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**PROMOCIÓN Y PROTECCIÓN DE TODOS LOS DERECHOS HUMANOS,
CIVILES, POLÍTICOS, ECONÓMICOS, SOCIALES Y CULTURALES,
INCLUIDO EL DERECHO AL DESARROLLO**

Informe de la Experta independiente sobre cuestiones de las minorías

Adición

MISIÓN A FRANCIA^{* **}
(19 a 28 de septiembre de 2007)

Resumen

En cumplimiento de su mandato, la Experta independiente sobre cuestiones de las minorías, Sra. Gay McDougall, visitó Francia del 19 al 28 de septiembre de 2007. Durante su estancia visitó París, Marsella, Estrasburgo y sus alrededores, y celebró consultas con ministros y otros altos representantes del Gobierno, organizaciones no gubernamentales (ONG), grupos de la sociedad civil, dirigentes religiosos, académicos y otras personas que se ocupaban de las cuestiones de las minorías, la lucha contra la discriminación y las cuestiones de género. La Experta independiente visitó comunidades residentes en suburbios de París y Marsella

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe completo, que figura en el anexo, se distribuye en el idioma en que se presentó y en francés solamente.

** Este informe se ha presentado con retraso para incluir en él la información más reciente.

descritos como "guetos" urbanos o suburbios "conflictivos", entre ellos Bobigny y La Courneuve, que se habían visto afectados por los disturbios urbanos de 2005. Habló directamente con los miembros de las comunidades sobre su vida, sus problemas y sus intereses relacionados con su mandato, y celebró foros con mujeres pertenecientes a minorías, lo cual permitió a esas mujeres expresar los problemas específicos con que se enfrentaban.

La Experta independiente llegó a la conclusión de que en Francia existía una grave discriminación contra los miembros de las comunidades minoritarias, claramente definidas como las minorías "visibles" de ascendencia inmigrante e integradas en gran medida por ciudadanos franceses. Los problemas particulares con que se enfrentaban los residentes en los suburbios "conflictivos" eran consecuencia directa de la discriminación y, por consiguiente, era necesario adoptar iniciativas normativas para poner fin a las circunstancias especiales en que se encontraban. La discriminación contra las minorías se manifestaba en esferas como la asignación de viviendas, el acceso al empleo, la calidad de la enseñanza y los niveles manifiestamente insuficientes de participación política. Las cuestiones de identidad eran fundamentales en el discurso y la mentalidad de exclusión. Los miembros de las comunidades minoritarias indicaron que sufrían una enorme presión para modificar sus identidades culturales y religiosas como condición para la inmigración y la plena inclusión y aceptación en la sociedad francesa.

Las visitas a las comunidades minoritarias revelaron altos niveles de frustración. La Experta independiente observó que los jóvenes de las comunidades minoritarias tenían la sensación de que se les negaban sus esperanzas y sueños; no veían ninguna posibilidad de ascender a causa del color de su piel, su religión, su apellido o su lugar de domicilio (en los suburbios conflictivos). Personas que habían trabajado con ahínco, habían cumplido todas las normas y creían firmemente en los principios de la República Francesa se veían atrapadas en guetos urbanos aislados social y geográficamente donde la tasa de desempleo se elevaba al 40% en algunos casos. Se sentían discriminadas y rechazadas por la rigidez de determinados conceptos sobre la identidad nacional francesa a los que no se ajustaban.

La Experta independiente observó que existía un clima general de sospecha y negatividad contra las personas de origen inmigrante, generado en parte por los debates públicos sobre las políticas de inmigración, el anuncio de cupos para la deportación y las cuestiones relacionadas con las pruebas de ADN. Debía hacerse mucho más para lograr la aceptación de la diversidad cultural. La Experta independiente llegó a la conclusión de que la comunidad de las minorías visibles tenía la sensación generalizada de que la obtención de la nacionalidad francesa no era suficiente para lograr la plena aceptación; ésta sólo se conseguía mediante una asimilación total que obligaba a las minorías a rechazar aspectos principales de sus identidades. Sus miembros sólo serían aceptados como verdaderos franceses si se encontraba un medio de mudar el color de su piel y ocultar las manifestaciones de su religión o las tradiciones de sus ancestros. La interpretación que hacían del nombre del nuevo Ministerio de la Inmigración, la Identidad Nacional, la Integración y el Desarrollo Conjunto era que la presencia cada vez mayor de personas de ascendencia inmigrante constituía una amenaza para la identidad nacional de Francia, un problema que debía resolverse.

La Experta independiente elogió algunas iniciativas recientes de lucha contra la discriminación, como la Ley de lucha contra la discriminación de 2004 y la creación de la Alta Autoridad de Lucha contra la Discriminación y para la Igualdad, un órgano independiente con

competencia para realizar mediaciones o denunciar casos de discriminación a las autoridades, llevar a cabo estudios y promover programas y actividades de lucha contra la discriminación. La Experta independiente acogió con satisfacción la función de ese organismo y de las organizaciones de la sociedad civil para señalar a las autoridades casos específicos de discriminación, pero destacó que era necesario adoptar enfoques más sólidos y definidos para influir de manera más importante y con un mayor alcance en la persistente discriminación que sufrían las minorías. Las sanciones imponibles por los actos de discriminación racial deberían ser lo suficientemente severas para tener un efecto disuasorio y evitar futuras violaciones.

Habida cuenta del grado y el carácter de las desigualdades en Francia, cumplir la obligación negativa de la no discriminación no es suficiente para lograr la igualdad en la práctica. El Estado tiene la obligación positiva de crear unas condiciones favorables para el ejercicio de los derechos de las minorías. La Experta independiente hace un llamamiento para que se promueva la igualdad mediante políticas de acción afirmativa en el ámbito del empleo que contribuyan a transformar la composición de la administración pública, la policía y otras instituciones públicas y privadas de manera que reflejen plenamente la amplia diversidad de la población francesa.

Históricamente, Francia ha rechazado el concepto de los derechos de las minorías y el reconocimiento de los grupos minoritarios o los derechos colectivos por ser incompatibles con la Constitución y los principios de la República, que otorgan prioridad a los derechos individuales, la igualdad, la unidad y la universalidad. Ello ha obstaculizado la adopción de iniciativas normativas que, por su naturaleza, deben reconocer la realidad de la discriminación contra grupos de población específicos de la sociedad francesa. Ha impedido examinar rigurosamente los programas de acción afirmativa o reunir estadísticas desglosadas por etnia o religión sobre la situación socioeconómica de los grupos de población. La Experta independiente recomienda que ese tipo de medidas gubernamentales se consideren fundamentales para lograr una verdadera "Libertad, Igualdad y Fraternidad", y no como violaciones de la Constitución. El reconocimiento de la etnia, la religión y la ascendencia no debe considerarse una amenaza a los principios de unidad e igualdad que cimientan la sociedad francesa.

Las mujeres pertenecientes a minorías expresaron otras preocupaciones específicas, como los derechos y la protección de las mujeres pertenecientes a minorías en relaciones violentas; el acceso a los servicios sociales y los mecanismos de protección; el acceso a la justicia; la condición jurídica de las mujeres de origen inmigrante en los casos de divorcio, incluido el derecho a permanecer en Francia después del divorcio y la ejecución por los tribunales franceses de sentencias extranjeras de divorcio basadas en leyes sexistas; los derechos de las mujeres pertenecientes a minorías en relación con las sucesiones, la vivienda y los bienes; problemas específicos sobre la enseñanza de las niñas de fe musulmana; problemas de seguridad y la alta incidencia de la violación de mujeres en las comunidades minoritarias desfavorecidas de los suburbios; y la falta de acceso a la participación política de las mujeres pertenecientes a minorías.

La Experta independiente recibió también información sobre la situación de los gitanos/nómadas, la comunidad judía y las minorías lingüísticas, como las comunidades de habla bretona, vasca, catalana y occitana.

Anexo

REPORT OF THE INDEPENDENT EXPERT ON MINORITY ISSUES

MISSION TO FRANCE

(19-28 September 2007)

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Introduction

1. In conformity with her mandate's requirement to promote implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereafter "the 1992 Declaration on Minorities"), the independent expert visited France between 19 and 28 September 2007. She conducted extensive consultations with senior government representatives, including ministers responsible for human rights, urban policy and poverty, the President of the Constitutional Council and other senior officials, in order to assess government perspectives on minority issues in France. She also consulted civil society organizations, academic institutions, students and media representatives and held open discussion forums.¹ The independent expert visited Paris, Marseilles and Strasbourg and their environs, where she consulted directly with community members, local regional government representatives, regional intergovernmental organizations and others in order to gain their views and opinions. She held forums specifically for minority women in order to allow them to express their views, talk about their lives and raise the issues most important to them.

2. The independent expert expresses her thanks to the Government of France for the excellent assistance and cooperation extended to her during the preparation and conduct of her visit, and to those government officials with whom she met.

3. The independent expert wishes to thank the numerous non-governmental organizations and civil society groups that met with her, provided valuable information, and facilitated aspects of her visit. The important work being done by NGOs has ensured that issues relating to discriminatory policies and practices are on the political agenda and before the courts. The independent expert encourages additional support for such organizations.

4. The independent expert has chosen to focus primary attention on the experiences of French citizens and long-term residents of immigrant heritage, particularly those of North African and Sub-Saharan origin, Muslims, and those from overseas departments and territories resident in mainland France. Persons belonging to such groups, often people of colour described as "visible minorities", typically experience serious discrimination and are grossly underrepresented in State and political institutions. Racism (including Islamophobia), discrimination, alienation and lack of social mobility for persons belonging to such groups were contributing factors to the violent urban upheavals that occurred in French cities in 2005.

5. The independent expert also held consultations with representatives of Gypsies/Travellers/Roma communities and linguistic minorities such as the Bretons and Basques and Occitan-speaking communities. That information will also be reflected in this report.

6. The independent expert's evaluation of minority issues in France is based on the 1992 Declaration on Minorities and other relevant international standards, from which she has identified four broad areas of concern relating to minorities globally. These are: (a) the

¹ Quotes used in this report are original comments made to the independent expert during consultations with governmental and non-governmental sources during her visit. In all cases, the identity of the source is withheld.

protection of a minority's survival, through combating violence against them and preventing genocide; (b) the protection and promotion of the cultural identity of minority groups and the right of national, ethnic, religious or linguistic groups to enjoy their collective identity and to reject forced assimilation; (c) the guarantee of the rights to non-discrimination and equality, including ending structural or systemic discrimination and the promotion of affirmative action when required; and (d) the guarantee of their right to effective participation of members of minorities in public life, especially with regard to decisions that affect them. The current report is based upon analysis of these four areas of concern as they relate to France.

I. LEGAL AND POLITICAL CONTEXT

A. Recognition of minorities in France

7. France does not recognize the concept of minority rights and the official recognition of minority groups or collective rights is considered incompatible with the French Constitution and the principles of the Republic, which give priority to individual rights, equality, unity and universalism. In France's 2007 report to the Committee on Economic, Social and Cultural Rights, the Government states: "Under the French Constitution, the nation is defined as being composed of persons with equal rights: 'France is an indivisible, secular, democratic and social Republic. It guarantees equality of all citizens before the law without distinction as to origin, race or religion' (art. 2). It follows from the French position that minorities are not recognized as holders of collective rights, but this position does not prevent the public manifestation or expression of diversity."

8. Successive French Governments have maintained the position that there should be no official acknowledgement of the ethnic, religious or cultural characteristics of citizens, despite the recommendations of European and United Nations anti-discrimination bodies. France attached a reservation to article 27 of the International Covenant on Civil and Political Rights and to article 30 of the Convention on the Rights of the Child relating to the rights of minorities.² France has not ratified the Council of Europe's Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages. As a United Nations Member State, France is required to observe and conform to the provisions of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by consensus in 1992.

9. As stated in her initial report,³ the independent expert supports the view that the existence of minorities and the determination of which groups constitute minorities does not lie with the State alone, but is dependent on a range of both objective and subjective criteria, in accordance

² The French reservation attached to both article 27 of the International Covenant on Civil and Political Rights and article 30 of the Convention on the Rights of the Child states that: "The Government of the Republic declares that, in the light of article 2 of the Constitution of the French Republic, article 27 (article 30 in the case of ICRC) is not applicable so far as the Republic is concerned."

³ E/CN.4/2006/74.

with the principles of international law. The Human Rights Committee, in its general comment No. 23 (1994) on article 27 (Rights of minorities), makes it clear that “the existence of an ethnic, religious or linguistic minority in a given State party does not depend on a decision by that State party but [needs] to be established by objective criteria”. At the same time, minority status is closely tied to how a group defines itself.

B. Domestic legislation relevant to minority issues

10. The independent expert notes the extensive legislative framework and institutional mechanisms established to combat racism, discrimination and anti-Semitism in France, which provide a strong legal foundation for the protection of the right to non-discrimination of persons belonging to minority groups. While space precludes a full analysis of relevant legislation and institutions, she highlights a number of developments which are particularly significant in relation to the protection and promotion of the rights of minorities.

11. The core of France’s anti-discrimination regime is found in the Criminal Code and the Labour Code. French law has been interpreted as prohibiting the Government from collecting information about the racial or ethnic background of its citizens. The independent expert welcomes the additional provisions of Act No. 2004-1486 of 30 December 2004, inspired by European Union anti-discrimination directives. This Act prohibits discrimination “on the grounds of origin, gender, family/marital status, physical appearance, surname, state of health, disability, genetic characteristics, lifestyle, sexual orientation, age, political opinions, religious beliefs, union activities, and real or supposed membership or non-membership of an ethnic group, nation or race”. Under the provisions of this Act, the Independent High Authority for Equality and Against Discrimination (Haute Autorité de Lutte contre les Discriminations et pour l’Égalité, HALDE) was established as an independent statutory authority, competent to deal with all forms of discrimination, whether direct or indirect, prohibited by law or by an international commitment ratified by France.

12. Article 19 of the Act relating to discrimination on the grounds of ethnic origin and incorporating into domestic law Council directive No. 2000/43/EC of 29 June 2000 is significant in that, upon presentation of evidence of direct or indirect discrimination by a complainant and a finding that a *prima facie* case exists, it shifts the burden of proof on to the defendant to prove that the challenged action or measure was justified by facts unrelated to any type of discrimination. Previously, a serious obstacle to the prosecution of discrimination cases was that the burden of proof lay solely with the plaintiff. However, the concept of indirect discrimination is applied only in matters of employment and housing.

13. HALDE is composed of an 11-member Council. It receives complaints from victims, members of Parliament and NGOs and determines the action to be taken on claims and issues recommendations. It has powers to mediate or refer discrimination cases for prosecution; conducts studies; and promotes non-discrimination programmes and activities. HALDE can intervene directly in court cases and can propose a settlement involving the payment of a fine. Unfortunately, it lacks enforcement powers with respect to non-payment of fines but can use publicity to “shame” parties failing to comply. In 2006, over 35 per cent of the 4,058 claims received were on the grounds of discrimination on the basis of “origin”, indicating the victim is a

person belonging to a visible minority. Nearly 43 per cent of all claims related to discrimination in employment. Of the 2,143 cases actually handled by HALDE in 2006, fines were proposed as settlements in 20 cases and 42 others were transferred to the State Prosecutor.⁴

14. HALDE can conduct investigations on its own initiative, allowing it to act independently even where no complaint is received. It uses the tool of “discrimination testing”,⁵ which compares how individuals who are similar in all significant respects but for ethnic origin are treated when seeking access to employment, housing or other public goods. Discrimination exists when the rejection rate for visible minorities is more than a specified rate higher than the “benchmark” testers. Importantly, French courts now accept the results of “discrimination testing” as admissible proof of discriminatory behaviour. However, a court official must be present to validate the “testing” evidence, which can be prohibitive.

15. The independent expert welcomed the positive work done by HALDE and recognizes that it is a young institution (created on 30 December 2004) and that it is still too early to fully assess its impact on decreasing racial discrimination. One positive sign is that its caseload more than tripled between 2005 and 2006. Creative initiatives by HALDE seek to raise awareness of discrimination and assist individuals in benefiting from its services, including a telephone shared-cost hotline and a radio programme hosted by HALDE’s President.

16. In March 2006, a new law (Law No. 2006-396 of 31 March 2006) on equal opportunities was adopted by the French Parliament following the outbreak of urban violence in French cities in autumn 2005. Focusing largely on promoting employment opportunities in urban areas classified as “sensitive” or “high risk”, the law also gives HALDE additional powers. Among these are provisions enabling HALDE to recommend that local government representatives impose administrative penalties on companies found guilty of discriminatory behaviour.

17. HALDE is only empowered to propose the payment of a “settlement” by those found responsible for discrimination, however does not have the legal authority to impose a penalty. However, the ceilings on penalties that can be proposed by HALDE on both individuals (3,000 euros) and on legal entities (15,000 euros) are set at a very low level and such penalties are only infrequently applied. The punishments that can be imposed for acts of discrimination under the Penal Code can be considerably higher and include the possibility of prison terms in addition to fines of up to 75,000 euros for individuals.⁶ However, it was noted by

⁴ HALDE 2006 Annual Report.

⁵ See the Equal Opportunities Act of 2 April 2006.

⁶ Act 2004-204 of 9 March 2004 increased the applicable penalties for racial discrimination. Now, the penalty for a person committing an act of racial discrimination can be as high as three years’ imprisonment and a 45,000 euro fine. Where a discriminatory refusal of admission takes place on premises open to the public or with the aim of denying access, or where the discrimination is the act of a person vested with public authority, the penalties have increased from three to five years’ imprisonment, and from a 45,000 to a 75,000 euro fine.

non-governmental sources that despite the possibilities open to the courts, penalties for discrimination are usually low and symbolic rather than being sufficiently severe to act as a deterrent to future violations.

18. The independent expert notes the inactivity of an Inter-Ministerial Committee to Combat Racism, Anti-Semitism and Xenophobia, which has not been convened since 2005. Such bodies offer the potential to ensure coordinated policies and practices across ministries, recognizing their interrelated mandates and the need for cooperation and holistic approaches to combat racism and its impact on minorities. The local prosecutor in the Paris suburb of Bobigny noted the potential benefits of greater cooperation between the authorities responsible for criminal justice, including those responsible for alternatives to custodial sentencing and those with mandates relating to education and employment.

II. IDENTITY, LANGUAGE, CULTURE AND RELIGION

A. Issues of identity

19. Members of minority communities consistently described feelings of frustration that becoming a citizen of France is not sufficient for full acceptance by French society. They spoke of their sense that the precondition for acceptance is nothing less than total assimilation. They feel that rigid notions of French national identity required them to reject major aspects of their identities. Only when they find a way to disguise the colour of their skins and hide the manifestations of their religion or their traditions will they be accepted as truly French. They spoke of feeling unwelcome because of who they are. They referred to the newly named “Ministry of Immigration, National Identity, Integration and Co-development” as conveying a message that the presence and increasing numbers of people of immigrant heritage is a threat to French national identity. A Muslim community member in the Marseilles suburbs stated: “We are called upon to conform ... but it is important to be proud and not hide your identity and culture. We have to respect the laws but be ourselves. The real French are also us: Mohammad and Fatima. Where are we going to go?”

20. The independent expert notes that debates under way during her visit in regard to a new immigration bill (subsequently adopted as Law No. 2007-1631 of 20 November 2007 relating to control of immigration, integration and asylum) regarding DNA testing for immigration applicants and quotas for deportations are highly relevant to her mandate. They contribute to generating a national climate of suspicion and negativity against those of immigrant or Muslim origin; creating a presumption that they are all illegal and are fraudulently bringing non-family members into France, a factor that may boost Islamophobia.

21. Community members stated that the commonly felt sense of exclusion and alienation is leading to an unfortunate anti-integration reaction, in which members of minority groups are retreating from mainstream French society, which they perceive as rejecting them. Manifestations can be seen in the growing radicalization of young Muslim men and an increase in ethnically-based gang culture. It was noted that the urban disturbances of 2005 were partly triggered by what was perceived as a violation of a mosque by police, which caused consternation throughout France’s Muslim communities. A student of Algerian heritage in

Strasbourg stated: “People always say to me ‘where do you come from?’ I come from Lyon. I am French. But when people keep asking me I feel less French and more Algerian. I am often told ‘look at you, you are not French’. You end up saying you are from another country and you don’t feel French any more.”

B. Language and cultural rights

22. Representatives and scholars of numerous linguistic and cultural minority groups from different regions in France, including the Bretons and Basques and the Catalan- and Occitan-speaking communities, strongly complained that their languages and cultural rights are not fully respected and promoted within France. They predict that some regional languages and elements of cultural identity and heritage are in danger of disappearing in the medium to long term. Following the amendment of the Constitution of France in 1992 to reflect the position of French as the language of the French Republic, community representatives described government policy to promote French at the expense of regional languages. Immigration trends have brought significant numbers of speakers of various non-European languages, notably Arabic, to France.

23. Basque community representatives reported that, despite community desire to maintain and preserve the Basque language, there are some 5,000 fewer Basque speakers than 10 years ago and the language is seriously endangered in France as a result of lack of official status. Representatives of the Catalan- and Occitan-speaking communities also pointed out that absence of recognition or official status results in a constant decline in the number of Basque, Catalan and Occitan speakers in both absolute and percentage terms to such an extent that, despite the recommendations of European and United Nations anti-discrimination bodies, these languages are endangered languages limited to use in the private sphere with implications in both linguistic and cultural terms.

24. Breton representatives reported to the independent expert that subsidies had been stopped to schools for teaching of and in the Breton language. Independent Breton-language immersion schools (called *Diwan*) exist but are not part of the State education system since their incorporation was blocked by the French Constitutional Council, reportedly on the grounds that French is the language of the Republic and that no other language may be used as a language of instruction in State schools. Representatives of the Breton-speaking communities note that the numbers of speakers has declined from 1.3 million in 1900 to 200,000 today.

25. The Government states⁷ that “in the education system, regional and minority languages are taught as optional subjects and special competitive examinations are held to recruit first- and second-level teachers of the languages concerned, which include Basque, Breton, Catalan, Corsican and Occitan within metropolitan France and Creole, Tahitian and Melanesian languages overseas”. The Government underscores that “museums and cultural centres focusing on regional cultures have been established and festivals celebrating these heritages are supported by the Ministry of Culture and Communication and local authorities. The Ethnological Heritage

⁷ Third periodic report of the Government of France to the Committee on Economic, Social and Cultural Rights (E/C.12/FRA/3), 15 March 2007.

Council and Mission established by the Ministry of Culture in 1980 have been tasked with preserving key constituents of the identity of local cultures and helping to coordinate ethnological research policy throughout metropolitan France and its overseas departments, regions and communities”.

26. The independent expert considers such issues to be central to the 1992 Declaration on the Rights of Minorities. Even when linguistic minorities are relatively well integrated in economic, social and political fields, the 1992 Declaration⁸ places great emphasis on preservation of linguistic, religious and cultural identity. The State is under a positive obligation to “create favourable conditions” in this regard. Information received suggests that policy and practice in France require review in consultation with the affected communities themselves, with a view to achieving consistency of approach and policy.

C. Rights of religious minorities

27. France maintains the principles of secularism (*laïcité*) in regard to different religious faiths. Those of Muslim faith, however, may face particular challenges. Under conditions of societal intolerance, suspicion, misunderstanding of Islam and growing Islamophobia, the principle of non-discrimination alone is not sufficient to ensure equality in practice. Concerns were raised with the independent expert regarding provision of Muslim prayer facilities and mosques. There is no specific law on the construction of places of worship. While the same rules apply to all religious communities with respect to leases, land use and ownership and building restrictions, community prejudices may result in unequal treatment by local authorities, leading to undue restrictions on Muslim communities. There is a perception of bias when in practice these laws are only relevant to the building of mosques because in secular France, Islam is the primary religion with a growing need for places of worship.

28. Estimates put the Muslim population in France at 5 to 6 million people, the largest in Western Europe, most of whom are part of settled and established communities. The independent expert welcomes the positive practice of government recognition of different religious communities and initiatives, including the establishment of the French Council of the Muslim Faith, that play an important role in a process of interfaith and inter-community dialogue.

29. The innovative “Marseilles Hope” initiative supported by town hall and municipal authorities is a collective of religious leaders who meet together and with local authorities to share information, views and issues, and to maintain positive and constructive communication. Founded in 1989 as a response to growing urban violence, the body promotes inter-community understanding and “social peace” through a range of activities including interfaith symposiums. Marseilles Hope was consistently highlighted by all respondents as an exemplary initiative of interfaith and community dialogue.

⁸ Article 1 states that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity” and that “States shall adopt appropriate legislative and other measures to achieve those ends”.

30. The independent expert was informed that incidents of violent attacks on persons belonging to national or ethnic, religious and linguistic minorities and reported racist and anti-Semitic incidents have declined.⁹ However, it was widely stated by community members and representatives that various manifestations of discrimination, including on the basis of their Muslim or foreign-sounding names, continue to impact seriously on their opportunities and equal treatment. In such fields as employment and access to housing, this problem is so widespread that some feel compelled to disguise their names and religious identities.

D. Gypsies/Travellers¹⁰ in France

31. Gypsy/Traveller community members and representatives reported increasing levels of discrimination against such groups and continuing failure to prosecute offenders. Issues of concern include the failure to provide serviced parking areas for caravans and disproportionate taxing of caravans; access to identity cards and documentation issues; obstacles to the right to vote and participate in political life; forced evictions; obstacles to the purchase of private property; difficulties with regard to education; and the incidence of harassment, abuse and violent attack against members of such groups. They highlighted a general climate of racism against Gypsies/Travellers that perpetuates racist stereotypes, exclusion and discrimination and leaves many extremely vulnerable.

32. Governmental representatives acknowledged claims that certain local authorities openly defy national legislation relating to the rights of Gypsies and Travellers. Law No. 2000-614 of 5 July 2000 relating to the Welcome and Housing of Travellers establishes the legal requirement for municipalities of over 5,000 residents to provide parking areas for Gypsy/Traveller caravans. National authorities confirmed that while an estimated 40,000 such sites are required, only 8,000 currently exist. Municipal authorities reportedly prefer to pay penalties than comply with the law. In many cases, sites, where provided, do not meet required minimum standards of infrastructure and environmental adequacy. Complaints were received that Gypsy/Traveller caravans are subject to prohibitively high taxes (imposed locally by communes) aimed at dissuading them from remaining in municipalities.

33. A new law adopted by Parliament in 2007 seeks to encourage communes to abide by the law. Law No. 2000-614 grants those in compliance with requirements to assign parking areas for

⁹ The National Consultative Committee for Human Rights (NCCHR) reported 974 racist and anti-Semitic incidents in 2005, down 38 per cent from the 1,574 incidents recorded in 2004.

¹⁰ *Note on terminology* - The independent expert recognizes debate regarding appropriate terminology in France and for the purposes of this report conforms to the ERRC uses of the terms “Gypsies” and “Travellers” to refer to individuals and groups who are descended from groups that have long been citizens of France and who have for many generations played a role in French society and history. The category “Gypsies and Travellers” includes persons of diverse culture, frequently self-identifying as “Sinti”, “Manouche”, “Kale”, “Gitan”, “Roma”, “Yenish”, “Traveller” or other.

caravans the ability to fast-track the eviction process of caravans parked illegally. Ministry of Interior officials noted that the law had been approved by Traveller associations on the grounds that it would encourage communes to create legal parking facilities for Travellers.

34. Gypsies and Travellers are subject to a range of special laws, including rules regarding documentation and the requirement for a travel permit (periodically renewable). Those found not to be in possession of a valid travel permit are subject to a heavy fine and/or a one-year prison sentence. They are not entitled to vote until they have been administratively attached to a municipality for three years, under article 10 of Law No. 69-3 of 3 January 1969 relating to the exercise of ambulatory activities and to the regime applicable to persons circulating in France without a fixed domicile or residence. The qualifying period for all other citizens is only six months. In view of the travelling lifestyles of Gypsies and Travellers, such legislation effectively disenfranchises many members of such communities; it is discriminatory with respect to the right of citizens to vote and stand for election to public office.

35. Responsibility for government policies concerning the Roma/Traveller communities rests with the Ministry of the Interior, and other ministries including those responsible for housing, health and education. In discussions with the Cabinet of the Ministry, the independent expert noted that the framework that dominated the discussion of those policies was one of “law and order” rather than the rights of citizens. This was emphasized by the fact that the official responsible for Traveller affairs was a senior General of the Gendarmerie, as was his predecessor.

36. The independent expert notes that the nomadic lifestyles of many Gypsies and Travellers do not diminish the right of their children to have access to education, for families to have access to adequate health care and social services, and the possibility to seek and obtain temporary or longer-term employment.

III. NON-DISCRIMINATION AND EQUALITY

37. During community forums in Paris and Marseilles, the independent expert was informed of common experiences of discrimination of people from visible minorities. Some described having been barred from leisure venues such as clubs, discos and bars, often with the excuse of “a private party”. The “testing” methodology to reveal discrimination has been used increasingly to good effect in these situations. In June 2007, five employees from four Paris discotheques were fined for discrimination after turning away those of African and Arab origin, marking the first time that a Paris court has issued a ruling based on the testing methodology. A representative of an anti-discrimination NGO in Paris stated: “Those born in France do not accept discrimination in the way that their parents or grandparents did, but even those of third or fourth generation continue to be discriminated against over an origin that they know very little about.”

38. Dedicated forums for minority women revealed specific additional issues affecting women, such as the rights and protection of minority women in abusive relationships, including concerns over access to social services and protection mechanisms; access to justice; the legal status of women of immigrant origin in cases of divorce, including the right to remain in France after divorce and the execution by French courts of foreign divorce judgements that were based on gender-biased laws; the rights of minority women relating to inheritance, housing and property;

specific issues relating to the education of girls of Muslim faith; security issues and the high incidence of rape of women in disadvantaged minority communities in suburbs; and the lack of access to political participation of minority women.

39. The near complete absence of people of colour in the French media is indicative of a wider problem of their “invisibility” within French society in general, to the extent that the appointment of the first black newsreader to a prime-time television news broadcast in 2006 was itself headline news. The lack of a representative voice for minorities in French politics creates a combined effect of both invisibility and silence of France’s minority groups, which additionally feel physically segregated from mainstream French society by public housing policies that consign them to isolated urban suburbs.

40. The independent expert was told of messages emanating from political parties and senior politicians that have been unwelcoming at best and in some instances of a racist and inflammatory nature. After the 2005 riots, the Minister of the Interior, Mr. Sarkozy, remarked that he would “clean the scum off the streets with a high-pressure hose”. This was commonly referred to by community members and has left a legacy of resentment among Muslim communities. The independent expert considers that the messages emanating from the highest officials of the State must be unambiguous in signalling full commitment to promoting non-discrimination, equality and diversity. As a community member in the Marseilles suburbs stated: “The administration is the first to say ‘be careful of discrimination’, but they are the ones creating the discrimination.”

41. Racism within the police service that has become institutionalized was highlighted as an ongoing problem. Community sources described racial profiling in stop-and-search procedures, among many intimidating and humiliating police practices, heavy-handed and aggressive policing, and what they perceive to be an “anti-black culture” of the police which extends to structural issues of recruitment. Some community members spoke of police techniques to make people stay in their neighbourhoods. Many commented that heavy-handed and insensitive policing practices had been the major factor in triggering the urban disturbances of 2005. It was noted that neighbourhood or “proximity” policing techniques designed to build relationships and confidence between local communities and the police had been abolished prior to the disturbances.

42. The effects of discrimination and exclusion have resulted in disproportionately high levels of poverty among visible minorities who are long-term residents or French citizens of immigrant heritage. Community members and NGOs described urban ethnic and religious ghettos as clear concentrations of poverty within French society. While government representatives also acknowledge the problems of poverty in the urban suburbs, the independent expert is concerned that the Government views poverty among minority communities as solely social or economic problems rather than as problems closely related to discrimination against members of minority groups.

43. The independent expert focused on three areas that particularly featured in her consultations as being problematic in regard to discrimination against persons belonging to minorities: housing, education and employment.

A. Housing

44. The independent expert visited the suburbs of Paris and Marseilles, including Bobigny and La Courneuve in Paris, areas affected by urban upheavals and violence in 2005, and the northern suburbs of Marseilles. Her visits enabled her to consult with local residents and to see for herself housing conditions and local demographics in these areas. Despite the lack of statistical data along ethnic and/or religious lines, visits to the poorest suburbs of Paris reveal an obvious high proportion of “visible” minorities and religious minorities.

45. Consistently, when poor immigrants arrive, those belonging to certain ethnic or religious groups are allocated to the poorest housing in specific neighbourhoods that have become highly ethnicized, resulting in a discriminatory pattern of de facto segregation. Housing in these suburbs is often dilapidated and poorly maintained. There are chiefly towering high-rise apartment blocks lined up in neighbourhoods devoid of any of the beauty or verve characteristic of the streets of central Paris. Teenage boys loiter on street corners; not in school and not at work. These are poor neighbourhoods, clearly economically depressed and spiritually depressing. Community members commonly noted that quality public housing in central locations or higher income areas is rarely allocated to those of immigrant heritage.

46. By all accounts, the level of discrimination in the private housing market also considerably limits housing options for visible minorities. Discrimination persists in spite of legislation prohibiting bias in residential leases.¹¹

47. Government officials acknowledged areas of some 70 per cent “foreign” residents and the creation of what has become recognized as the “ghetto” phenomenon, officially acknowledged only in recent years. Community representatives reflected that the urban blight of these areas has been attributed to ethnic minorities themselves who are blamed for their own conditions, in a process of stigmatization which extends to other spheres of life. Many residents said that their very address in the “sensitive suburbs” provides further grounds for discrimination. When employers receive applications indicating that the job-seeker lives in a ghetto, they reject it because it means the applicant is a minority. One community member stated: “When they read La Courneuve on your application, it goes in the bin.”

48. Physically isolated housing areas, including suburbs such as Clichy-sous-Bois, were noted as being seriously deprived in the development of public transport, resulting in major problems of isolation. Clichy-sous-Bois is only 10 km distant but reportedly more than 1.5 hours from central Paris by public transport. This places major labour markets, such as central Paris,

¹¹ The Government states in its report to the Committee on the Elimination of Racial Discrimination dated 15 March 2004 that the Act of 17 January 2002 concerning social modernization amended article 1, paragraph 2, of the Act of 6 July 1989 on housing leases. This explicitly prohibits refusal to rent housing for reasons related to the tenant’s origins, name, physical appearance, habits, sexual orientation, beliefs, race or nationality. The Act establishes that the burden of proof that denial was justified lies with the landlord.

effectively out of reach for those living in such areas. A community member in La Courneuve stated: “People from here don’t go to the centre of Paris. Most of the people here are hostages to their neighbourhood. It is a housing ghetto, but also a mental ghetto.”

49. NGO representatives and community members in both Paris and Marseilles described low quality, poorly maintained and unsanitary housing. Some commented that inadequate conditions and environment, combined with problems of discrimination and unemployment, contribute to a “climate of despair” and a spiral of urban decay conducive to such problems as drug dealing and violent crime, including a high incidence of rape of young women.

50. A government representative in the suburb of Bobigny in Paris acknowledged that: “We think that there is a link between what happened [2005 urban violence] and a failure of urban policy.” Policy debates tacitly recognize, while failing to analyse, the reality of ethnic ghettos. NGOs noted that only since 2000 has the problem begun to appear on the political agendas of the Government and other major parties, and that it has been given added impetus by the 2005 urban upheavals. During her visit to La Courneuve, the independent expert witnessed redevelopment schemes under way that focused on renovating existing tower blocks of better quality and demolishing others in favour of lower-level developments with communal gardens and improved leisure facilities.

51. Conflicting opinions were expressed regarding solutions to the problem of ghettoization. Some propose the break-up of the ghettos through policies of relocation and urban redevelopment with the express purpose of dispersing minorities throughout French neighbourhoods. They recognize that this approach would require proactive measures to decrease negative attitudes among some ancestral French toward those of immigrant origin. Others believe that solutions lie in investing to improve such areas; their infrastructure, access to services and employment options.

52. Under French law,¹² all communes are required to have a certain percentage of low-cost housing. Community sources complained that rich communes ignore the law and would rather pay fines for non-compliance than live with poor minorities. Some suburban residents noted that accusations of “communitarianism” also stem from ethnic concentrations and misinformed perceptions of voluntary isolationism from wider French society. As one community member commented: “We want to integrate but we are not allowed to. It is very hard for example to get finance from a bank because of our background, name or colour. Then when we are forced to take initiatives within our communities we are accused of ‘communitarianism’.”

53. The Urban Policy Minister, Ms. Fadela Amara, commented on planned activities and substantial funding for the National Urban Renewal Agency (ANRU) aimed at upgrading social housing through 2012. The Minister noted that this would be with the express objective of

¹² Law No. 2000-1208 of 13 December 2000 relating to solidarity and urban renewal states in article 55 that all towns with more than 50,000 inhabitants have to make available 20 per cent of social housing.

creating mixed neighbourhoods in the suburbs. In January 2008, the Minister is to unveil the “plan of respect and equality of chance”, which will consist of initiatives in education and accomplishment, employment access, economic development, public transport and culture for the deprived suburbs. The plan is being developed through a process of consultation and debate with those living in the suburbs and local authorities, including via a blog. Part of the plan entitled “Hope Suburbs, a Dynamics for France” recommends reinforcing the powers of the HALDE in relation to the problems of the suburbs.

B. Employment

54. The principle of non-discrimination set forth in article L.122-45 of the Labour Code prohibits any difference in treatment on grounds of “origins, sex, customs, family situation, actual or supposed membership or non-membership of an ethnic group, nation or race, political opinions, physical appearance, family name, genetic characteristics, state of health or disability”, yet NGOs have flagged racial discrimination in employment as a major problem in France. In March 2007, the International Labour Organization presented results of a major national “practice testing” survey measuring discrimination against immigrant-origin workers in access to employment.¹³ The survey found that four out of five employers preferred ancestral French workers over candidates of Maghreb or black African origin. Only 11 per cent of French employers were considered to have complied with equal treatment standards throughout the recruitment process.

55. The independent expert was informed that it is common practice for job advertisements as well as notifications relating to rental housing to refer to “BBR”, indicating “Bleu, Blanc, Rouge”, the colours of the French flag. This is commonly understood as a coded reference that only “white” French people are invited to apply or will be considered.

56. An historic court ruling in 2007 found a subsidiary of the cosmetic firm L’Oreal guilty of racial discrimination in selecting only white applicants for an advertising campaign, the first time that a major company has been found guilty of such a discrimination offence in France. L’Oreal, together with a recruitment company it had contracted, was fined 30,000 euros. Despite this landmark ruling, the penalty imposed does not appear commensurate with the seriousness of the offence and is insufficient (in view of L’Oreal’s annual profits of 1.83 billion euros in 2006) to send a strong message to employers that discriminatory practices will not be tolerated by the courts.

57. Black and Muslim women spoke of having degrees or professional qualifications but not being able to find work in their field and having to accept low-paid, temporary cleaning jobs. Even in these positions, they described finding that white women are treated differently and have

¹³ The France National Discrimination Testing Report presented in March 2007 was invited and financed by the DARES research division of the France Ministry of Employment and Social Cohesion. The full report is available at: http://www.ilo.org/public/english/protection/migrant/download/france_discr_fr.pdf.

greater job security. A Muslim woman in a Marseilles suburb stated that despite being at the top of her class in her university law studies, she had subsequently been unable to obtain an internship position with a legal firm, whereas all of her white peers had obtained and completed their internships. She fears that her failure to secure an internship, a requirement for certification, will prevent her from becoming a lawyer.

58. In 2004, a French employment agency answered 258 job advertisements for senior salespeople and managers by sending a total of 1,806 fictitious résumés.¹⁴ Almost 30 per cent of white French men and 26 per cent of white French women received positive responses. But when the résumés were changed to have Arab-sounding names, the positive response rate dropped to only 5 per cent. A community member of Algerian origin talked with the independent expert about her difficulty in finding work in Marseilles and stated: “I am of Algerian origin, but I am very white. I can get in the door, but when they hear my name is Fatima the excuses come.”

59. The independent expert welcomes initiatives proposed by the Minister of Justice, Ms. Rachida Dati, one of three recently appointed female ministers from minority backgrounds, who in July 2007 instructed all Attorney Generals in France to appoint to their offices dedicated staff with the specific assignment to prosecute discrimination.

60. Ordinance No. 2005-901 of 2 August 2005 established the “PACTE” (The Pathway to Civil Service Careers) as an alternative means of entry to low-level regional, hospital and State civil service posts rather than via the standard competitive examination processes, with the aim of making the civil service more representative.¹⁵ However, the programme only targets entry into the lowest level jobs and is limited to two-year contracts. In addition, the independent expert was informed by senior police commissioners of programmes, including the Cadets of the Republic Programme, which have been established to assist young people from all sectors of society in entering the police force. While anecdotally noting its success, police commissioners were unable to provide figures relating to the results in promoting diversity because identifying the graduates of the programme by ethnicity or minority status would be committing an offence under criminal law.

¹⁴ The Adia employment agency worked with French sociologist Jean-Francois Amadiou to complete the study on discrimination in recruitment practices and published its report in May 2004, Enquête « Testing » sur CV-Adia/ Paris I- Observatoire des discriminations. <http://cergors.univ-paris1.fr/docsatelecharger/pr%E9sentation%20du%20testing%20mai%202004.pdf>.

¹⁵ The Government states that the aim of PACTE is to make the civil service more representative of the society it serves, by trying to curb discrimination and exclusion. PACTE is open to those between 16 and 25 with no qualifications, and is a contract governed by public law lasting between one and two years and offering training and work experience in “Category C” posts, including maintenance, clerical and secretarial positions. It provides access to civil-servant status after an aptitude test.

61. On several occasions, the independent expert was informed by members of ethnic and religious minorities that they had experienced severe problems in finding employment in the police service despite having passed the qualifications and that discrimination remains commonplace within the police force. As a community representative in a Marseilles suburb noted: “It is hard to convince young people to do competitive examinations when they say ‘show us the examples of those who have succeeded’ and there are none.” A case filed before HALDE shortly after the independent expert’s visit focused media attention on issues of discrimination within the police service. A policeman of Moroccan heritage charged that he was asked racist questions in his interview for the officers’ competition, such as “Does your wife wear the veil?”¹⁶

62. Some proposed initiatives seeking to counter discrimination on the grounds of name or address, such as anonymous application forms, continue to be debated and have met with support in some ministries. A system of urban tax-free zones has also been created and will be extended by the Government to assist in bringing investment and employers to particular areas of high unemployment. Of course, relocating industries to ghetto areas must go hand in hand with requirements or incentives to hire local residents.

63. Some companies are taking the lead in promoting diversity in the workplace through internal equality and non-discrimination policies. Since October 2004, heads of 60 companies with operations in France, including Airbus, IBM and Total, have signed a “Charter on Diversity” to promote non-discrimination, employment opportunities and promotion of minorities. Lack of statistical data continues to hamper evaluation of progress and the outcome of this and other initiatives. HALDE notes that it has worked to encourage companies to adopt more transparent internal staffing and recruitment practices. Practices such as “legacy hiring” and recruitment based on social networks are commonplace in certain sectors of the French labour market. By their nature, hiring practices that are not merit-based or transparent work to exclude minorities.

C. Education

64. The independent expert notes the high priority given to issues of education within France as well as French legislation and public policy, as demonstrated in the Government’s country reports to the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child. However, she remains concerned that a reliance on current approaches to tackling discrimination issues fails to fully address the specific situations facing families and children from particular ethnic, religious and linguistic communities.

65. Disproportionate dropout rates were highlighted as a serious issue facing those belonging to minority communities. The Government has sought to address such issues via training, career advice and vocational initiatives, in particular via Law No. 2006-396 of 31 March 2006 on equal

¹⁶ http://reverso.nouvelobs.com/url/result.asp?url=http://tempsreel.nouvelobs.com/actualites/societe/20071206.OBS8586/un_policier_saisit_la_halde_pour_discrimination_au_conc.html&autotranslate=on&template=General&directions=65544.

opportunities. However, anti-discrimination organizations noted a tendency for members of minority groups to be directed towards vocational courses rather than studies required for university and professional preparation.

66. Government and NGO representatives highlighted to the independent expert the continuing problem of exclusion from access to France's "elite" schools and universities, traditionally the means of entry to the civil service in France. The independent expert welcomed plans to enhance pre-training facilities in some schools, noted by the Minister Fadela Amara, and initiatives to create partnerships between schools in difficult areas and elite schools, to help facilitate access for those from minority communities.

67. Gypsy/Traveller communities face particular challenges in regard to the education of their children as a result of their ambulatory lifestyles, resulting in particularly low participation levels and high dropout rates. Community representatives noted worrying trends of Gypsy/Traveller children being placed in schools or classes for those with learning impediments without evidence of impaired learning abilities. Circular No. 2002-101 of 25 April 2002 provides guidelines on the "Schooling of Traveller Children and Non-Sedentary Families", which aim to increase participation in the education system; however, Gypsy and Traveller representatives complain that these remain largely unimplemented.

68. Particular issues face minority girls in the sphere of education. During consultations, the issue of the wearing of the veil by Muslim girl students and the wider debate regarding religious symbols in French schools was frequently discussed. The independent expert urges that such debates be conducted in an open and inclusive manner and with the rights and interests of the child to the fore, including within Muslim communities themselves. She considers that caution must be exercised in legislation and policy that, irrespective of neutral intent, impact disproportionately on those faiths for which external, visible symbols or clothing are considered important tenets of faith, including Muslims, Orthodox Jews and Sikhs.

D. Comparisons between Marseilles and Paris

69. Discrimination in housing, policing, and unemployment, together with a lack of social and geographical mobility are important contributing factors to social unrest. The independent expert noted that Marseilles was relatively unaffected during the urban upheavals of 2005. She visited Marseilles to understand the particular circumstances and dynamics that contributed to its stability, meeting with senior government representatives, community groups and local residents, and with the innovative "Marseilles Hope" collective of religious leaders.

70. Consultations revealed that the limited nature of disturbances in Marseilles can be attributed to various factors, including a closer proximity between the housing for minorities and the city centre, which countered feelings of isolation; more community-sensitive policing; stronger family and social cohesion; more meaningful dialogue between communities and religious leaders and between communities and local authorities; relatively greater employment opportunities for those from minority groups; an explicit recognition and celebration of the diverse cultures and communities by local authorities; and the historical and geographical factors that have contributed to Marseilles' development as a multicultural city.

IV. POLITICAL PARTICIPATION OF MINORITIES

71. Article 2.3 of the 1992 Declaration on the Rights of Minorities states that: “Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.” This is a guarantee that must be read in conjunction with the political rights of citizens under articles 2.1 and 25 of the International Covenant on Civil and Political Rights.

72. Although minorities in France account for an estimated 12 per cent of the population, according to the Institute Montaigne, an independent French institute, only 2 of the 555 members of the lower house elected in metropolitan (non-overseas) France come from the country’s black, Asian and North African minorities.¹⁷ In the 2007 elections, France’s governing political party, the Union for a Popular Movement (UMP), had only seven minority candidates running for election while the opposition Socialists had 20 candidates, mostly in the Paris region.¹⁸ A total of 7,639 candidates stood for 577 seats, including France’s overseas possessions.

73. The legitimate interests of minorities are not fully considered within political institutions that do not reflect the diversity of French society. Parliamentary debates on key issues relevant to minorities, including policy to combat racism and discrimination and to promote equality and immigration issues, are being conducted without representatives of minorities, who are frequent victims of discrimination. Lack of minority representation constitutes an extremely serious problem of underrepresentation in the legislative and at all levels of political structure. A significant sector of French society feels excluded from the organs of power, as a result of which those deliberative bodies suffer a deficit in the absence of their views. This raises issues of legitimacy and a legislative process that is not fully informed.

74. The rise of far-right political platforms within mainstream French politics influences the nature of political discourse and decision-making according to community representatives. They highlighted a growing nationalist, anti-immigrant discourse and political climate, exemplified by the slogan “France, love it or leave it”. This sends a message to communities not to complain. One community member in the suburbs stated: “If I speak of my living conditions, they will say I hate France. Given that climate, it is hard to have a dialogue on how to improve things.” NGO representatives noted that despite recent urban violence in 2005, issues of disadvantaged urban communities and discrimination featured little in 2007 election campaigns of major parties. Rather, immigration controls and tougher law and order measures were the primary campaign issues, suggesting that solutions to urban problems are being sought in “get tough” policies rather than in improved approaches to employment opportunities, urban redevelopment and human rights.

¹⁷ Research quoted in *The Economist*, 25 October 2007, Minorities and legislatures: Must the rainbow turn monochrome in parliament?

¹⁸ Figures quoted by IFOP, the French market research institute established in 1938 to conduct polls and public research, http://www.ifop.com/europe/groupeifop/gr_fr.htm.

V. CONCLUSIONS AND RECOMMENDATIONS OF THE INDEPENDENT EXPERT

75. In spite of important national anti-discrimination legislation, serious racial discrimination is experienced by members of minority communities in France that is entrenched and institutionalized in nature. A political culture of denial has been an obstacle to effective measures to fully implement non-discrimination laws and to take concrete steps to address the complex inequalities that have been generated. The recent explosions of urban discontent have alerted authorities to the need for change.¹⁹

76. The independent expert urges the Government to take fully into consideration the analysis of the present report in developing policy responses to the urban upheavals. The most important actions that can be taken by Government lie in addressing the underlying causes of discontent and working towards structural solutions.

Acknowledgement of the reality

77. The Government of France is urged to: (1) recognize the existence of national or ethnic, religious and linguistic minorities within its territories and to withdraw its reservation to article 27 of the International Covenant on Civil and Political Rights relating to the rights of persons belonging to minorities and article 30 of the Convention on the Rights of the Child; and (2) ratify the European human rights treaties relating to the rights of minorities, including Protocol No. 12 to the European Convention on Human Rights and the Council of Europe's Framework Convention on the Protection of National Minorities.

Guarantees of non-discrimination and equality

78. France's anti-discrimination legislation should be amended to allow the imposition of penalties and fines for discriminatory practices that are sufficiently severe as to act as a deterrent to future violations. Legislation should also be amended to grant HALDE meaningful enforcement powers when there is a failure to comply with agreed settlement fines. Courts should impose more severe penalties for discriminatory acts, as allowed for under the Penal Code.

79. Robust affirmative action policies should be put in place to counter the effects of long-term discrimination against minorities. The independent expert encountered strong opinions both for and against affirmative action policies, from civil society groups and

¹⁹ The independent expert notes that further incidents of unrest and violence occurred in the suburbs of Paris (Villiers-le-Bel) in November 2007, following the tragic death of two young men after a collision between their motorcycle and a police vehicle. She deeply regrets this further violence.

governmental sources. The terminology of “positive discrimination” was commonly used, which she believes creates misleading perceptions of “privileges” given to people from certain sectors of society at the expense of others. Using such terminology sabotages public support from programmes that generate equality in ways that benefit everyone.

80. A wider debate is required on the issue in France that is open, informed and inclusive, and that builds on the experiences of other United Nations Member States and the recommendations of regional and international institutions. Such a debate should be framed by the concept of special measures/affirmative action as it is understood in international standards, including articles 1.4 and 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination.

81. The independent expert shares the view of the Committee on the Elimination of Racial Discrimination that efforts to combat discrimination in France are hampered by inadequate statistical information on the grounds of race, ethnicity or religion. She welcomes the current debate regarding the use of statistical data, including its constitutionality, and hopes this debate will continue to be informed by the experiences and practice of other European countries.²⁰

82. The collection of data regarding the socio-economic status of the population disaggregated by ethnic and religious identities as well as along gender lines is recommended as an essential tool to reveal the full extent of social problems experienced by persons belonging to different ethnic and religious minority groups. Such data will assist in the development of appropriate and effective policies and practices to combat the effects of discrimination.

83. The Government should undertake confidence-building and awareness-raising measures among all communities, including minority groups, to promote and encourage participation in voluntary data collection, including census registration, and allay fears that data collection will be used as a means of deepening rather than combating discrimination.

84. The Inter-Ministerial Committee to Combat Racism, Anti-Semitism and Xenophobia has been inactive since 2005 and should be reinstated and convened on a regular basis. Such a body offers the potential to ensure coordinated policies and practices across the ministries, recognizing their interrelated mandates and the need for holistic approaches in efforts to combat racism and discrimination and to promote the rights of minorities.

²⁰ On 15 November 2007, the Constitution Council, in its decision No. 2007-557 DC, approved Law No. 2007-1631 relating to control of immigration, integration and asylum, without article 63 relating to racial or ethnic data, which it declared contrary to the Constitution.

85. Following consultations with the High Commissioner for Active Solidarity Against Poverty in France, the independent expert notes that policy initiatives designed to address the needs of the poor as an aggregate group rather than targeting the specific nature of the obstacles faced by minority groups will fail to create sustainable solutions to their poverty, highlighting the recommendations of the 2007 report *Minorities, Poverty and the Millennium Development Goals*.²¹

Discrimination in employment

86. The public sector must lead by example in promoting and ensuring equality, non-discrimination and diversity, in order to send a clear message to all sectors of society. The Government should undertake more aggressive strategies to dramatically increase the number of people with immigrant heritage in the public service, particularly the police, civil service and the judiciary, in order better to reflect the broad diversity within French citizenry. These efforts should be evaluated on the basis of results or outcomes, using statistical data disaggregated to reveal the number of visible minorities who have been newly employed and their advancement. In the private sector, anonymous employment applications should be encouraged.

Discrimination in housing

87. The independent expert welcomes proposed initiatives to improve housing and living conditions in French suburbs. However, she considers that substantial investment in urban renewal should be just one component of a much wider policy package, which includes employment and education in the broader context of dedicated anti-discrimination initiatives. She emphasizes that priority should be given to ensuring that new or renovated housing is first offered to long-term residents of such suburbs.

88. When communes fail to meet the regulations regarding the availability of a specified percentage of social housing that must be allocated to poor families, they should be severely penalized to the limit specified in the law. The Government should establish effective means to monitor compliance with the laws in this regard.

89. Furthermore, the severe penalties currently foreseen in law should be imposed on municipalities that violate laws adopted to implement the rights of individuals belonging to Gypsy/Traveller communities. No municipality should be allowed to disregard the law with impunity.

Discrimination in education

90. The Government should evaluate its current programmes that focus on under-achieving schools against specific studies on the educational obstacles faced by

²¹ A/HRC/4/9, paras. 104 and 109.

minority students, both those of immigrant heritage and those from Gypsy/Traveller communities. Special measures should be adopted to guarantee the right to education in mainstream schools for children of Gypsy/Traveller families. Steps should be taken to protect the right of those children to not be segregated into schools or classes for the learning impaired when there is no evidence of need.

Inclusion of minority women

91. Women from the various minority groups in France face complex issues and specific challenges. In addition to discrimination in the fields of education, employment and housing, they are often confronted with specific challenges relating to family matters when their immigration status is tied to that of their husband. Divorce proceedings in foreign courts of certain countries can create problems for the realization of rights that they might have under French law. These special concerns require targeted attention and dedicated resources within relevant ministries and local and regional authorities.

92. The full and effective participation of minority women must be seen as an essential component of Government and civil society efforts to address their issues. The establishment of an advisory body to HALDE on minority women's issues should be considered as a means of gaining the views and experiences of minority women and assisting in the planning, design, implementation and evaluation of policies in order to address their specific issues and concerns.

Promotion of language, religion and cultural rights

93. The independent expert supports calls for France to ratify the European Charter for Regional or Minority Languages, which provides valuable guidance to all European States in their treatment of such issues, and for the preservation and promotion of the rich cultural and language heritage of each State. The Government of France should support the use of regional and minority languages as a medium of instruction in the early years of public primary education for students who so request.

94. The independent expert supports the conclusions and recommendations which the Special Rapporteur on freedom of religion or belief stated in her report on her visit to France in 2005, namely, that Law 2004-228 of 15 March 2004 on "laïcité" and the wearing of conspicuous religious symbols in public schools "constitutes a limitation of the right to manifest a religion or a belief [...] and has mainly affected certain religious minorities, and notably, people of a Muslim background". The independent expert supports the Special Rapporteur's recommendation that the Government should closely monitor the way that education institutions are implementing the law and adopt a flexible implementation of the law which would accommodate schoolchildren for whom the display of religious symbols constitutes an essential and freely chosen element of their faith.

Enhancement of political participation

95. Full and effective participation in national and regional political structures, as well as representation within key government ministries and institutions, is essential to future efforts to protect and promote the rights of minorities. Political parties in France should seek ways to increase the number of persons belonging to minorities that win election to national regional and local government structures.

96. The Government of France should establish consultative bodies of persons belonging to minorities to facilitate the full and effective participation of minorities in all decisions that affect them, and in the planning, design, implementation and evaluation of policies and programmes in respect of minority issues and those which impact on the lives of minorities.
