹ and the rights of people receiving psychiatric treatment¹⁰.
6. A new authority, the '*Défenseur des droits*' (Defender of Rights), has replaced several independent authorities which had certainly demonstrated their effectiveness¹¹. The CNCDH will keep a close watch on the independence of this new institution and the effectiveness of its action¹².
7. The CNCDH, which welcomed the creation of the *Contrôleur général des lieux de privation de liberté* (General Inspector of Custodial Facilities)¹³ - a mechanism at the national level for the prevention of torture -, wishes to underline the exemplary role played by this independent authority to ensure the rights of people deprived of their freedom.

C- INTERNATIONAL COMMITMENTS AND GENERAL FRAMEWORK FOR IMPLEMENTING THE RECOMMENDATIONS

8. **The CNCDH recommends signing and/or ratifying as quickly as possible:**
 - **the optional Protocol to the ICESCR (signed on 11th December 2012),**
 - **the third optional Protocol to the Convention on the Rights of the Child,**
 - **Protocol No. 12 to the European Human Rights Convention concerning the general prohibition of discrimination,**
 - **the Convention on the protection of the rights of all migrant workers and members of their families ,**
 - **the supplementary provisions of ILO Convention No. 143 on migrant workers,**
 - **and ILO Convention No. 169 on the rights of indigenous and tribal peoples.**
9. **The CNCDH recommends revising the law concerning aligning the criminal law to the Rome Statute of the International Criminal Court** which imposes four cumulative conditions for French courts to be able to exercise extraterritorial jurisdiction concerning genocide, war crimes and crimes against humanity¹⁴. **It recommends aligning French law to the International Convention for the Protection of All Persons from Enforced Disappearance**¹⁵.
10. **The CNCDH recommends setting up a genuine inter-ministerial mechanism for reviewing recommendations issued by the international organisations**¹⁶.
11. **Consultation with civil society and the CNCDH concerning implementing these recommendations, today virtually non-existent, should also be strengthened**¹⁷.
12. **The CNCDH underlines the importance of drafting and adopting a national human rights action plan** involving both public authorities and civil society¹⁸. **Also recommended are the adoption of a national action plan, and the**

nomination of an independent national *rapporteur*, for trafficking and exploitation of human beings¹⁹.

D- ADMINISTRATION OF JUSTICE, CRIMINAL LAW, CRIMINAL PROCEDURE AND PRISONERS' RIGHTS

13. The CNCDH has taken note of the commitments made by the new Government in place since May 2012, and its announcements of new directions in the area of justice, and its policies on crime and prisons. The CNCDH will closely monitor implementation in the months to come.
14. The law of 14th April 2011 accords every individual the right to have recourse to a lawyer as soon as the individual is detained, however, certain practical difficulties have been faced in the application of this law, notably regarding the degree of effectiveness of the lawyer's assistance²⁰.
15. The principles governing criminal law and criminal procedure, especially the principle according to which the sentence must be strictly necessary, have been completely changed by the adoption of the following laws: the law aimed at predicting the risk of second or multiple offences²¹, the law on preventive detention and fitness to plead²², the law on the plan for serving prison sentences²³ and the law on the strategy and planning for handling internal security²⁴. More than just a tougher stance on crime, this growth in legislative complexity is contrary to the idea of a policy against crime that is "*coherent, stable and understandable*"²⁵ and it does not help the ordinary citizen to understand his rights. The CNCDH has criticised the creation of the criminal court for minors, modelled on that used for adults²⁶. **The CNCDH recommends that criminal justice for minors adheres to the spirit of the 1945 ruling concerning juvenile delinquency, which enshrined the principles of reduced criminal responsibility for minors, the primacy of education over repression and the specificity of such jurisdiction.** The CNCDH has taken note of the Justice Minister's circular of September 2012 concerning the policy on crime which reasserts the principle of a specialised judicial system for minors.

Penal institutions

16. In view of the increase in the prison population²⁷, **the CNCDH recommends much greater recourse to alternatives to prison and adjustments to sentences, and an increase in the resources devoted to helping rehabilitation of detainees²⁸.** The Justice Minister's circular of September 2012 concerning the policy on crime is on the right track referring to the Prison law of 24th November 2009 which, in criminal matters other than for habitual offenders, calls for prison sentences to be given as a last resort and asks the courts to individualise sentences and to adjust the length of prison sentences.
17. Despite the modernising of the stock of penal establishments which, by itself, is no guarantee of an improvement in respecting human rights²⁹, detention conditions remain a major concern and demand that serious consideration be given both to the sense of such sentences and to the policy on rehabilitation.

18. Despite the fact that the November 2009 Prison law defines the legal framework concerning body searches³⁰, abusive and systematic practices continue, as witnessed by the recent condemnation of France by the ECtHR³¹. **The CNCDH recommends banning total body searches and advocates the use of modern detection technology to guarantee the dignity and physical integrity of the individual³².**
19. France has been condemned several times by the ECtHR³³ concerning access to medical treatment by prison inmates. It is also one of the countries with the highest rate of suicide in prisons³⁴. In addition, it has been estimated that 30% of the prison population suffers from mental health problems³⁵. **The CNCDH recommends that preventative measures be put in place, and that prisoners' access to treatment be improved, whilst scrupulously respecting the rules of medical confidentiality³⁶.**

E- ENFORCED HOSPITALISATION AND PSYCHIATRIC TREATMENT

20. In 2011, France enacted an important reform whereby any hospitalisation without consent now requires to be controlled by a judge before the expiry of fifteen days following psychiatric confinement³⁷.
21. In a country like France, where hospitalisation is commonplace but where practices differ widely from one region to another, such checks on enforced hospitalisation should ensure that more account is taken of the rights of those suffering from psychiatric problems and unable to give their consent to the treatment proposed.
22. However, more than a year since the law came into effect, practical problems surrounding the ability of the judge in charge of custody and release to exercise such control are such that its effect is limited. The location where the judge holds his audience determines in large part the effectiveness of the checks. **The CNCDH recommends that these audiences be held in the hospital, and that appropriate means, notably in both personnel and in training, be provided to ensure that the reform becomes truly effective³⁸.**
23. Moreover, this reform contains an important section concerning enforced treatment outside the hospital environment, where the guarantees for the patient and the patient's immediate circle remain to be defined, given the real danger of infringing the patient's rights. **The CNCDH recommends that enforced treatment outside the hospital environment be subject to the same checks and balances as those in force for full-time hospitalisation.**

F- MIGRANT POLICY AND RIGHTS TO ASYLUM

24. For several years now, confusion persists between the policy for migrants and the right to asylum. Whereas a country may determine its policy concerning migrants free of any constraints, the Geneva Convention imposes certain minimum requirements concerning the right to asylum³⁹. Certain procedures for seeking asylum, in particular the request made at border checkpoints, the so-called "Dublin" procedure and the priority procedure, can induce a misunderstanding concerning the principle of non-refoulement. The priority procedure, characterised notably by requiring very fast decisions by the asylum courts and the right to a stay of

enforcement, can in practice deprive the asylum-seeker of an effective appeal and result in the person being returned to his country of origin before his request has been fully examined, as the ECtHR has pointed out in a recent judgement⁴⁰. **The CNCDH recommends that all asylum-seekers have effective access to the appropriate legal authorities and that a decision to return the person to his country of origin cannot be taken before the asylum court has been able to take its decision.**

25. Moreover, the recommendation made during the previous UPR cycle concerning the establishment of a procedure for reuniting refugees' families has not been carried out⁴¹, a situation that denies the right of refugees to lead a normal family life.
26. As for the rights of aliens, the CNCDH has noted that the policy of systematically placing in detention almost all undocumented migrants continues unabated⁴². In this regard, placing in detention families with children, even very young children, has been denounced by several stakeholders, including the *Défenseur des droits*, and has been the subject of condemnation by the ECtHR⁴³. The CNCDH has noted the circular of 6th July 2012 from the Ministry of the Interior which recommends prefects to prefer assigning a residence for families with children rather than recourse to a detention centre, except in cases where conditions for such a residence are not respected, or where one or more of the family members absconds or in case of refusal to accept embarkation. **The CNCDH considers that detaining aliens should not become the standard solution in the policy for migrants, and recommends that, in general and complying with European regulations⁴⁴, placing in detention should only be decided as a last resort.**

G- RACISM

27. Since 2008, acts of racism committed in France have been on the increase, particularly against Moslems and people from North Africa⁴⁵.
28. In the past few years, there has been a disquieting trend for certain politicians and media personalities to make public statements which are xenophobic or stigmatising⁴⁶, which have the effect of rendering racial prejudice commonplace - and even accepted by society⁴⁷. In August 2010, the CNCDH condemned "*the succession of official discriminatory declarations concerning gypsies, Roma people and "French citizens with foreign origins" and also juvenile delinquents and their parents*"⁴⁸.
29. In addition, there are more and more allegations of racist or discriminatory behaviour by the police ("checks based on facial features"). The publication of several surveys on this subject⁴⁹ has helped bring the issue into the public arena. Whilst the new Government has launched a study to establish concrete measures to combat these practices, **the CNCDH is convinced that the best method of preventing such racial profiling by the police is to provide officers with adequate awareness training concerning racism and discrimination.**
30. Finally, although the Government has shown its willingness to have a coherent, integrated approach to the problem by announcing a three-year (2012-2014) National Action Plan against Racism and anti-Semitism⁵⁰, **the CNCDH**

recommends that this plan be accompanied, in the first instance, by a strong political message in having the inter-ministerial representative report to the Prime Minister, and secondly, by involving fully the civil society in order to have a concrete set of actions in place.

31. As the reliability of the method for collecting statistical data is unsatisfying, **the CNCDH recommends that France arms itself with a reliable statistical tool which would enable the extent of racial violence to be measured, and also help in evaluating the level of racial discrimination and associated inequalities.** The CNCDH believes, however, that setting up statistics based on ethnic origin is not the most appropriate solution, and recommends a method based on more objective criteria⁵¹.

H- DISCRIMINATION

32. The recommendation, made during the previous UPR cycle, that France revise its 2004 law on the wearing of religious symbols in public schools has not been implemented. The CNCDH believes that this law is perfectly in line with the fundamental secular principles of the French Republic, and that this measure, the extent of which is limited, is not in itself discriminatory⁵². The CNCDH has issued numerous reservations about the law concerning the covering of the face in public areas, believing that secular principles do not justify such measures, even though questions of public order do need to be taken into account⁵³.
33. Even with France having a set of laws to protect citizens from discrimination⁵⁴ and to promote equality, and there having been recent efforts at improving the parity between men and women⁵⁵, acts of discrimination persist, linked in essence to an inadequate knowledge or a misunderstanding of the law. For example, equality between men and women remains a problem, despite a wealth of constitutional and legislative implements, due to the all too frequent absence of the necessary instruments for application, monitoring and coordination of the various constraining measures⁵⁶. **In overall terms, the laws on repression of discriminatory acts need to be strengthened and completed by a section on prevention-information-sensitisation. Indirect and multiple acts of discrimination also need to be better defined and covered in the French legislative armoury,** as these are the most common forms of discrimination encountered. The CNCDH is pleased to note that this question has become a priority item for the Government, and will monitor very closely the implementation of the measures recently announced.

I- ROMA PEOPLE AND TRAVELLERS

34. At an international level, the term 'Rom' (Roma people) has been adopted. For France, this term refers both to an administrative category of travelling people with French nationality, and to migratory Roma people who are, for the most part, citizens of the European Union.
35. The latter, mainly from Romania and Bulgaria, countries currently operating with certain transitory measures, are excluded from the labour market. They are also victims of repeated evacuations from encampments and summary expulsions with no individual examination of their situation, with very often dire consequences for

their sanitary situation and severe limitations for their children to have proper schooling. The 'French Strategy for inclusion of Roma people'⁵⁷ is an interesting document but heavy on theory and good intentions and light on implementation - it remains to be seen how it will be put into practice. **The CNCDH recommends abrogating the transitory measures and putting a stop to expulsions from camps in the absence of any alternative solution and propositions for re-housing the families in a dignified and more permanent manner, so that such people may find their place within the French Republic**⁵⁸. The CNCDH notes the recent advances with the publication of the inter-ministerial circular concerning planning and accompaniment for evacuation of illegal encampments as well as the three circulars from the Education Ministry concerning schooling for children of itinerant and allophone families⁵⁹. However, these do not appear to have given rise to any real change for the families concerned. **The CNCDH points out also that migrant Roma people are the target for stigmatising declarations and calls for a real political will to fight against such stereotypes and discrimination**⁶⁰.

36. Travellers with French nationality, belonging to various gypsy groups, are the subject of discriminatory practices which emanate from legislation that needs to be changed. The possession of **registration documents** undermines their freedom of movement. **The CNCDH recommends the abolition of the full range of registration documents**⁶¹. Although the 5th October 2012 decision by the Constitutional Council only declared unconstitutional the registration booklet for those persons unable to justify a regular source of income, it did however allow aligning with mainstream electoral procedures the arrangements for travellers which heretofore had been an attack on their right to vote, something which has been denounced many times by the CNCDH. These two questions are not the only ones which concern the nomadic way of life of a part of the French gypsy population and their rights, but they are the ones which need answering most urgently.

Apart from the themes described in the above report, there are many other areas of concern that could have been developed, had the rules for submission allowed: human trafficking, the right to lodge a complaint when subjected to ill treatment by law enforcement officers, the use of certain firearms (flashball and taser), human rights in French overseas territories and departments, human rights training and education, new technologies, etc.

¹ See in particular: [Institut national de la statistique et des études économiques](#), [National Institute of Statistics and Economic Studies], Les revenus et le patrimoine des ménages [Household incomes and personal fortune] - Insee Références - Édition 2012, 4th July 2012.

² See in particular: Chart from the following report from the [l'Observatoire National de la Pauvreté et de l'Exclusion Sociale](#) (ONPES) [National Observatory on Poverty and Social Exclusion] 2011-2012: [Une tendance à la hausse de la pauvreté et de l'exclusion sociale](#); [Upward trend in poverty and social exclusion]; see also, CNCDH, [Avis sur l'accueil des demandeurs d'asile en France](#), [Opinion on the reception given to asylum-seekers in France], 15th December 2011.

³ ATD Quart Monde, [Les idées fausses ça suffit](#), [Enough of these false good ideas], 24th April 2012.

⁴ [Loi n° 98-657 du 29 juillet 1998](#) [Law No. 98-657 dated 29th July 1998] giving the framework for the fight against exclusion.

⁵ As an example, governmental expenditure in the areas of solidarity, social insertion and equal opportunity - including here programmes relating to equal opportunity between the sexes, support for

public health, social, youth, sporting and other associative actions, the 'revenu de solidarité active (RSA)' and social experimentation, actions to support families in difficulty and finally programmes concerning disability and dependence - has all been revised downwards, with the exception of that concerning disability and dependence. See the Senate, [Rapport général n°107 fait au nom de la commission des finances sur le projet de loi de finances pour 2012](#), [Standard report No. 107 in the name of the Finance Committee concerning the Finance Bill for 2012], Tome III Moyens des politiques publiques et dispositions spéciales, annexe n°28 Solidarité, insertion et égalité des chances, session ordinaire de 2011-2012 [Policy and special provisions, annexe No. 28, Solidarity, insertion and equal opportunity, general session 2011-2012].

⁶ In its introductory address, and during the discussions, France made the following voluntary pledge: "*To seize the CNCDH as often as possible in the context of law-making so that it efficiently assumes its advisory role*".

⁷ During the 2009-2012 mandate, the CNCDH has only been formally involved in five legislative projects. It is, however, regularly consulted on various subjects by the Ministry of Foreign Affairs.

⁸ [Loi organique n° 2009-1523 du 10 décembre 2009](#) [Organic law No. 2009-1523 dated 10th December 2009 concerning the application of article 61-1 of the Constitution].

⁹ [Décision n° 2010-14/22 QPC du 30 juillet 2010](#), [Decision No. 2010-14/22 QPC dated 30th July 2010] *M. Daniel W. et al. [Police custody]*.

¹⁰ [Décision n° 2010-71 QPC du 26 novembre 2010](#), [Decision No. 2010-71 QPC dated 26th November 2010], *Mlle Danielle S. [Enforced hospitalisation]*.

¹¹ The *Médiateur de la République* (Mediator of the French Republic), the *Défenseur des enfants* (Children's Ombudsman), the *Commission nationale de déontologie de la sécurité* (National Security Sector Professional Ethics Commission) and the *Haute autorité de lutte contre les discriminations et pour l'égalité* (Equal Opportunities and Anti-Discrimination High Authority); [Loi organique n° 2011-333 du 29 mars 2011](#) [Organic Law No. 2011-33 dated 29th March 2011], concerning the Defender of Rights].

¹² CNCDH: [Avis sur le Défenseur des droits](#), [Opinion concerning the Defender of Rights], 4th February 2010 and [Avis sur le projet de loi organique relatif au Défenseur des droits adopté par le Sénat en juin 2010](#) [Opinion concerning the bill governing the Defender of Rights adopted by the Senate in June 2010], 30th September 2010. In its latest opinion note, the CNCDH wished to "*express its opposition to any future integration of the Contrôleur général des lieux de privation de liberté (General Inspector of Custodial Facilities) into the framework of the Défenseur des droits, pointing out, as it had done at the inception of this institution, the necessity for our country to have an independent control mechanism so as to ensure compliance with the ban on torture or inhuman or degrading treatments or punishments wherever that may take place*".

¹³ [Loi n°2007-1545 du 30 octobre 2007](#) [Law No. 2007-1545 dated 30th October 2007] inaugurating the creation of the General Inspector of Custodial Facilities.

¹⁴ [Loi n° 2010-930 du 9 août 2010 portant adaptation du droit pénal à l'institution de la Cour pénale internationale](#) [Law No. 2010-930 dated 9th August 2010 concerning aligning the criminal law to the International Criminal Court]; CNCDH, [Avis sur la loi portant adaptation du droit pénal à l'institution de la Cour Pénale Internationale](#), [Opinion on the law concerning aligning the criminal law to the International Criminal Court], 6th November 2008.

¹⁵ France ratified the International Convention for the Protection of All Persons from Enforced Disappearance on the 23rd September 2008. The draft text concerning aligning local law to this Convention, presented to the Senate at the beginning of 2012, has still not been adopted and contains significant shortcomings (in particular concerning the definition of the crime of enforced disappearance, hierarchical responsibility, etc.).

¹⁶ CNCDH, [Avis sur la diplomatie française et les droits de l'homme](#), [Opinion concerning French diplomacy and human rights], 7th February 2008. In its introductory address, and during the discussions, France made the following voluntary pledge: "*To consider the establishment without delay of an inter-*

ministerial mechanism that would meet regularly, notably in view to examine, in cooperation with the CNCDH, the follow-up to the recommendations made by human rights treaty bodies and competent national institutions".

¹⁷ In its introductory address, and during the discussions, France made the voluntary pledge: "To seize the CNCDH as often as possible in the context of law-making so that it efficiently assumes its advisory role".

¹⁸ CNCDH, [Avis sur la diplomatie française et les droits de l'homme](#), [Opinion concerning French diplomacy and human rights], 7th February 2008.

¹⁹ See CNCDH, [Avis sur la traite et l'exploitation des êtres humains en France](#), [Opinion on the trafficking of human beings in France], 18th December 2009, recommendation 93.

²⁰ CNCDH, [Avis sur le projet de loi relatif à la garde à vue](#), [Opinion on the draft bill concerning police custody], 6th January 2011; see [loi n° 2011-392 du 14 avril 2011 relative à la garde à vue](#) [Law No. 2011-392 dated 14th April 2011 concerning police custody].

²¹ [Loi n°2010-242 du 10 mars 2010 tendant à amoindrir le risque de récidive criminelle et portant diverses dispositions de procédure pénale](#) [Law No. 2010-242 dated 10th March 2010 designed to minimise the risk of repeated offences and modifying certain instruments in criminal procedures].

²² [Loi n° 2008-174 du 25 février 2008 relative à la rétention de sûreté et à la déclaration d'irresponsabilité pénale pour cause de trouble mental](#). [Law No 2008-174 dated 25th February 2008 concerning preventive detention and the declaration of lack of criminal responsibility due to mental disturbance].

²³ [Loi n° 2012-409 du 27 mars 2012 de programmation relative à l'exécution des peines](#) [Law No. 2012-409 dated 27th March 2012 concerning the plan for serving prison sentences].

²⁴ [Loi n° 2011-267 du 14 mars 2011 d'orientation et de programmation pour la performance de la sécurité intérieure](#) [Law No. 2011-267 dated 14th March 2011 concerning the strategy and planning for handling internal security].

²⁵ CNCDH, [Avis sur l'élaboration des lois](#) [Opinion concerning drafting of legislation], 15th April 2010.

²⁶ CNCDH, [Avis sur la réforme de la justice pénale des mineurs](#) [Opinion on the reform of criminal justice for minors], 23rd June 2011.

²⁷ Prison population was at its highest level on the 1st May 2012; The Justice Ministry's website, [chiffres de la population pénale au 1^{er} mai 2012](#) [Prison population figures as at 1st May 2012]: "67,073 people were imprisoned in France, a figure which represents an increase of 3.9% compared with May 2011 (64,584)"

²⁸ CNCDH, [Avis sur le projet de loi de programmation relatif à l'exécution des peines](#) [Opinion on the draft bill concerning the serving of prison sentences], 26th January 2012.

²⁹ CNCDH, *ibid* : "These [new] centres, far from built-up areas, focus more on security than on human relations, notably with video surveillance, and this to the detriment of the objectives for rehabilitation and prevention of repeated offences which have been laid out in the law on prisons".

³⁰ Article 57 of the [loi pénitentiaire n°2009-1436 du 24 novembre 2009](#) [Prison law No. 2009-1436 dated 24th November 2009] and articles R. 5-57-7-79 and R. 57-7-82 of the Criminal Procedure Code, from decree No. 2010-1634 (23rd December 2010); CNCDH, [Avis sur le projet de loi pénitentiaire](#) [Opinion concerning the draft prison law], 6th November 2008. For an evaluation of how the prison law has been applied, see [Rapport d'information fait au nom de la commission des lois constitutionnelles, de législation, du suffrage universel, du Règlement et d'administration générale \(1\) et de la commission sénatoriale pour le contrôle de l'application des lois \(2\) sur l'application de la loi pénitentiaire n° 2009-1436 du 24 novembre 2009](#), [Report in the name of the Committee for Constitutional Acts Laws, Legislation, Universal Suffrage, Standing Orders and General Administration (1) and the Senate Commission for legislative implementation (2) concerning the application of the law on prisons No. 2009-1436 dated 24th November 2009], by Mr. Jean-René Lecerf and Mme Nicole Borvo Cohen-Seat, Senators, 4th July 2012.

³¹ In its decision in [El Shennawy c. France](#), request No. 51246/08, 20th January 2011, the European Court criticised the frequency of the searches suffered by the plaintiff and the manner in which the searches

were carried out, ruled to be contrary to the norms of human dignity: these searches "were carried out by masked men, on the one hand" and "on the other hand they were filmed".

³² CNCDH, [Avis sur le projet de loi pénitentiaire](#) [Opinion concerning the draft prison law], 6th November 2008.

³³ ECtHR, decision in [Raffray Taddei c. France](#), request No.36435/07, 21st December 2010; decision in [Duval c. France](#), request No. 19868/08, 26th May 2011.

³⁴ [INED, suicide en prisons: la France comparée à ses voisins européens, Populations et sociétés, n°462](#) [Suicide in prisons: France compared with its European neighbours] *Populations et sociétés*, no.462

³⁵ Moreau, F., *La santé dans les prisons françaises*, [Health in French prisons] in *Pouvoirs*, 2010/4 No.135 pp.69-86.

³⁶ CNCDH, [Avis sur la préservation de la santé, l'accès aux soins et les droits de l'homme](#) [Opinion concerning health preservation, access to treatment and human rights], 19th January 2006 and [Avis sur le projet de loi pénitentiaire](#) [Opinion concerning the draft prison law], 6th November 2008.

³⁷ [Loi n° 2011-803 du 5 juillet 2011 relative aux droits et à la protection des personnes faisant l'objet de soins psychiatriques et aux modalités de leur prise en charge](#) [Law No. 2011-803 dated 5th July 2011 concerning the rights of persons committed to psychiatric treatment and the way they are treated]; See CNCDH, [Avis sur le projet de loi relatif aux droits et à la protection des personnes faisant l'objet de soins psychiatriques et aux modalités de leur prise en charge](#) [Opinion concerning the rights of persons committed to psychiatric treatment and the way they are treated], 31st March 2011.

³⁸ CNCDH, [Avis sur les premiers effets de la réforme des soins psychiatriques sans consentement sur les droits des malades mentaux](#) [Opinion concerning the initial effects of the reform of enforced psychiatric treatment and the rights of persons suffering from mental disorders], 22nd March 2012.

³⁹ CNCDH, [Avis sur les conditions d'exercice du droit d'asile en France](#) [Opinion concerning the conditions surrounding the right to asylum in France], 29th June 2006.

⁴⁰ ECtHR, [I.M. c. France](#), request No. 9152/09, 2nd February 2012.

⁴¹ In 2008, the following recommendation was among those presented during the UPR: "To execute the procedures for family reunification of recognized refugees with utmost speed to ensure the protection of family life of the persons concerned".

⁴² The number of administrative detention placements is stable around 30,000 per year (30,270 in 2009, 30,281 in 2010); See parliamentary report, [Les orientations de la politique de l'immigration et de l'intégration](#) [Guidelines concerning the policy on immigration and integration], the eighth report drawn up in accordance with article L. 111-10 of the Code concerning alien entry and residence in France and right to asylum, December 2011, p.70.

⁴³ ECtHR, [Popov c. France](#), request Nos. 39472/07 and 39474/07, 19th January 2012; in its decision, the Court was able to state that, in one case, the conditions in which a family had been held constituted inhuman and degrading treatment. It also underlined that the procedure whereby the children were placed in detention disregarded their rights to freedom and security.

⁴⁴ Article 15 of the [Directive 2008/115/ce](#) from the European Parliament and Council dated 16th December 2008 on community norms and procedures for member States concerning the return of persons illegally entered from a non European country.

⁴⁵ Trends in racial violence and anti-Semitism in France since 2008

	2008	2009	2010	2011	Trend over 4 years
Anti-Semitism	459	815	466	389	- 15.25%
Racism and xenophobia	467	1026	770	710	+ 52.68%
Anti-Moslem racism*			116	155	+ 33.6% (over two years)
TOTAL	926	1841	1352	1254	+ 35.42 %

*Before 2010 and the signing of a convention between the Interior Ministry and the French Council of the Muslim Faith, acts specifically aimed at Moslems were not separately recorded and were included with the acts of racism and xenophobia.

Detailed analysis of the information provided by the Interior Ministry shows that people of a North African background and Moslems are the principal victims of racial abuse in France. Moreover, quantitative and qualitative surveys carried out by the CNCDH show that, between 2007 and 2011, prejudice and suspicion with regard to the Muslim religion had significantly increased. See CNCDH, *The fight against racism, anti-Semitism and xenophobia, Years 2008*, [2009](#), [2010](#) and 2011 and the Ministry of the Interior.

⁴⁶ See for example: [Décision de la Cour d'appel de Paris](#) [Decision of the Paris Court of Appeal], No. 10/06226, 15th September 2011.

⁴⁷ CNCDH, [La Lutte contre le racisme, l'antisémitisme et la xénophobie](#) [The fight against racism, anti-Semitism and xenophobia], Year 2010, la Documentation française, March 2011, in particular see from page 15 onwards.

⁴⁸ CNCDH, [Communiqué sur la déchéance de nationalité, les Roms et les gens du voyage](#) [Communiqué on loss of nationality, Roma people and travellers], 7th August 2010. This declaration was made following the publication, in August and June 2010, of reports by the ICERD and the ECRI concerning France.

⁴⁹ See for example: Open Society Justice Initiative, [Police et minorités visibles : les contrôles d'identité à Paris](#) [*The police and visible minorities: identity checks in Paris*], 2009; Jobard and Levy, "Police, justice and racial discrimination in France: the current situation" in CNCDH, [La lutte contre le racisme, l'antisémitisme et la xénophobie](#) [*The fight against racism, anti-Semitism and xenophobia*], Year 2010; Human Rights Watch, [La base de l'humiliation : les contrôles d'identité abusifs en France](#) [Where humiliation starts: abusive identity checks in France], January 2012.

⁵⁰ The adoption of the national action plan against racism is also designed to comply with the international commitments made at the Durban Conference and regularly brought up by the ICERD, the ECRI and the CNCDH.

⁵¹ CNCDH, [Avis sur les statistiques ethniques](#) [Opinion on ethnic-based statistics], 22nd March 2012.

⁵² CNCDH, [Avis sur la lutte contre la diffamation des religions](#) [Opinion concerning religious defamation], 12th June 2008.

⁵³ CNCDH, [Avis sur le port du voile intégral](#) [Opinion concerning the wearing of full-face veils], 21st January 2010.

⁵⁴ Article 225-1 of the Criminal Code. There are 18 criteria defined for discrimination in France: "*Considered as discrimination is any distinction made between individuals based on their origins, their sex, their family situation, the fact of being pregnant, their physical appearance, their name, their state of health, their level of disability, their genetic characteristics, their moral behaviour, their sexual orientation, their age, their political opinions, their trades union activities, their belonging or not belonging, either true or imagined, to a particular ethnic group, country, race or religion. Considered also as discrimination is any distinction made between companies or organisations based on the origins, the sex, the family situation, the physical appearance, the name, the state of health, the level of disability, the genetic characteristics, the moral behaviour, the sexual orientation, the age, the political opinions, the trades union activities, the belonging or not belonging, either true or imagined, to a particular ethnic group, country, race or religion of the members or of certain members of those companies or organisations*".

⁵⁵ See the reports from the 'Observatoire de la parité entre les femmes et les hommes': [Parité : encore bien loin de l'objectif fixé mais en nette progression !](#) [Parity: excellent progress but a long way to go to meet the target!], communiqué of 18th June 2012, and [Chiffres clés de la parité aux élections législatives 2012](#) [Key figures on parity at the 2012 parliamentary elections].

⁵⁶ CNCDH: *Les droits de l'homme en France – Regards portés par les instances internationales [Human rights in France - International insights and recommendations]*, report 2009-2011, Paris: *La Documentation française*, December 2011.

⁵⁷ The French strategy on including Roma people is on-line [sur le site de la Commission européenne](#) [on the European Commission's website].

⁵⁸ CNCDH, [Avis sur le respect des droits des « gens du voyage » et des Roms migrants au regard des réponses récentes de la France aux instances internationales](#) [Opinion on respecting rights for "travellers" and Roma people following recent responses by France to the international authorities], 22nd March 2012.

⁵⁹ [Circulaire interministérielle NOR INTK1233053C](#) [Inter-ministerial circular NOR INT1233053C] dated 26th August 2012 concerning the planning and accompaniment for evacuation of illegal encampments; [Circulaire NOR REDE1236611C](#) dated 2nd October 2012 concerning schooling for children of itinerant families; [Circulaire NOR REDE1236612C](#) dated 2nd October 2012 concerning schooling for newly arrived allophone children; [Circulaire NOR REDE1236614C](#) dated 2nd October 2012 concerning the organisation of the CASNAV, the centres in France for evaluating and coordinating the schooling of children of newly-arrived itinerant families.

⁶⁰ This situation was denounced by both the ICERD and the ECRI in their latest reports concerning France published respectively in August and June 2010.

⁶¹ As it happens, this abolition was included in the National Action Plan against racism and anti-Semitism.

Acronyms used in this report:

ICESCR: International Covenant on Economic, Social and Cultural Rights

ECtHR: European Court of Human Rights

APPENDIX: SUMMARY OF THE RECOMMENDATIONS FROM THE CNCDH (FRANCE)

The CNCDH recommends:

1. The signing and/or ratification as quickly as possible of:
 - the optional Protocol to the ICESCR (signed on 11th December 2012),
 - the third optional Protocol to the Convention on the rights of the child,
 - Protocol No. 12 to the European Human Rights Convention concerning the general prohibition of discrimination,
 - the Convention on the protection of the rights of all migrant workers and members of their families,
 - the supplementary provisions of ILO Convention No. 143 on migrant workers,
 - and ILO Convention No. 169 on the rights of indigenous and tribal peoples.
2. Revising the law of 9th August 2010 *concerning alignment of the criminal law to the Rome Statute of the International Criminal Court*.
3. Aligning French law to the International Convention for the Protection of All Persons from Enforced Disappearance.
4. Setting up a genuine inter-ministerial mechanism for reviewing recommendations issued by the international organisations and bodies.

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5. Strengthening the consultation with civil society and the CNCDH concerning implementing recommendations from the international human rights organisations and bodies.
 6. Drafting and adopting a national human rights action plan.
 7. Adopting a national action plan, and nominating an independent national *rapporteur*, for trafficking and exploitation of human beings.
 8. Adhering to the spirit of the 1945 ruling concerning juvenile delinquency, which enshrined the principles of reduced criminal responsibility for minors, the primacy of education over repression and the specificity of such jurisdiction.
 9. Having much greater recourse to alternatives to prison and adjustments to sentences, and ensuring an increase in the resources devoted to helping rehabilitation of detainees.
 10. Banning total body searches and using modern detection technology to guarantee the dignity and physical integrity of the individual.
 11. Putting in place preventative measures against suicide in prisons and ensuring that prisoners' access to treatment is improved, whilst scrupulously respecting the rules of medical confidentiality.
 12. That judicial review of enforced hospitalisation be held in the hospital, and that appropriate means, notably in both personnel and in training, be provided to ensure that the control becomes really effective.
 13. Ensuring that the same level of review and control be exercised for enforced treatment outside the hospital environment as is provided for full hospitalisation.
 14. That asylum-seekers have a guaranteed access to a competent authority and that no decision on refoulement can be acted upon before that authority has had time to announce its decision.
 15. That the use of detention centres for aliens should be used only as a last resort.
 16. The provision of adequate awareness training for the police concerning racism and discrimination, as the best means of preventing racial profiling.
 17. That a strong political message accompanies the 2012-2014 national action plan against racism and anti-Semitism and that the civil society is fully implicated in order to have a concrete set of actions in place.
 18. The creation of a powerful statistical tool which would enable the extent of racial violence to be measured, and which would also help in evaluating the level of racial discrimination and associated inequalities.
 19. Strengthening the repression of discriminatory acts and the prevention-information-sensitisation dimension of the fight against discrimination.
 20. A better definition and improved handling of indirect and multiple acts of discrimination in the French legislative armoury.

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21. Putting a stop to expulsions of Roma people from camps in the absence of any alternative solution and abrogating the transitory measures concerning access to the job market.
 22. A real political will be adopted to fight stereotypes and discrimination against migrant Roma people.
 23. The abolition of registration documents for Travellers.