FRANCE

CCPR A/38/40 (1983)

291. The Committee considered the initial report of France (CCPR/C/22/Add.2) at its 439th, 440th, 441st and 445th meetings, held on 12, 13 and 15 July 1983 (CCPR/C/SR.439, 440, 441 and 445).

292. The report was introduced by the representative of the State party, who explained at length the system of public liberties in France, as reflected in the organization of the State, and informed the Committee that steps were now being taken whereby his country would make the declaration under article 41 of the Covenant and would ratify the Optional Protocol. He also gave detailed additional information on various legislations that had been adopted or under consideration, since the submission of the report, relating to the rights and freedoms embodied in the Covenant, particularly the prohibition of all discrimination based on sex, inside and outside the civil service; the abolition of capital punishment; new provisions on preventive detention and the penitentiary system; expulsion of aliens; the abolition of military tribunals and "La cour de sureté de l'état"; extension of the provisions of the Penal Code and the Code of Penal Procedures to overseas territories; conscientious objection; the abolition of monopoly of programmes in the broadcast media and the right of individuals to access thereto, and administrative decentralization in Metropolitan France and its overseas Territories.

293. Members of the Committee praised the quality and comprehensiveness of the report, particularly as complemented and made up-to-date by the representative in his introduction, which contained information on new reforms in the area of human rights and fundamental freedoms. They also noted that France had been one of the pioneering nations in the field of human rights and recalled that the French Declaration of the Rights of Man and of Citizens of 1789 had been a source of inspiration in the drafting of many constitutions all over the world. Although the system for protecting human rights seemed to be effective and extensive, Committee members referred to the fact that some 4 million foreigners lived in France at a time of high unemployment and world economic crisis; that new conceptions on family life and marriage seemed to be evolving in French society; and would, therefore, have required some information about the factors and difficulties that may be affecting the full implementation of the Covenant. In this connection, it was asked whether the peoples of overseas territories really enjoyed the same guarantees concerning human rights as the population in Metropolitan France and whether there existed any central organ in charge of ensuring the respect of the Covenant in those territories.

294. Commenting on articles 1, paragraph 1, and 22 of the Covenant, one member noted that the provision of the French Constitution that "the republican form of Government shall not be subject to amendment" appeared to constitute an unjustified limitation on political rights of the French people and was contrary to the letter and spirit of the Covenant. Another member wondered, in view of references in the French Constitution to the "indivisible Republic" and the "integrity of the territory **",** how it was possible for anyone in any French territory to advocate independence or secession. It was also noted that the option made for independence by an overseas territory could

not amount to the right to self-determination if such option was to be subject to approval by a majority vote of the National Assembly. Noting that the Covenant imposed on States parties the obligation to promote the realization of the right to self-determination, members asked how France helped the peoples of its overseas territories, particularly that of Guiana, as well as the peoples of Palestine and Namibia to achieve their rights to self-determination; what steps it had taken to prevent French citizens and corporations from co-operating with the apartheid régime of South Africa and why France had not applied United Nations sanctions against that régime for its policy of racial discrimination. Noting with appreciation that France had associated the right to self-determination with the right to development, one member recalled the right of peoples freely to dispose of their natural resources implied the right to protect the latter from pollution and asked how France reconciled the right of the peoples of its territories in the South Pacific to protect themselves from atmospheric pollution with the carrying out of atomic weapon tests in the Murunoa Atoll.

295. As regards article 2 of the Covenant, it was noted that the French Constitution provided for the equality of rights to all "citizens", while the Covenant referred in this and most articles to "everyone" or "all individuals" and that the report dealt thereby with prohibition against discrimination while article 2 provided for the undertaking by States parties to respect and ensure the rights recognized in the Covenant. Considering the larger migrant population in France, one member pointed out that if, in fact, equality before the law and civil rights and rights to fundamental freedoms were provided only for French citizens, then the protection of migrant workers became very important and he asked what rights they had to protection until and unless they became French citizens. Noting that, in addition to the migrant population, ethnic and other minorities, residents of Dom Tom (Guadeloupe; Polynesie), clandestine seasonal workers, gypsies and other people living on the margin, could be subject to racial or other forms of discrimination, and referring to article 2, in conjunction with article 26 of the Covenant, members wondered what effective measures the French Government had taken to ensure the rights of members of these groups and to prevent discrimination against them, particularly with regard to employment and lodging, and what measures it had taken to instruct the immigration service, the border police and other authorities concerned about their duties in this respect.

296. Commenting on the status of the Covenant in the French judicial system, members noted that, according to the Constitution, treaties had an authority superior to that of laws, subject, for each treaty, to its application by the other party and that, according to the French reservation upon ratification of the Covenant, articles 19, 21 and 22 of the Covenant would be applied in conformity with articles 10, 11 and 16 of the European Convention on Human Rights, and they asked whether treaties were really superior to laws, considering the different position taken in this respect by the French Council of State; whether the principle of reciprocity had any role in the implementation of the Covenant by the Courts and administrative authorities, particularly in relation to foreigners residing in France or in its overseas territories; whether any French judge considered that it was his duty to apply the Covenant in case of conflict with domestic laws; whether the Covenant was not considered part of domestic law; how much authority the Covenant had in relation to the Constitution and the Declaration of Human Rights of 1789; what juridical significance there was in the frequent reference in the report to the preamble of the Constitution of 1946; whether there could be any conflict between the Constitution, the Declaration or the European Convention and some provisions of the Covenant and, if so, which instrument prevailed; how the representative could explain the fact that, according to his introduction, the Covenant had so far been invoked in one case

only; whether the Covenant had been made known to all the administrative and judicial authorities and whether it was possible to declare a law unconstitutional in specific cases in France.

297. It was noted with satisfaction that, in France, no one could renounce in advance the right to bring an appeal on the grounds of action ultra vires; that the right of petition to one of the supreme authorities of the State alleging an infringement of human rights was open to all and that anyone may challenge an act committed by the administrative authority, even though he may have only a moral interest in its annulment; whether, in the latter case, the challenge constituted a kind or actio popularis, which an individual could resort to if he considered that a certain law was not in conformity with the Covenant; whether he had a direct interest in that law or not; what recourse the citizens of overseas territories possessed in case of abuse of authority by the representative of the French Government or the senior administrators; what the functions of the "mediator" were and what the net result of his work was.

298. With regard to article 3 of the Covenant, members expressed satisfaction at the reforms achieved with respect to equal rights of men and women and at the fact that 50 per cent of civil servants in France were now women and they asked whether that percentage was valid at all levels; whether equal pay for equal work was ensured, particularly in the private sector; whether there were any affirmative action programmes to raise the position of women not only in public service but in all professions and occupations; why such reforms failed to amend the law of 1964, which left the husband as the administrator of common property and to what extent tradition was responsible for the inequality that remained between the two sexes in certain domains.

299. In relation to article 4 of the Covenant, reference was made to the French reservation relating to this article and it was asked whether that reservation meant that the Covenant would apply only to the extent that it was possible under the Constitution, or that the Constitution could normally be applied only to the extent permitted by article 4 of the Covenant. Noting that the reservation concerning article 4 of the Covenant which provided that the President of the Republic should decide the measures to be taken in case of emergency situations, one member stated that this was more of a correct interpretation of the Covenant than a reservation inasmuch as it rejected any possible foreign control on that decision. Another member wondered whether there was any control over the President's decisions during a public emergency.

300. As regards article 6 of the Covenant, members of the Committee expressed satisfaction at the abolition of capital punishment in France. It was noted, however, that the report had not covered all aspects of applications of this article and it was asked whether individuals had been really protected from criminality; what had been done to check the rise of delinquency and to reduce unemployment, considered the fact that such phenomena threatened the life of individuals and their families; what measures had been taken to reduce infant mortality, particularly in overseas territories; whether comparative figures could be given on infant mortality in Metropolitan France and the Territories. Information was also requested on laws and regulations relating to the use of fire-arms by Police and security forces in France.

301. Commenting on articles 7 and 10 of the Covenant, members asked whether a punishment could be challenged as being so out of proportion to the offence that it constituted a cruel punishment; what the French law and practice were concerning the right of individuals to protection from being

subjected to medical experimentation; whether keeping accused persons in prison alone, day and night, as stipulated in the Code of Penal Procedure amounted to keeping them incommunicado; whether an open or a semi-open prison system existed in France; whether prisoners had a close and fairly regular contact with their families directly or by correspondence; whether further progress had been made towards reducing overcrowding in prisons and recruiting more competent staff for their administration; whether accused persons or offending juveniles were always separated from adults, and whether marriages could be allowed between prisoners.

302. With reference to article 8 of the Covenant, clarification was requested of a statement in the preamble of the Constitution that "everyone has the duty to work" and it was asked whether, in theory at least, such a provision could allow the adoption of a law on forced labour and whether that statement had ever been given juridical application.

303. In connection with article 9 of Covenant, questions were asked as to what guarantees existed in France against arbitrary detention of individuals in psychiatric hospitals; how long detention on remand might be in practice and whether provisional detention could exceed a period of six months where the punishment of the offence exceeded five years. Noting that the Covenant had provided for the right of compensation to the victim of unlawful arrest or detention or miscarriage of justice (art. 9, pap. 5, and art. 14, para.6) and that, according to the Travaux préparatoire of the Covenant, those provisions were meant for protecting the victim and not for punishing the faulty official, one member asked whether the victim of unlawful arrest or detention had the right to compensation only when agents of the executive or judicial power had committed personal faults or whether he had the right of recourse against the State on the grounds of its objective responsibility.

304. As regards article 12 of the covenant, it was asked whether restrictions on the free movement of aliens in the country could be applied and, if so, in which cases; whether the practice of considering nomads not of French nationality as belonging to a commune for administrative purposes might restrict their movement; whether any measures had recently been adopted to abolish the instructions given to the border police to the effect that they could refuse entry into France to certain foreigners even if they held valid visas and other essential documents; whether the residents of Dom Tom could freely enter and reside in France without special authorization and whether the passports given to them were exactly the same as those given to the metropolitan French. One member asked whether refusal of passports, though exceptional, did amount to a restriction on the freedom of movement. Another member pointed out that the withdrawal of French nationality from a naturalized person after being convicted of certain crimes was not in conformity with the principle of equality if the same provisions did not apply to other French citizens convicted for the same crimes.

305. In relation to article 13 of the Covenant, it was asked what remedies were available to aliens against their expulsion from the country; how many aliens had recently been expelled from France and what their countries of origin were. It was also asked what remedy an expelled alien in the overseas territories had if he considered that he was a victim of an abuse of power.

306. As regards article 14 of the Covenant, it was asked whether members designated by the State to the High Judicial Council were selected from a list supplied by professional associations of lawyers and judges; how the social balance of jurors was ensured and whether or not they were

drawn by lot; what was the tenure for the judges of the various courts and the rules for their removal; what control the judiciary had over their requirements in order to be able to expedite trials without undue delays; what the rules were concerning presence in a public hearing and whether there was any provision to prevent the courtroom from simply being filled by government officials; what conditions there were for legal assistance following the recent reforms in France; at what stage the defence lawyer first contacted the accused; whether the penalty was suspended pending a decision on an appeal; whether a conviction could be based only on a confession and whether proof could be obtained by means that constituted a violation to the right of privacy provided for in article 17 of the Covenant; whether free assistance of an interpreter was provided to an accused who did not understand or speak the language used in court; whether the requirement that the public prosecutor make available, only 24 hours before a hearing, a list of witnesses he intended to call was a reasonable time for the preparation of one's defence; whether the State paid the expenses of his witnesses when the accused was too poor to do so; whether there was a financial compensation in addition to moral compensation in case of judicial error and whether it was possible for a judge who sentenced an offender to modify the sentence in the light of new circumstances.

307. In connection with article 15 of the Covenant, clarification was requested of a statement in the report to the effect that a new penal law could be applied, even if it was more severe, if it was an interpretive law.

308. As regards article 17 of the Covenant, it was asked whether it was always necessary to have search warrants or whether there were laws permitting immediate entry and seizure in the case, for example, of narcotic drugs or contraband material; whether measures had been taken in France to allow people to have access to information about them kept in secret Government files; what recommendations the government Commission on telephone tapping, established in 1981, had made.

309. In relation to article 19 of the Covenant, it was asked whether France still felt it necessary to retain its reservation in view of the recent reforms in that area; what methods were used to ensure the "equal access to broadcasting", mentioned in the report; what was meant by "insult to the President of the Republic" and to "certain categories of public officials" and what laws there were on sedition in France.

310. Commenting on article 20 of the Covenant, one member referred to a statement in the report to the effect that French law in regard to propaganda for war adequate and wondered why France would not then finalize the juridical formalities by adopting a law prohibiting such propaganda and, by doing so, meeting the requirement of the Covenant and heeding the call of the General Assembly to the United Nations. It was also asked whether any provisions existed in France prohibiting national or religious hatred and how "anarchist propaganda", provided for in a law issued in 1894, but still in force, would be interpreted at the present time.

311. As regards article 22 of the Covenant, it was asked what categories of association could be subject to a "less liberal regime" and what the Government policy was in regard to associations which were established in France but whose aim was to be active in the political life of another country or to incite racial hatred in another country.

312. With reference to articles 23 and 24 of the Covenant, it was asked whether a marriage in

France could be declared null and void for reasons other than absence of consent; whether a married woman could dispose of her property in France without authorization from her husband; what the legal effects were of children of de facto unions; and whether children born out of wedlock had the same rights as legitimate children, especially with respect to inheritance.

313. In connection with article 25 of the Covenant, more information was requested on the participation of the residents of Dom Tom in the political life of the country and on their participation in the elections to the central institutions and to local administration on equal terms with the residents of the departments of Metropolitan France.

314. In relation to article 26 of the Covenant, information was requested on the measures adopted to protect individuals against discrimination; on how the legislation penalizing discrimination worked in practice and on its actual implementation in view of the large number of migrant workers and foreigners who were living in France.

315. As to article 27 of the Covenant, members of the Committee referred to the French reservation on this article and to the statement in the report, as confirmed by the representative of France in his introduction of the report, to the effect that there were no minorities in France and that, accordingly, this article was not applicable as far as France was concerned. They wondered how that position could be justified in view of the existence in France of several French and foreign communities of various ethnic, religious and linguistic origins, which were entitled to have their right to enjoy their own culture and to use their own language respected and ensured by law and practice. It was also pointed out that the reference in the French reservation to the provisions of article 2 of the Constitution signified that the reservation applied only to questions previously envisaged in that article and that the reference in the Constitution to the "Republic" could be interpreted to refer only to Metropolitan France and it was asked whether France did not recognize the existence of minorities in its overseas territories as well and, if so, whether all residents of those territories enjoyed equal rights as the residents of the metropole and whether that included their right to be ensured enjoyment of their own cultures and use of their own languages.

316. Replying to questions raised under article 1 of the Covenant, the representative of the State party pointed out that according to a 1936 law, the President of the Republic was empowered to dissolve by decree any association the aim of which was to overthrow the republican form of government in France because the people's right to freely determine their political status did not cover the use of force and that he felt that if one day the French people decided to reinstitute the monarchy, they were more likely to draft a new constitution than to change the existing one; that although the Constitution proclaimed that the Republic was one and indivisible, the right of peoples to self-determination was also proclaimed in that Constitution and the machinery to ensure its realization existed, was implemented and resulted in the attainment of independence of former departments and territories such as Algeria and Djibouti; that the existing overseas departments and territories had freely adopted their status and that it was incorrect to say that there was a general desire for independence therein; that France had submitted a draft resolution to the Security Council in 1982 reaffirming the legitimate national rights of the Palestinian people, including their right to self-determination; that France's position with regard to Namibia was based on a Security Council resolution of 1978 which called for the withdrawal of the illegal South African Administration in Namibia and the transfer of power to the Namibian people; and that although France was required

under the Covenant to react to racial discrimination outside the country, France, as a matter principle, condemned racial discrimination wherever it existed and had condemned apartheid in many different forms.

317. Replying to questions posted under article 2 of Covenant, he stated that the 1958 Constitution, the 1789 Declaration of Rights, the Preamble to the 1946 Constitution and the decision of the Constitutional Council of 1971, recalling the Preamble to the 1946 Constitution, were all texts superior to other rules of law and constituted the first level; that the second level embodied duly ratified treaties which, according to the Constitution, had an authority higher than that of laws; and that the third level was constituted of laws, while the fourth level consisted of provisions which emanated from the executive power; that at each level, the authority must respect the principle of a higher level but that did not mean that it was not necessary to formulate legislation for the implementation of treaties, particularly when treaties were, such as the Covenant, so general in their wording that it was difficult to implement them without specific legislation; that many provisions of the Covenant were included in French law; that individuals could invoke the protection of the Covenant before the courts; and that the fact that this action had not occurred very often was due to the fairly recent ratification by France of the Covenant and because French lawyers preferred to invoke the European Convention on Human Rights where they had the possibility of recourse to the European Court of Human Rights. No conflict between a treaty and the French Constitution was likely to take place because a treaty which came into force contrary to the Constitution would imply prior revision of the Constitution, and where agreement of Parliament was needed for the ratification of a treaty, the latter would be checked first by the Constitutional Council for verification of its conformity with the Constitution. As regards the question concerning conflict between a treaty and French law, he pointed out that difficulties could arise regarding a treaty which predated a law, but that the matter could be referred to the Council of State which, in 20 years, had had only two such cases to deal with and that, in reality, where the protection of liberties was concerned, it was the judge who was competent.

318. The representative also indicated that an administrative act could be challenged on the grounds of abuse of power or violation of a law or a treaty, but that such a challenge did not constitute a kind of actio popularis; and that decisions of Government representatives in overseas departments and territories could be referred, as the case was in the metropolis, to the administrative judges who could annul them if they deemed appropriate. He explained that the "mediator" dealt with complaints relating to administrative failures which were not necessarily illegal, but which concerned inequitable or abusive application of administrative regulations; that the "mediator" was not competent to deal with questions of law; that since 1976 he had been able to propose reforms, 220 of which had been implemented, but that he had never had, and could never have, very great importance in France because the essential control of the administration was in the hands of the judges.

319. Responding to questions raised under article 3 of the Covenant, the representative stated that men were more numerous than women in executive jobs and that the latter were poorly represented in highly responsible posts, but that recent appointments tended to rectify the situation in favour of women; that programmes existed to promote the equality of women in a wider range of professions and occupations; that equal pay for equal work in the private sector was almost achieved with the gap between salaries of men and women reduced to 2.8 per cent; that although the position of

women had improved, efforts had not yet succeeded in abolishing all manifestations of inequality between men and women; that the obstacles facing women in their professional life should be attributed more to the traditional image of women as housewives, which still persisted; and that France had therefore recently undertaken studies on how that image should be presented to children in school-books, games and to adults, through the mass media..

320. As regards article 4 of the Covenant, the representative pointed out that France's reservation applied to paragraph 1 only of that article, which was quite legitimate under the Vienna Convention, but that it appeared to him that the question of whether reservations could be made to the other paragraphs of the article was one for the Committee to decide. He also stated that the President of the Republic was entitled, in time of public emergency, to take both legal and administrative decisions, but that they were subject to review by the Council of State which could annul them.

321. In connection with questions raised under article 6 of the Covenant, he pointed out that the number of crimes involving bloodshed had remained stable in France over the last 10 years; that Police could only use firearms on their own initiative in self-defence, which they must subsequently justify and that it was too soon to evaluate what effect the abolition of the death penalty had had on criminality in France.

322. As regards article 8 of the Covenant, he indicated that the French word "devoir" had only a moral connotation and was not used in legal texts, whereas " obligation" had only legal force, but that the "duty to work" remained, nevertheless a principle of the French Constitution.

323. Commenting on questions posed under articles 7 and 10 of the Covenant, he explained that medical experiments were carefully controlled and were always subject to the consent of the patient, that a distinction had to be made between imprisonment in a cell (régime cellulaire), where a detained person was placed in a cell with one or two other prisoners and was able to correspond with his family and lawyer, and solitary confinement (isolement); that, in France, the overcrowding of prisons presented a problem, but that it was nearly always possible to separate minors from adult prisoners, and that prisoners were allowed to marry.

324. Replying to questions raised under article 9 of the Covenant, the representative indicated that the great majority of those admitted to psychiatric hospitals entered of their own free will and that such persons could discharge themselves at their own request; that it was possible for persons to be admitted at the request of family or friends or at the request of the local mayor in urgent cases, but that, in the latter two cases, the parquet must be informed and the person concerned could appeal at once to a high court judge who could immediately release him. He explained that a person could be arrested only by order of the judicial police and only in the most serious cases; that persons so arrested were held on police premises for investigation purposes for 24 hours which could be extended by the Government attorney for a period of time, which was normally 24 hours but which could, in cases of drug trafficking or offences against the security of State, be for a further 48 hours, subject to annulment, in the latter case, by the State Security Court. In this connection, he pointed out that in France there had always been procedures for avoiding the preliminary investigation when the case was relatively simple, when the offence was not too serious, and when the slow proceedings of the preliminary investigation were not really required; that the problem had been to institute a summary procedure which did not undermine individual freedoms. He explained at length the

provisions of a 1983 law concerning "immediate appearance", which represented the best compromise between the need for justice to be quickly administered and the need to provide serious guarantees of individual freedoms. He also stated that preventive detention, in theory, was possible for all serious offences and for certain ordinary offences but never for minor offences; that in the case of ordinary offences several conditions had to be satisfied: such offence had to be punishable by a term of imprisonment of more than two years; the order should be issued by the examining magistrate as part of the pre-trial proceedings or by order of the court of summary jurisdiction under an accelerated procedure; that this order must substantiate very precisely the reason why preventive detention was necessary, which reasons included preserving evidence, preventing pressure from being exerted on witnesses or victims, preventing fraudulent conspiracy between suspects preserving public order, protecting the accused, putting an end to the offence or preventing it from recurring, and ensuring that the accused remained at the disposal of the courts; and that preventive detention in those cases was in principle limited to four months but that it could be extended, under certain conditions, to another four months, but that accused persons who were first offenders could not be kept in preventive detention for more than six months. As to preventive detention for serious offences, he stated that that was of unlimited duration.

325. Responding to questions raised under article 12 of the Covenant, the representative stated that freedom of movement was guaranteed to foreigners by law when they possessed a valid "carter de sejour"; that when, because of his previous behavior, the foreigner had to be subjected to special supervision, the Ministry of the Interior might forbid him from residing in certain departments or allow him to reside only in one department and that such decision was taken by a decree valid for one year; that any person entering the country in order to exercise and occupation was obliged to present at the frontier either a contract stamped by the administrative authority or an authorization to work. The department (or departments) where his right to exercise his professional activity was granted was specified in his working permit. There were no restrictions on the freedom of movement between metropolitan France and the overseas territories as far as French citizens were concerned, but foreigners were subject to special arrangements because it was necessary to prevent too many foreigners from settling in particular areas and thereby upsetting the demographic balance; nomads were not obliged to reside in a particular commune; and passports issued in the overseas territories were the same as those issued in metropolitan France.

326. In connection with questions raised under article 13 of the Covenant, he pointed out that there had been no expulsion of migrant workers; that in 1981 and 1982 the position of many clandestine immigrants had been regularized, it being considered that the work they had done accorded them rights. A foreigner on whom an expulsion order had been served could always apply to a judge, who could rule that the expulsion order should be stayed or annulled. French frontier police were not empowered to refuse entry to anyone possessing the documents required by the regulations in force.

327. As regards questions raised under article 14 of the Covenant, the representative pointed out that the practice of preventing the public from attendance at a public hearing by filling the courtroom with Government officials was not known in France; that above a certain level of income no legal aid was allowed, that below a certain level, full costs were granted and that in the intermediate category, part of the legal costs were allowed. He informed the Committee that because matters dealt with by the members under this article were very complicated, his replies would be made in

writing.

328. As regards the questions relating to article 15 of the Covenant, he pointed out that the misunderstanding was due to an error in the report; that an interpretive law was not a more severe law but merely a law which interpreted a former law and did not modify it and that a law altering the effects of a penal conviction did not modify the penalty but merely stipulated that the penalty would be served in different circumstances.

329. Commenting on questions raised under article 17 of the Covenant, the representative stated that searches could be made only by an order of the judicial police, who did not need an authorization from the Government attorney for that purpose, but that such searches were subject to a series of conditions, otherwise the police could not make a search unless the examining magistrates had requested if for the purpose of the preliminary investigation; and that the rules governing searches were the same for all offences, including drug trafficking. There was a law on access to administrative documents and in a recent decision, the State Council had ruled that the Data Processing and Freedom Act also applied to manual files. Telephone tapping could be done only by a decision of a judge under the Penal Code and the report prepared by a special commission set up to consider the preparation of appropriate legislation with regard to administrative telephone tapping was now being considered by the Government.

330. Replying to questions posed under article 19 of the Covenant, he indicated that the concept of an "insult to the Head of State" had been applied with great moderation and that there had been almost no case for the past nine years.

331. As to article 20 of the Covenant, he stated that France reiterated its reservation in respect of this article; that the Charter of the United Nations created obligations with regard to legitimate self-defence and the implementation of Security Council resolutions and that the Charter took precedence over the Covenant.

332. In relation to questions raised under articles 23 and 24 of the Covenant, he indicated that while each of the spouses could administer his or her own wealth, in principle, the husband controlled common possessions. However, the consent of the wife was essential for any important decision about their common possessions and wealth acquired by the wife through her own business or professional activity was administered by her with the same proviso about important decisions. In case one of the partners was unable to control his or her own share of the possessions, a decision giving sole control could be decided by the courts.

333. As regards questions posed under article 26 of the Covenant, he informed the Committee that punishment for offences of racial discrimination varied from two months to one year imprisonment and fines of up to 300,000 francs and that, in 1981, 28 sentences for racial discrimination had been pronounced in French courts.

334. In connection with article 27 of the Covenant, he stated that in France there were different religious communities; there were also persons of different origins; there were also cultural differences among the different regions of the country. All French citizens had the right to have their individual characteristics respected. Regional languages such as Basque, Breton, Catalan,

Corsican and Provencal were taught at the secondary level, and Arabic and Hebrew were also widely studied. In Alsace-Lorraine, German occupied a privileged place in the curriculum. However, Frenchmen enjoyed all those rights in their capacity as citizens and not as members of a legally protected minority. The concept of a "minority" had come from central Europe, where the interplay of languages, racial groups and cultures had caused it to be developed in certain well-defined geographical and historical conditions. However, the concept had always seemed dangerous, since the legal organization of a minority could lead to isolation, to the establishment of ghettoes, and to persecution. There was no Jewish minority in France, although there were French citizens who belonged to a given cultural community and faith, which they were free to practice and develop in their capacity as French citizens. The Republic guaranteed to all French citizens all the rights and freedoms necessary for the flowering of their personality. Article 27 of the Covenant runs counter to the provisions of article 26, since the concept of a "minority" led directly to the concept of "discrimination". France was opposed to all forms of discrimination and therefore could not accept the concept of a legal "minority". France intended to grant everyone the same degree of freedom in conditions of equality and fraternity. Liberty and equality did not imply uniformity, and it was by means of those concepts, and not of the concept of legally organized minorities, that the right of citizens to live in their different ways was recognized. France therefore considered that article 27 of the Covenant was not applicable to it because it was contrary to a fundamental principle of French law.

335. The representative finally stated that in view of the large number of questions which had been asked, making it impossible to reply to all of them in the time available, and of the many changes in French law over the past two years, his delegation would submit a consolidated report in the next few weeks.

CCPR A/43/40 (1988)

357. The Committee considered the second periodic report of France (CCPR/C/46/Add.2) and the additional information (CCPR/C/20/Add.4) submitted following examinations of its initial report at its 800th to 803rd meetings, held from 30 to 31 March 1988 (CCPR/C/SR.800-803).

358. The report was introduced by the representative of the State party who said that the fortieth anniversary of the Universal Declaration of Human Rights, the forthcoming celebration of the bicentennial of the Declaration of the Rights of Man and of the Citizen and the commemoration of the French Revolution were appropriate occasions for reflecting on human rights and the foundations of French democracy. The establishment of a secretariat of State for human rights, the recent reorganization of the Consultative Committee for Human Rights, the acceptance of the individual petition procedure provided for under the International Convention on the Elimination of All Forms of Racial Discrimination and the accession to the Optional Protocol to the International Covenant on Civil and Political Rights were indicative of the French Government's concern for human rights issues.

359. Since submission of France's initial report, recognition of the equal dignity of individuals had been given further expression de jure and de facto and, in particular, efforts had been made to reach complete equality between men and women and to improve the situation of children. A national advisory committee on ethics had also been established in order to deal with new questions arising from scientific and medical progress and a report had been drafted by the Council of State concerning certain ethical questions relating, inter alia, to intervention in the human body and human procreation.

360. The representative also drew attention to the fact that France had been the first country to adopt complete and consistent anti-racist legislation. The Act of 3 January 1985 had allowed anti-racist associations to bring civil suit in respect of certain racially motivated crimes or offences, the Acts of 13 and 25 July 1985 had introduced a new criterion regarding discrimination based on mores, and the Act of 30 June 1987 had eliminated any possibility of invoking "legitimate motive" when discrimination was based on race. Some problems of illegal immigration, which was dangerous in many ways, were handled in a humanitarian manner by the Office for the Protection of Refugees and Stateless Persons, the decisions of which were subject to appeal. New Legislation concerning the entry and length of stay of aliens in France had been adopted containing provisions regarding expulsion and escort to the frontier and resort to emergency procedures.

361. Referring to other measures, the representative explained that, in order to relieve the Council of State of a heavy burden of cases, it had been decided to establish five administrative chambers of appeal. In addition, owing to the constant increase in the prison population, a modernization plan had been adopted in 1986 that would increase prison capacity. Lastly, with regard to the overseas departments and territories, régimes had been established to take into account the unique conditions in those areas and to give their inhabitants the power to control their own destiny.

Constitutional and legal framework within which the Covenant is implemented

362. With regard to that issue, members of the Committee wished to receive information on the relationship between a general principle of law derived from the judicial practice of the Council of State and rights explicitly mentioned in the Constitution or in legislation, on Act No. 86-1020 and its amendments concerning the new legal procedure for terrorist offences, particularly the separate procedures, the absence of a jury and the exclusive competence of Parisian courts and on activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol. In that connection, it was asked whether any publicity had been given to the fact that the second periodic report was being considered by the Committee, what measures had been taken in order to publicize the Covenant in the overseas departments and territories and whether there were any courts of appeal and legal practitioners and training institutions existing in New Caledonia. Members also requested examples of the activities of the Consultative Committee for Human Rights and the ombudsman (médiateur) and additional information concerning the recent report of the Council of State on legal ethics.

363. In addition, members wished to know whether there had been judicial or administrative decisions in which the Covenant had been directly invoked, what legal status the Covenant had in the French legal system, especially with regard to the relation between the Covenant, the Constitution and the European Convention on Human Rights, whether the Constitutional Council had necessarily to be consulted before a treaty was ratified, what means were provided in French law to resolve conflicts between a treaty and a law after the former had entered into force and whether any individual had the right to challenge the constitutionality of proposed legislation. Clarification was also sought as to the legal system in the overseas territorial units; one member wondered, in connection with the "Hienghène case" in New Caledonia, whether criminal law was applied differently in New Caledonia and in France.

364. In his reply, the representative of the State party explained that the general principles of law could be defined as unwritten rules identified by the judicial precedents of the Council of State based on an interpretation of the preamble to the Constitution or on French practice. They played an important part in the functioning of the Administration, especially since the Constitutional Council largely followed the judicial precedents of the Council of State.

365. The Consultative Committee for Human Rights had given its opinion on a series of draft laws relating, inter alia, to the reform of the Nationality Code, French foreign policy in the field of human rights, racism and xenophobia, the implications of biological sciences for human rights, instruction in human rights in secondary schools and the rights of the child and of refugees. The ombudsman (médiateur) was empowered to make recommendations and draw the attention of the Government and political officials to the shortcomings and errors of the services under their authority. Citizens could apply to him only through their parliamentary representatives. In 1987, of the 4,547 cases considered, the intervention of the ombudsman had resulted in the decision being changed in 1,018 cases.

366. With regard to the enactment of legislation to combat terrorism, the Act of 9 September 1986, as amended, had established a special procedural régime applicable to offences deemed to be related to an individual or collective undertaking aimed at serious disturbance of public order (ordre public) through intimidation or terror. In view of the very nature of terrorist acts, it had not been thought appropriate to categorize terrorism as a specific, single offence. Nevertheless, although the

Government had not wished to re-establish the State Security Court to try terrorist offences, a specific legal régime had been introduced. Under the new legislation, terrorist offences were dealt with by a special Court of Assize and tried by a panel of six independent judges appointed for a strictly limited period by the President of the Court of Appeal.

367. With reference to the dissemination of information, the representative said that the two Covenants had been published in the Journal officiel on 1 February 1981 and in collections of treaties and diplomatic documents. They were studied in secondary schools as part of a special course in civics. A reform had been initiated, which would require students to take an examination in civics before they could receive their bachelor's degree. The Covenants were also taught at law faculties as well as the Ecole nationale de la magistrature.

368. Turning to questions concerning the status of the Covenant, he said that there had been about 20 judicial decisions in cases where the Covenant had been directly invoked before the courts. Those decisions had dealt , in particular, with the scope of freedom of movement, the regulations for election to the European Parliament and the application of the principle of non bis in idem. Moreover, the influence of the Covenant was gaining ground, especially among members of the legal profession. While compatibility of the Covenant and the Constitution was not a problem, the relationship between it and national laws was more complicated. If a law preceded a treaty, the latter took precedence in all cases. However, if a law was promulgated after a treaty, judicial courts tended to grant priority to the treaty while administrative courts tended to apply the law. The Covenant and the European Convention on Human Rights differed widely as one was regional and the other international. France had acceded first to the European instrument; however the French Government's declaration regarding articles 19, 21 and 22 of the Covenant did not imply that the provisions of the European Convention on Human Rights took precedence over those of the Covenant.

369. With regard to questions concerning the citizens of the French overseas territories, the representative stressed that they enjoyed the same rights and freedoms as in metropolitan France. Although certain legislation enacted in France was adapted in the overseas territories, legislation relating to civil and political rights applied automatically to both France and its territories. The court system in an overseas territory was the same as that of metropolitan France and judges were called upon to serve either in metropolitan France or overseas. In the "Hienghène case", the jury had been selected by ballot in accordance with the procedure established under the Penal Code, an examining magistrate had been placed in charge of the case and the prosecution had been conducted under the authority of the public prosecutor. Nevertheless, although the State had called for severe penalties, the accused had ultimately been acquitted.

Self-determination

370. In connection with that issue, members of the Committee wished to know what France's position was with regard to self-determination in general and specifically with regard to the struggle for self-determination of the South African, Namibian and Palestinian peoples. Information was also sought concerning the special status of the island of Mayotte and clarification was requested as to whether any individual rights were currently not applicable to the overseas territories. It was asked whether the derogation in respect of Polynesia had been reported in accordance with the Covenant,

why the derogation was needed and what the current situation was in that regard, whether a state of emergency had been proclaimed in New Caledonia in 1985 and in Wallis and Futuna, and if so, whether article 4, paragraph 3, of the Covenant had been complied with, and which authority dealt with violations of human rights in territories outside metropolitan France. Additional information was requested concerning the outcome of the referendum of 13 September 1987 in New Caledonia and subsequent developments relating to self-determination in that territory. It was further asked how the people living in New Caledonia were considered from the point of view of the concept of a "people" as expressed in article 1 of the Covenant, what the legal status of the Kanaks was, what proportion of the voting population in the referendum had been indigenous and whether there had been an increase in the non-indigenous population over the past three years. Members wondered whether self-determination should be allowed for people who only had a temporary connection with the country in which the right was to be exercised and whether people from New Caledonia had been able to testify before the courts on that question. They also asked whether people who had lived in the territory for only a few years had had the right to participate in the referendum and whether people who did not normally live in New Caledonia had been able to vote in the referendum.

371. Responding to questions raised by members of the Committee, the representative of the State party said that the right of peoples to self-determination was enshrined in the preamble to the French Constitution and was one of the basic principles of French policy. For many years, France had insistently and unequivocally called for the abolition of apartheid, which denied the majority of the people of South Africa their basic rights. In order to induce the South African Government to engage in a dialogue with all components of South African society, France had implemented a policy of pressure and had taken a number of measures at both the national and the international levels; for instance, it had been at the origin of Security Council resolution 569 (1985). In order to find a solution to the Namibian problem, France had participated in the formulation of the United Nations plan for the independence if Namibia, embodied in Security Council resolutions 385 (1976) and 435 (1978) which constituted, in the view of the French Government, the only acceptable basis for a final solution of the question. The establishment, in June 1985, by the South African authorities of an interim Government in Namibia was in total contravention of the United Nations settlement plan and France was committed to measures to induce the South African Government to respect its obligations.

372. Regarding the question of Palestine, the French position was based on the principles set forth in the Venice Declaration of June 1980. A French-Egyptian draft resolution on Lebanon and Palestine had confirmed the right to existence and security of all States of the region and the legitimate rights of the Palestinian people. The convening of an international conference restricted to permanent members of the Security Council and the parties directly concerned was considered by the French Government as the most realistic way to secure peace in the Middle East.

373. Responding to other questions raised by members of the Committee, the representative explained that the people of Mayotte had voted in 1976 to remain part of the French Republic. Mayotte had a sui generis régime, intermediate between the overseas departments and territories and some consideration had been given to making it an overseas department. All civil and political rights applied in the overseas territories, the sole peculiarity of the legal system in the territories being the matter of "personal status", which was a concept under traditional customary law.

374. Regarding the proclamation of states of emergency in the overseas territories, the representative explained that a latent social crisis had existed between the Government of the Territory of French Polynesia and groups of dockers since the end of 1986 and that, after a number of disturbances and fires, the High Commissioner had proclaimed a state of emergency on 24 October 1987. The measures taken had been confined to a night-time curfew and the closure of drinking establishments. Calm had been rapidly restored and the state of emergency had been ended on 5 November 1987. By the end of 1987, all claims for compensation had been met and the French Government had allocated FF 110 million in reparations for the damage suffered by the victims. A state of emergency had also been declared in New Caledonia on 12 January 1985, following serious incidents that had occurred during elections to the territorial assembly in November 1984; it had lasted until 30 June 1985. In the Wallis and Futuna Islands, after a very short conflict between traditional chiefs, which had posed the risk of the violent expulsion of a member of the administration, the senior administrator had decreed a state of emergency which had lasted only 25 hours.

375. Referring to the referendum of 13 September 1987 on self-determination for New Caledonia, the representative explained that his Government had had three major concerns in conducting the exercise: to allow the people of New Caledonia to determine their future, to ensure that the wishes of the people of the territory were respected and to restrict the electoral roll to inhabitants with a direct interest in the future of the territory. The vote had been restricted to inhabitants of the territory with at least three years' residence and had been placed under the protection of the judiciary. Although the pro-independence parties had called for a boycott, 59 per cent of the electorate had voted; 98 per cent had stated their preference for remaining within the Republic, a figure that represented 57 per cent of the electorate. Following the referendum, new legislation had been enacted to provide the territory with a stable institutional system. It had been difficult to find an objective and simple criterion for eligibility to take part in the referendum in New Caledonia other than a period of residence. The three-year period had been chosen because that was the term of service for military personnel. The composition of the electorate had been determined by Parliament and had been approved by the Constitutional Council. Statistics on the indigenous component of the population did not exist because all citizens, regardless of ethnicity, were considered to be citizens of the French Republic.

Non-discrimination and equality of the sexes

376. With reference to that issue, members of the Committee wished to have information about the activities undertaken by the equal opportunity boards attached to various ministries and asked in which respects the rights of aliens were restricted as compared with those of citizens. They also wished to know how France dealt with migrant workers' rights. Referring to the French reservation to article 27 of the Covenant, one member raised the question of France's compliance with article 2, paragraph 1, and article 26 of the Covenant, which prohibited discrimination on the basis of language, regardless of whether an individual was a member of a minority. In that connection, it was asked to what extent a language other than French could be used in official business and in dealing with the authorities. With respect to the legal régime of property in marriage, it was asked whether wives needed to obtain the consent of their husbands when taking important decisions concerning common possessions.

377. Responding to questions raised by members of the Committee, the representative of the State party pointed out that the Conseil supérieur de l'égalité professionnelle (Supreme Council for Professional Equality) was a body which advised various ministries, dealt with job equality for women and made recommendations in such areas as professional equality, the status of women, training and opportunities for women to start their own business. Aliens enjoyed the same rights as French nationals as long as they did not disturb French internal order. The right to reside in France, however, could be denied to those likely to threaten public order, and the right to work might be denied under specific conditions. Aliens did not have the right to vote, but some local communities had allowed them to participate in advisory bodies. Although there was no generally established channel through which they could make themselves heard, various informal or semi-formal means of doing so were available. Efforts were made to take the views and problems of foreign residents into account.

378. Responding to other questions raised by members of the Committee, the representative pointed out that the status of French as the only official language dated back to the early sixteenth century. All official acts were drafted in French. However, the language used in Alsace-Lorraine and Polynesia had a special status. In some regions, there was a renewed interest in local languages, such as Breton and the langue d'oc, which could be taught in schools in the same way as foreign languages. In criminal cases, courts were obliged to provide an interpreter if the defendant did not speak or understand French, and that also applied in the case of a Breton who maintained that he did not speak French. Regarding the régime of community property, under the French régime wives had equal rights with regard to the management and disposal of all property acquired during the marriage. Either spouse could dispose of property individually except real estate and other major items which could affect the family as a whole. In the latter cases, spouses would have to take a joint decision.

Right to life

379. With reference to that issue, members of the Committee wished to receive additional information on article 6 of the Covenant to the extent made necessary by the Committee's general comments Nos. 6 (16) and 14 (23) and on the level of child mortality in metropolitan France and in the overseas departments and territories. They also asked what the regulations were governing the use of firearms by the police and gendarmes and whether there were differences between normal police regulations and those applying to anti-terrorist activities.

380. In his reply, the representative stated that France had the right and the duty to defend itself in accordance with Article 51 of the Charter of the United Nations. France considered its nuclear arsenal as weapons of deterrence, the aim being to avert a possible attack. Since 1945, it had been responsible for only 9 per cent of the total number of nuclear tests performed and it submitted an annual report to the United Nations Scientific Committee on the Effects of Atomic Radiation. The level of ambient radioactivity in the area of Mururoa was lower than in the rest of the world. France was ready to contribute to efforts to reduce the arms race, but that would take time. Calls for ending nuclear tests would only be significant when disarmament had been achieved.

381. Regarding child mortality, the representative pointed out that the differences in rates in metropolitan France and in the overseas departments and territories could be explained by the fact

that overseas departments and territories were, to a large extent, rural communities in parts of the world more often affected by endemic diseases. The geographical nature of those areas, particularly the large number of islands they comprised, also made it more difficult to maintain effective health facilities. Nevertheless, it was hoped that it would soon be possible to achieve a greater degree of uniformity.

382. Regarding the use of weapons by security forces, the representative explained that force could only be used in exceptional circumstances and individual policemen were entitled to use force only as a means of self-defence, subject to strict conditions. Gendarmes were permitted to use force when warnings or police commands had been ignored and no other means of arresting or immobilizing the offender were available and he clearly intended to escape. If the use of force was not in accordance with the law, those responsible could be tried for murder or manslaughter. In 1986, 12 persons had died as a result of the use of firearms by policemen and six had died in 1987. There was no special provision regulating the use of weapons by police in application of anti-terrorist laws.

Liberty and security of person

383. With reference to that issue, members of the Committee wished to have information about law and practice concerning preventive detention in penal institutions and in institutions other than prisons or for reasons unconnected with the commission of a crime. They also asked whether resort to the "immediate appearance" procedure had actually produced the expected benefits and whether the application of that procedure had created any difficulties with respect to the protection of the right to defence. It was also asked what the respective maximum period of detention in custody and of pre-trial detention was, how soon after arrest a detainee's family was informed and when the detainee could contact a lawyer, under what circumstances an accused person might be kept in prison alone, day and night, and whether there was a form of incommunicado detention. Referring to the case of two persons who had been detained in one of the overseas territories for periods of up to 790 days, one member wished to know whether such persons, if convicted, would be entitled to have the period already served taken into account in their sentences.

384. In his reply, the representative of the State party said that provisional detention was a measure authorized by a judicial authority, was always implemented in detention centres and only applied to serious offences. A special régime was accorded to minors, who were supposed to be housed separately from the adult population or, failing that, in a special prison location. A study undertaken in 1982-1983 had shown, however, that 72 of 109 detention centres did not make special provisions for minors. Under the Government's plan for modernization of penal institutions, it was envisaged that that situation would be corrected. Accused individuals who were separated from convicted individuals had specific rights concerning communication, correspondence and conditions of detention. Overcrowding in prisons was a serious problem, since only 34,100 places were available for 49,330 detainees as of January 1988. Provisional detention in institutions other than detention centres did not occur, although in special circumstances an individual could be transferred to a medical or psychiatric facility.

385. Responding to other questions raised by members of the Committee, the representative said that "immediate appearance" and other rapid procedures had produced positive results while continuing to guarantee the rights of the defendant. Detention in custody could not exceed 48 hours.

However, in cases involving drug trafficking or terrorism, two further prolongations were possible, bringing the total amount of time to four days. Regarding provisional detention, in cases involving minor offences the maximum period of provisional detention was normally four months. Provisional detention for minors under 16 years of age was limited to 10 days. Under the law, there was no theoretical limit to provisional detention for serious crimes. However, a detainee could request the examining magistrate to release him. If the decision was in favour of continued detention, the accused had the right to appeal to a higher court which, under a 1987 law that would enter into force on 1 December 1988, was obliged to decide on the matter within 15 days. The detainee usually requested that his family should be informed. Once the 24-hour period of custody had expired and the case came before a judge, the accused had the right to contact a lawyer and to consult him freely. Long periods of detention were deducted from an eventual sentence. The provisions for keeping accused persons in prison alone in order to prevent them from being with persons who might harm them should not be confused with solitary confinement. The latter was regulated by other rules that were applicable to specific cases.

Right to a fair trial

386. In connection with that issue, members of the Committee wished to know whether article 115 of the Code of Criminal Procedure, which provided for the formality of "first appearance", except in cases of emergency, was compatible with article 14, paragraph 3 (b), of the Covenant and whether provisions of French legislation relating to the bearing of costs by the accused were compatible with article 14 of the Covenant. Additional information on article 14 of the Covenant, pursuant to the Committee's general comment No. 13 (21) was also sought.

387. In his reply, the representative explained that article 115 of the Code of Criminal Procedure, which allowed examining magistrates to question the accused immediately, was only applicable in cases of emergency. The examining magistrate and the Procureur both had to be present simultaneously at the scene of a flagrant crime in order for the provision to be applied. Article 281 of the Code of Criminal Procedure provided that the cost of summoning witnesses, when they were summoned at the request of the accused, was borne by him. In practice, this provision was applied when witnesses who had no knowledge of a case were asked by the accused to be summoned as witnesses before the Assize Court. A decree providing that the State had to bear the costs of an interpreter for a defendant unable to pay for an interpreter himself was issued on 4 August 1987.

Freedom of movement and expulsion of aliens

388. With regard to that issue, members of the Committee wished to receive additional information about the special regulations governing the movement of aliens within French territory. Clarification was sought on the circumstances which might lead the Ministry of the Interior to order special surveillance measures in respect of aliens and on the circumstances under which administrative authorities might refuse to issue a passport. It was also asked whether employment with or assistance to an international organization of which France was not a member had ever led to a declaration of loss of French nationality, whether an alien who was facing expulsion under the emergency procedure had an effective opportunity to request a stay of proceedings prior to his expulsion, whether an appeal against an expulsion order had suspensive effect and what procedural guarantees ensured that a person was not expelled to a jurisdiction where he might be subjected to

torture. In the light of the Committee's general comment No. 15 (27), supplementary information was also requested on the position of aliens in France.

389. One member wished to receive clarification on the differences between the normal and the emergency expulsion procedure. It was asked, in particular, whether the emergency procedure was not in fact becoming the norm, which of the two procedures had been used in the expulsion in 1987 of a group of aliens to Gabon, whether, since group expulsions were not compatible with article 13 of the Covenant, the cases had been reviewed individually, and whether it had been possible to appeal against the decision in a way that made the remedy under article 13 an effective one. Additional information was also sought on a new law which had allowed the expulsion in 1986 of 101 Malian immigrants and, on the expulsion of Basque separatists from France to Spain.

390. In his reply, the representative stated that aliens had an absolute right to live anywhere within French territory, but had to inform the authorities within one week of any change of residence. In certain cases, an alien could be required to restrict his movement to a certain number of departments. Nationals and aliens could be barred from certain portions of the territory on the same judicial basis. In addition, aliens were subject to an administrative measure restricting their movements to certain areas if the Government could show that their presence in a given location could be dangerous. Special surveillance in respect of aliens was ordered only in exceptional circumstances and was subject to review by a judge.

391. The power of the administrative authority to revoke passports had been limited by separate decisions involving the Court of Cassation in 1984, the Jurisdictional conflict Court in 1986 and the Council of State in 1987. The Court of Cassation had ruled that the Government could not prevent a person from leaving the national territory by refusing to issue a passport or by revoking it, even if the person was a tax evader. The Council of State had ruled that the Government could not, on the basis of an individual's past record and without a court order, prevent him from leaving the national territory. Therefore, freedom to come and go could only be restricted in cases involving either convictions for procuring or trafficking in drugs or threats to national security or public safety.

392. Responding to other questions, the representative said that the employment of a French national in an international organization of which France was not a member had never led to the loss of French nationality. An appeal against an expulsion order did not have suspensive effect; such a measure was suspended only if an administrative court granted a stay of proceedings at the request of the person involved or his attorney - requests that could be made under either the normal or the emergency procedure. In no case could a person be expelled to a country where his life and freedom would be at risk. An alien was free to indicate that he did not wish to be expelled to his country of origin and could not be expelled to a third State without his consent. With regard to the Basque separatists, Spain being a democratic country in which human rights were protected, persons expelled there were in no danger. Aliens enjoyed the same rights as French nationals and measures limiting freedom of expression could only be applied when the exercise of that right posed a threat to public order.

393. The expulsions to Gabon had involved persons belonging to two revolutionary movements. As for the Malians, some of them lacked visas, others had re-entered the country illegally after having been convicted of crimes, and still others were subject to expulsion for other reasons. It had

been necessary, for technical reasons, to charter an aircraft and that was why they had all been transported out of France at the same time.

Right to privacy

394. With regard to that issue, members of the Committee wished to have clarification of the basis for determining whether the establishment of a computer file on an individual was submitted for approval or merely brought to the notice of the National Committee on Computer Science and Freedom. In that connection, it was asked whether the National Committee had ever refused to establish a file and, if so, on what grounds and whether there had been any complaints from individuals regarding their personal files and what the outcome of such cases had been. Additional information was also sought as to the meaning of the terms "family" and "home" in the context of the protection of private life, and on the law and practice relating to telephone tapping, the use of listening devices and "bugging". In particular, it was asked whether there was any form of control of official telephone tapping for reasons of national security, public order or similar situations and what listening devices could be used in police investigations.

395. In replying to the questions posed by members of the Committee, the representative of the State party explained that under the Act of 6 January 1978 the establishment of a computer file on individuals was based on a number of distinctions, such as whether a file posed a real danger to privacy and whether it had been compiled by a public or a private person. Computer files containing personal information established for the State, a public institution, a territorial subdivision or a private judicial person managing a public service were submitted for approval to the National Committee, while files established by other persons were merely brought to the Committee's notice. The Committee had refused 20 out of 3,059 requests to establish a file. In certain cases, the Committee's approval had also been conditional on compliance with certain prerequisites and it had made numerous recommendations for preventing abuses. It had also become customary for individuals to consult their files and, if they encountered any obstacles to their right of access, the Committee was empowered to enjoin public or private persons to provide the information requested. In some cases, problems had to be referred to the judiciary by interested parties or the Committee itself.

396. The notion of private life was not necessarily limited to the definitions of "home" and family". It sufficed for a judge to determine whether a violation of an individual's emotional life, basic aspects of his personality or his identity constituted invasion of privacy. Private life was protected whenever it was threatened irrespective of the place where the attack was committed or of the persons involved. Telephone tapping by private individuals was punishable by two months' to one year's imprisonment. Provisions of the Penal Code had stipulated the Council of State would draw up a list of the devices developed for carrying out operations that interfered with private life, but rapid technological developments had made it impossible to draft a regulatory text. Judicial tapping was not expressly provided for under the law, but was based on the Code of Criminal Procedure, which permitted the examining magistrate to take any action to obtain information which he deemed useful to establish the facts. The legality of telephone tapping by the judiciary had been upheld by the Court of Cassation. Tapping for the purpose of criminal investigations could only be ordered by an examining magistrate and had to be carried out under his supervision. If the Court of Cassation considered that such telephone tapping had been carried out in violation of the right of the

defence, the tapping would be terminated and the information withdrawn from the file. As to other sophisticated devices which made it possible to intercept private conversations, the representative pointed out that, since French criminal procedure was essentially a written procedure, evidence that could not be readily transmitted in writing and put into a file could not be submitted for free discussion by the parties and could therefore not serve as grounds for bringing charges against an accused person.

Freedom of religion and expression, prohibition of propaganda for was and advocacy of racial and religious hatred

397. With reference to that issue, members of the Committee wished to have information on new legislation concerning the ownership of the media and its impact of freedom of expression. In that connection, it was asked whether, in view of the legalization of private radio and television broadcasting, France was giving consideration to withdrawing its reservations to article 19 of the Covenant. Members also wished to know the legal basis for France's declaration that articles 19, 21 and 22 of the Covenant would be implemented in accordance with articles 10, 11 and 16 of the European Convention on Human Rights, whether service by conscientious objectors under the Act of 27 June 1983 conferred the same rights as regular military service and whether the Act of 28 July l894 was still in effect and, if so, what was meant by "anarchist propaganda" in the modern context.

398. In addition, members asked what the basic philosophy behind French legislation governing freedom of expression was, why certain books had been banned by the Ministry of the Interior as being harmful to France's relations with other countries, whether freedom of expression was curtailed during election campaigns and whether elections had ever been invalidated on the ground of abuse of freedom of expression, what the situation had been during the referendum in New Caledonia in that respect and whether the results of the referendum could have been challenged before the courts on that ground, whether the National Committee on Communication and Freedoms (CNCL) had jurisdiction in overseas territories, whether operating licences had been obtained by radio stations in New Caledonia and whether journalists were protected from the owners of powerful media. It was also asked whether the requirement that officials be reserved with regard to the expression of their opinions was compatible with article 19, paragraph 2, of the Covenant, and information was requested on the regulations governing the conduct of senior officials and career members of the armed forces and on the extent to which the French public was informed about developments within the public administration.

399. In his reply, the representative of the State party drew attention to the fact that the legal régime governing the media had been completely revised in 1986 with the introduction of new laws designed to prevent concentration of ownership liable to affect freedom of expression. The 1986 laws were based on four major principles with regard to ownership: transparency, guarantees with regard to the publisher, restriction of foreign investment in existing companies and prevention of monopolies. In the area of television, no individual company could own more than 25 per cent of a national channel and there were strict rules with regard to the ownership of more than one channel. It was forbidden to set up two national channels or two regional channels in the same region, and excessive concentration of ownership involving more than one type of medium was also prohibited. Since the principle of a broadcasting monopoly was no longer upheld, France had withdrawn its reservation to article 19 of the Covenant.

400. Turning to other questions, the representative explained that service by conscientious objectors conferred the same rights as normal military service. He also stated that, as a country bound by the provisions of the Covenant and the European Convention on Human Rights, France was eager to ensure that the two were legally consistent and that their provisions were applied uniformly. In particular, France was concerned that article 21 of the Covenant did not, as the European Convention did, provide for the possibility of restricting the exercise of the right of assembly by the armed forces, the police and public officials. In the interest of public order, France wished to retain that possibility. The Act of 28 July 1894 had not been applied in practice for over 50 years and the term "anarchist propaganda" had to do with the disruption of social order by non-constitutional means. The enforcement of freedom of expression varied according to the sector. The exercise of some forms of expression, such as the theatre, could be limited by economic problems. In connection with morality and pornography, a system of rating was applied to films. The Act of 29 July 1881 on freedom of the press allowed the Minister of the Interior to ban foreign publications, but for many years that prerogative had been exercised only in cases of pornography, racist propaganda and publications prejudicial to France's foreign relations. Consideration was being given to modifying the legislation.

401. There was concern in France over the fact that the publication of opinion polls might influence election results, and consideration was being given to further legislation on this subject. All referendums were preceded by political campaigns during which equality of access to the media was ensured by law. The Council of State and the Constitutional Council could declare elections invalid if there had been irregularities. The National Committee on Communication and Freedoms (CNCL) was the competent regulatory body in France's overseas territories as well as in metropolitan France. As to the freedom of expression of public officials, the preamble to the Constitution of 1946 as well as Act No. 83-634 of 1983 on the rights and obligations of public officials ensured that no official would suffer in his work because of his opinions, belief or ethnic origin. The obligation to be reserved in the expression of opinions had been carefully defined in French judicial precedents. Public officials could belong to any political party, stand for elected office and be seconded to serve if elected, without losing their civil service status. With regard to the dissemination of public information, the Committee on Public Access to Documentation had been established to determine what could be printed by the press. Within each Ministry, the Minister issued instructions on what should or should not be publicized.

Freedom of assembly and association

402. With regard to that issue, members of the Committee wished to receive additional information on the law and practice relating to demonstrations, including demonstrations by students and unions as well as the practice under article 7 of Act No. 86-1020 of 9 September 1986 relating to action to combat terrorism and attacks on State security.

403. In his reply, the representative pointed out that the basic Act of 1881 guaranteeing freedom of assembly had been developed by a decree-law of 23 October 1935 which covered all public demonstrations. That law required that mayors or prefects should be given advance notice of demonstrations by the organizers. Those authorities then either issued a permit or banned the meeting in the interest of public order. Although the law prescribed penalties for unannounced

demonstrations, they had rarely been applied. Article 7 of the Act of 9 September 1986 was an administrative measure to be taken at the highest level of Government - by decree of the President of the Republic in the Council of Ministers. Two groups had been dissolved under article 7: an Iranian terrorist group on 26 June 1987 and a Basque separatist group on 27 July 1987.

Protection of the family and children

404. In connection with that issue, members of the Committee wished to know whether the legislation concerning the establishment of joint parental authority for children of divorced parents had been adopted by Parliament.

405. In his reply, the representative of the State party said that the Act of 27 July 1987, providing for parental authority over children of divorced parents, which had just been adopted, greatly simplified the legal proceedings involved and made joint parental authority the norm, although a judge could rule otherwise if it was in the child's interest. The Act also provided that the child's own wishes should be heard.

Right to participate in the conduct of public affairs

406. With regard to that issue, members of the Committee wished to have additional information on the effect of the Act of 27 June 1983, amending the National Service Code with regard to eligibility for election to public office or appointment to the civil service.

407. In reply, the representative stated that service as a conscientious objector had no effect on eligibility for public office or the civil service.

Right of minorities

408. With reference to that issue, members of the Committee inquired whether the Government had taken any measures to assist in maintaining native cultural traditions or languages in various regions of the Republic where such traditions existed.

409. In his reply, the representative of the State party pointed out that the Government's concept of State neutrality applied to the field of culture, where State intervention was generally considered unlawful and even dangerous. The Government encouraged the development of regional cultural associations and activity centres and regional languages were taught in secondary education on an optional basis. Under the Constitution, in New Caledonia, Wallis and Futuna and Mayotte, civil status, marriage, adoption, affiliation, inheritance and ownership were governed by the Customary law of the territories concerned. In New Caledonia, the Act of 22 January 1988, on the status of the territory, provided for the establishment of a customary assembly. The Act of 6 September 1984 on the status of French Polynesia recognized the cultural identity of the territory and that principle was protected under the Polynesian Constitution which provided for the teaching of the Tahitian language as part of the normal curriculum of primary schools. In general, the overseas community itself laid down the policies for developing their cultural traditions and the State provided financial support for activities carried out within that framework.

General observations

410. Members of the Committee expressed appreciation and satisfaction to the delegation of the State party for its co-operation and competence in responding to the Committee's questions. However, members stated that more detailed information, perhaps in a separate report, should be provided on the situation in the overseas departments and territories with respect to all the Articles of the Covenant, not merely article 26. They also considered that it would be potentially useful for the authorities in those departments and territories to participate in the preparation of subsequent reports. Members indicated that all of their concerns had not been fully allayed. Some referred in that regard to the right to liberty and security of person, while others referred to the right to privacy and still others to the rights of minorities. They also expressed the wish that public awareness of the rights guaranteed under the Covenant, especially in the overseas departments and territories, should be increased.

411. The representative of the State party said that the dialogue with the Committee had been a very constructive exercise and that he would transmit the observations and recommendations made by the Committee to his Government.

412. In concluding consideration of the second periodic report of France, the Chairman also thanked the delegation for its spirit of co-operation and expressed satisfaction at the very constructive dialogue that had taken place.

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388. The Committee examined the third periodic report of France (CCPR/C/76/Add.7) at its 1597th to 1600th meetings (sixtieth session), held on 20 and 21 July 1997, and at its 1613th meeting, on 31 July 1997, adopted the following observations.

1. Introduction

389. The Committee expresses its appreciation to the State party for its elaborate and thorough report, which has been prepared in accordance with the Committee's guidelines, and for engaging in a constructive dialogue with the Committee through a highly qualified delegation. The Committee regrets, however, that the third periodic report, which was due in 1992, was submitted only after considerable delay and that therefore the Committee did not have the opportunity to re-establish its dialogue with France for nearly ten years. The Committee notes with satisfaction that the information provided in the report, and that given orally by the delegation in reply to both written and oral questions, enabled the Committee to obtain a good understanding of the actual compliance by France with the obligations undertaken under the Covenant. The Committee appreciates the considerable amount of written information provided by the Government, after the discussion, in answer to issues raised by members of the Committee.

2. Factors and difficulties affecting the implementation of the Covenant

390. The Committee finds that reservations and declarations made by France when ratifying the Covenant and consequent non-reporting on many issues related to such reservations and declarations, which may bear directly or indirectly on the enjoyment of Covenant rights, make it difficult to assess fully and comprehensively the situation in regard to human rights in France.

3. Positive aspects

391. The Committee notes with satisfaction the institution and functioning of the Consultative Commission on Human Rights, which includes participation by non-governmental organizations and serves as an independent consultative body.

392. The Committee welcomes the recent measures taken by France to promote equality of men and women in the context of article 3 of the Covenant. It notes the adoption of the Act of 22 November 1992, which aims to prevent and combat sexual harassment by an employer. The Committee appreciates the rapid rise in the proportion of women in public service posts.

393. The Committee welcomes the announcement made by the French delegation during the consideration of the report that the practice of deportation of groups of illegal immigrants by chartered flights to their home countries, bearing characteristics of collective expulsion, has been stopped since 1 June 1997.

394. The Committee notes that article 55 of the Constitution of France gives direct applicability primacy to the Covenant in relation to domestic law. The Committee welcomes the extension of this

principle to administrative jurisdictions by the decision of the Conseil d'Etat dated 20 October 1989.

395. The Committee notes with appreciation that a referendum, in compliance with article 1 of the Covenant, is scheduled to be held in the Overseas Territory of New Caledonia in 1998 for the people of that territory to decide on their future political status.

396. The Committee takes note of the establishment of a liaison committee in the framework of the United Nations Decade for Human Rights Education.

4. Subjects of concern and the Committee's recommendations

397. The Committee is concerned that no specific mechanism exists in France to ensure that the views expressed by the Committee on individual communications under the Optional Protocol are complied with. The Committee suggests that a mechanism be established for that purpose.

398. The Committee is concerned that in some overseas territories, such as Mayotte and New Caledonia, personal status is determined by religious or customary law, which might in some situations lead to discriminatory attitudes and decisions, especially against women. The Committee recommends that the State party undertake a comprehensive study to review the compatibility of the personal status of women in Mayotte, New Caledonia and other overseas territories with the provisions of the Covenant, and particularly article 3, and, if needed, take appropriate measures to eliminate all existing inequalities.

399. The Committee is concerned at the prevailing malaise in the magistracy and the legal profession concerning the independence of the judiciary and of the prosecutors. It welcomes the information provided by the delegation to the effect that a commission has recently reported and made recommendations on this issue.

400. The Committee is constrained to observe that the Amnesty Acts of November 1988 and January 1990 for New Caledonia are incompatible with the obligation of France to investigate alleged violations of human rights.

401. While acknowledging the efforts undertaken and the successful results obtained by the State party during the period under review in combating discrimination against women, the Committee is concerned at the low proportion of appointments of women as senior officials in public administration at both local and central levels. The Committee urges the State party to pursue active measures for the realization of women's rights, especially by taking measures to achieve their equal representation at all levels of public administration and to prevent discrimination against workers with family responsibilities.

402. The Committee is concerned at existing procedures of investigation against the police for human rights abuses. It is also concerned at the failure or inertia of prosecutors in applying the law to investigating human rights violations where law enforcement officers are concerned and at the delays and unreasonably lengthy proceedings in investigation and prosecution of alleged human rights violations involving law enforcement officers. The Committee recommends that the State party take appropriate measures fully to guarantee that all investigations and prosecutions are

undertaken in full compliance with the provisions of article 2, paragraph 3, and articles 9 and 14 of the Covenant.

403. The Committee is seriously concerned at the number and serious nature of the allegations it has received of ill-treatment by law enforcement officials of detainees and other persons who come into abrasive contact with them, including unnecessary use of firearms resulting in a number of deaths, the risk of such ill-treatment being much greater in the case of foreigners and immigrants. It is also concerned at the reported increase in the rate of suicides in detention centres. The Committee is concerned that in most cases, there is little, if any, investigation of complaints of such ill-treatment by the internal administration of the police and the Gendarmerie nationale, resulting in virtual impunity. It is concerned that no independent mechanism exists to receive individual complaints from detainees. The Committee recommends that the State party take appropriate measures to remedy this state of affairs and, inter alia, reduce the level of use of solitary confinement. It also recommends that the State party establish an independent mechanism to monitor detention centres and to receive and deal with individual complaints of ill-treatment by law enforcement officials. The Committee urges the State party to introduce in the training of law enforcement officials at all levels a comprehensive course in human rights along the lines contained in the United Nations Training Manual for Law Enforcement Officers.

404. The Committee is concerned about the frequent resort to and length of pre-trial detention. It is a matter of particular concern to the Committee that the length of pre-trial detention should be high in case of juveniles, which would constitute violation of article 9, paragraph 3, and 14, paragraphs 2 and 3 (c), of the Covenant. The Committee is also concerned that the right to legal counsel may not be available to a juvenile in certain proceedings. The Committee recommends that measures be taken to reduce the length of pre-trial detention and ensure legal aid to juveniles in legal proceedings.

405. The Committee is concerned that the powers of the Gendarmerie nationale, which is basically a military corps, when operating in a civilian public order situation, are wider than those of the police. The Committee recommends that the State party consider repealing or modifying the Decree dated 22 July 1943 so as to reduce the powers of the Gendarmerie when it comes to the use of firearms in public order situations, with a view to harmonizing them with those of the police.

406. The Committee is concerned that in order to exercise the right to conscientious objection to military service, which is a part of freedom of conscience under article 18 of the Covenant, the application must be made in advance of the conscript's incorporation into military service and that the right cannot be exercised thereafter. Moreover, the Committee notes that the length of alternative service is twice as long as military service, which may raise issues of compatibility with article 18 of the Covenant.

407. The Committee is concerned that the treatment given by the State party to asylum seekers does not appear to comply with the provisions of the Covenant. The Committee is also concerned at the reported instances of asylum seekers not being allowed to disembark from ships at French ports, without giving them an opportunity to assert their individual claims, since such practices raise issues of compatibility with article 12, paragraph 2, of the Covenant. However, the Committee welcomes the fact that France is considering the abolition of such practices.

408. The Committee is particularly concerned about the restrictive definition given to the concept of "persecution" of refugees by the French authorities as it does not take into account possible persecution proceedings from non-State actors. The Committee recommends that the State party adopt a wider interpretation of "persecution" to include non-State actors.

409. The Committee is concerned that the Office of the United Nations High Commissioner for Refugees (UNHCR) has no right of access to the various places where persons applying for asylum or awaiting deportation are kept. The Committee recommends that UNHCR should be able to visit those places whenever it sees fit without any obstruction or hindrance.

410. The Committee is concerned about the continued application of the anti-terrorist laws of 2 September 1986 and 16 December 1992, which provide for a centralized court with prosecutors having special powers of arrest, search and prolonged detention in police custody for up to 4 days (twice the normal length) and where an accused person does not have the same rights in the determination of guilt as in the ordinary courts. The Committee is also concerned that the accused has no right to contact a lawyer during the initial period of 72 hours of his detention in police custody and that no appeal is provided for against the decisions of the Special Court. The Committee regrets that the State party did not provide information as to which authority in practice decides whether a case is to be handled under ordinary criminal law or under the anti-terrorist laws and what role is played by the police in that decision. The Committee has now been given information regarding statistics on concluded trials under the anti-terrorist laws, but it is informed that many hundreds of people are under detention, investigation and trial on suspicion of committing acts of terrorism or related offences. In the circumstances, the Committee would recommend that anti-terrorist laws, which appear to be necessary to combat terrorism, be brought fully into conformity with the requirements of articles 9 and 14 of the Covenant.

411. The Committee takes note of the declaration made by France concerning the prohibition, under article 27 of the Covenant, to deny ethnic, religious or linguistic minorities the right, in community with members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language. The Committee has taken note of the avowed commitment of France to respect and ensure to all individuals equal rights, irrespective of their origin. The Committee is, however, unable to agree that France is a country in which there are no ethnic, religious or linguistic minorities. The Committee wishes to recall in this respect that the mere fact that equal rights are granted to all individuals and all individuals are equal before the law does not exclude the existence in fact of minorities in a country and their entitlement to the enjoyment of their culture, the practice of their religion or the use of their language in community with other members of their group.

412. The Committee is concerned that the Civil Code establishes a different minimum age for marriage for girls (15) and for boys (18) and that it sets such a low age for girls. It is also concerned that the Civil Code specifies that only the father can make the declaration of birth of his child. Furthermore, the Committee is concerned that in some situations children born out of wedlock might not have their right to succession fully recognized. The Committee recommends that the minimum age of marriage for girls be raised. It also suggests that the State party amend its Civil Code to allow mothers to make the declaration of birth of her child. Further, the Committee recommends that all children born out of wedlock be given the same succession rights as children born in wedlock.

413. The Committee is concerned at the absence of an independent complaint mechanism, such as a national human rights commission, for the protection and enforcement of human rights. The Committee strongly recommends that an institutional mechanism be established by the Government for receiving complaints of violations of human rights, including all forms of discrimination, with power to undertake conciliation as well as determination of such complaints and granting of redress.

414. The Committee recommends that the State party submit its next report in time and that the report include a comprehensive assessment regarding the implementation of provisions of the Covenant, including in particular articles 9 and 14, and particulars of the cultural, religious and linguistic rights of ethnic groups and inhabitants of the Overseas territories. The Committee would welcome reconsideration by France of the reservations and declarations made by it.

415. The Committee draws to the attention of the Government of France the provisions of paragraph 6 (a) of the Guidelines Regarding the Form and Contents of Periodic Reports from States parties, and requests that, accordingly, its next periodic report, due on 31 December 2000, should contain material which responds to all the present Concluding Observations. The Committee further requests that the present concluding observations be widely disseminated among the public at large in all parts of France.