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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic report

FRANCE* **

[13 February 2007]

* For the third periodic report submitted by the Government of France, see CCPR/C/76/Add.7; for the consideration of this report by the Committee, see CCPR/C/SR.1597 to SR.1600, and CCPR/C/79/Add.80 for the Committee's concluding observations. The information submitted by France in conformity with the guidelines on part I of the reports of States parties is contained in core document HRI/CORE/1/Add.17/Rev.1.

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Introduction

1. France asks the Committee to forgive it for the late submission of its fourth periodic report on the implementation of the International Covenant on Civil and Political Rights.

2. This report was prepared in conjunction with civil society, through the National Consultative Commission for Human Rights, which is comprised inter alia of non-governmental organizations, human rights associations and trade union organizations. Having had the opportunity to examine the Government's draft report, the Commission presented its observations to the Government's representatives both orally, following a working meeting, and in writing. The present report takes account to the extent possible of the Commission's recommendations.

3. In its three previous reports[1] France outlined the mechanisms by which the rights provided for in the Covenant are guaranteed. In accordance with the guidelines on reporting adopted by the Committee on 26 February 2001 (CCPR/C/66/GUI/Rev.2), the Government has focused in this fourth report on responding to the recommendations that the Committee, after considering the third periodic report (CCPR/C/79/Add.80), set out in its concluding observations of 4 August 1997. These recommendations cover key areas and raise questions of great relevance to current civil and political rights issues, such as equal enjoyment of those rights by men and women (see the recommendations in paragraphs 14 and 25), guarantees relating to foreigners (paras. 20 and 22), the proper administration of justice (paras. 15, 16, 17, 18 and 23), and the establishment of an independent mechanism to protect human rights (para. 26). The replies to these questions will illustrate the progress that has been made in these areas.

4. The Government is well aware that, because of the time that has elapsed between the Committee's observations and recommendations and the submission of this report, some modifications and additional information may be required. It will provide updated information on matters falling within the Committee's sphere of competence in response to the questions that the Committee is bound to raise prior to the oral presentation of the report.

I. OBSERVATION CONTAINED IN PARAGRAPH 3 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

A. Considerations relating to international law

5. The reservation that was entered concerning the compatibility of the interpretation of the Covenant with the purposes and principles of the United Nations was intended to ensure consistency within the United Nations system. The declaration concerning compatibility between the interpretation of articles 19, 21 and 22 of the Covenant and that of articles 10, 11 and 26 of the European Convention for the Protection of Human Rights [and Fundamental Freedoms] was intended to preserve the consistency of international human rights mechanisms and hence make

[1] See, for example, CCPR/C/46/Add.2 and CCPR/C/76/Add.7.

them more effective. The purpose of the declaration concerning article 20, paragraph 1, of the Covenant and the definition of the word "war" is to ensure that such a situation will be dealt with in a spirit consistent with international law.

B. Constitutional considerations

6. Considerations relating to the Constitution underlie the reservation that France entered to article 4, paragraph 1, of the Covenant, and its declaration concerning article 27.

7. Article 16 of the Constitution grants the President of the Republic, in the event of an institutional crisis threatening the Republic, exceptional powers that cannot be circumscribed a priori by a treaty provision. This highly exceptional procedure is subject to prior consultation with the Constitutional Council and meets the requirements of article 4 of the Covenant.

8. Article 1 of the Constitution (formerly art. 2) states that the French Republic is indivisible and ensures "the equality of all citizens before the law, without distinction as to origin, race or religion". Thus, the French people are one. Persons belonging to a minority have the same rights as any other citizens but do not have specific collective rights. The purpose of France's declaration concerning article 27 of the Covenant is to underscore this French concept, which is consistent with article 27 and allows persons from minorities to have their own cultural life, to profess and practise their own religion outside the institutions of the Republic (which is secular) and to use their own language, as called for in the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and as explained below in the response to the recommendation in paragraph 27 of the Committee's concluding observations.

9. The reservation to articles 9 and 14 of the Covenant is linked to the specific nature of the defence forces' functions.

C. Declarations that France is considering for revision

10. The French authorities are examining the conditions under which they might modify the Government's declaration concerning article 13 of the Covenant.

11. The declaration concerning article 14, paragraph 5, of the Covenant may be curtailed because the right to appeal decisions rendered by the Court of Assizes in criminal cases is now established under the Act of 15 June 2000 and codified in articles 380-1 et seq. of the Code of Penal Procedure.

12. The French declaration concerning article 14, paragraph 5, may also be amended to reflect relevant legislative changes.

II. RECOMMENDATION IN PARAGRAPH 10 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

13. There is now an ad hoc mechanism within the Ministry of Foreign Affairs comprising the Department of the United Nations and International Organizations, the Department of Judicial Affairs and, when necessary, the technical ministries concerned. It should be noted that every

time an individual communication submitted against France has resulted in a finding of a violation, the Government has provided all relevant follow-up information to the Committee, which has always been pleased with the Committee's cooperation (see the Committee's annual reports to the General Assembly, supplement 40, vol. II). The Government also wishes to recall that the establishment of a specific mechanism to follow up on the Committee's findings on individual communications does not constitute an obligation under the Covenant.

III. RECOMMENDATION IN PARAGRAPH 11 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

14. In following up on the Committee's observation, the French authorities (Ministry of Overseas France) undertook a study of the issue, from which the following points emerged.

A. Applicability in principle of international legal provisions on discrimination against women in all the overseas departments (DOM), regions (ROM) and territorial communities (COM)

15. By way of introduction, the Government recalls that the nation's constitutional and legal system applies to all the national territory, including overseas France. The principle of secularism is enshrined in the Constitution and applies throughout France. The personal civil status of women, wherever they reside in France, must be consistent with the principle of secularism.

16. Since France did not enter a reservation regarding the territorial applicability of the Covenant, the Covenant applies to the entire territory of the Republic, including the overseas departments, regions and territorial communities. Hence the Covenant as a whole is applicable to all the French territories outside metropolitan France.

17. Article 75 of the Constitution of the Fifth Republic states that "citizens of the Republic who do not have ordinary civil status, as referred to in article 34, shall retain their personal status so long as they have not renounced it". This constitutional recognition of personal status has been written into the statutes of the overseas territorial communities via provisions that protect customary law civil status:

(a) Article 2 of Act No. 61-814 of 29 July 1961, conferring the status of overseas territory on the islands of Wallis and Futuna, stipulates that persons originating from Wallis and Futuna "who do not have ordinary civil status shall retain their personal status so long as they have not renounced it";

(b) Title I of Organic Law No. 99-209 of 19 March 1999, concerning New Caledonia, is devoted to customary civil status and customary tenure;

(c) Likewise, the subject of Title VI of Act No. 2001-616 of 11 July 2001 is civil status under the local law applicable in Mayotte.

18. The French overseas territorial communities are subject to article 74 of the 1958 Constitution, which sets out the respective powers of local deliberative institutions and the State; New Caledonia, a community *sui generis*, is governed by Title XIII of the Constitution. Measures adopted by the deliberative bodies of the overseas territorial communities, particularly those likely to affect civil status, are thus subject to strict judicial control by the Conseil d'Etat.

B. Action by the legislature to remove exceptional arrangements in the territorial community of Mayotte that are based on local and customary law and are incompatible with the principle of gender equality

19. Two types of personal status coexist in Mayotte and in both overseas territorial communities in the Pacific, namely New Caledonia and Wallis and Futuna: ordinary law status, governed by the Civil Code, and local or customary law status.

20. In its decision No. 2003-474 of 17 July 2003, the Constitutional Council found that "since [the legislature] did not contest the very existence of local law civil status, it could adopt provisions designed to have its rules evolve with a view to rendering them compatible with constitutionally protected rights and principles". Stressing the fact that "those combined provisions [the preamble and articles 1, 72-73 and 75 of the Constitution of the French Republic] mean that citizens of the Republic who retain their personal status enjoy the rights and freedoms associated with French citizenship and are subject to the same obligations [...]" , the Constitutional Council found that the legislature was justified in eliminating exceptional arrangements based on local and customary law, such as repudiation, polygamy and inequality among children with regard to inheritance, together with arrangements likely to conflict with the principle of gender equality.

21. In Mayotte, the Finance Act for Overseas France No. 2003-660 of 21 July 2003 which amended Act No. 2001-616 of 11 July 2001, concerning Mayotte, led to significant progress towards equality of the sexes by instituting monogamy and the dissolution of marriage by divorce, and by prohibiting unilateral repudiation, and discrimination based on sex or legitimacy regarding inheritance rights of children. Article 68 of the Act of 21 July 2003 amended Title VI of the Statutory Act of Mayotte of 11 July 2001, by limiting the scope of local-law personal status to the rules on status and capacity of persons, systems of matrimonial property, inheritance and gifts, excluding any other sector of social life.

22. Act No. 2004-439 of 26 May 2004, on divorce, builds on this reform in two respects:

- The ordinary-law divorce procedure was extended to include divorce between persons with local law civil status;

- In divorce proceedings, the earliest petitioner was granted access to an ordinary court.

23. The far-reaching changes in local law civil status set in motion by these two legislative reforms help improve the situation of women in Mayotte society without calling into question the very existence of this status, which is guaranteed by the Constitution.

24. In matters of labour law, Order No. 2005-44 of 20 January 2005 amended the provisions of the Mayotte labour code in order to prevent all forms of discrimination based on sex, in particular by means of:

(a) Article L.000-4 prohibiting inter alia all forms of discrimination based on sex in regard to job offers, hiring and working relations;

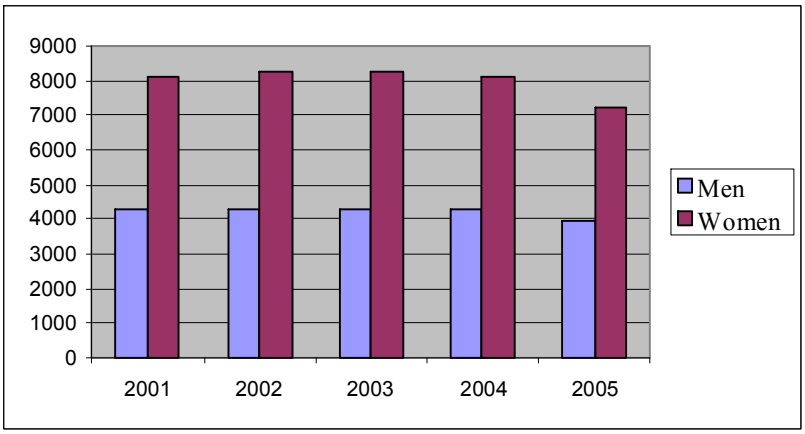
(b) Aligning local law with the laws in force in metropolitan France on night work;

(c) Aligning local law with the laws in force in metropolitan France on staff representative institutions, and in particular those dealing with gender equality;

(d) Realigning local law on collective bargaining to ensure equality between men and women.

Table 1

Job seekers by sex, Mayotte



Source: IEDOM 2005.

25. Under these conditions, the labour law applicable in Mayotte no longer allows for local law personal status or any discriminatory practice.

C. Measures to combat discrimination against women in the French territorial communities of the Pacific

26. In the light of the observation by the Committee on the Elimination of Discrimination against Women, the Government wishes to mention several local initiatives taken in the overseas territorial communities of the Pacific to increase awareness among women living in French Polynesia, New Caledonia, and Wallis and Futuna of, for example, the Convention on the Elimination of All Forms of Discrimination against Women. In French Polynesia, for instance, a workshop-conference on this subject was held by the recently created (March 2005) Ministry of the Family and Women's Affairs of French Polynesia, in cooperation with the Ministry for Parity and Social Solidarity. The reports of the French territorial communities of the Pacific, which were the outcome of the workshop-conference, will be incorporated into the national report to

be submitted to the United Nations before the 2010 Summit. In another initiative, a meeting of women from the region was scheduled for 2006 on the subject of "family values and cultural values for the advancement of women's rights in our Pacific homelands". Lastly, recommendations have been adopted to sensitize mayors to the role of women in politics, and the Convention on the Elimination of All Forms of Discrimination against Women is being translated into the Polynesian language.

27. The dynamism of women in the territorial communities in the Pacific must be stressed. While women remain attached to their traditions, they do not shy away from future challenges in all areas of life. It should nevertheless be noted that in New Caledonia and French Polynesia, because of the way that areas of competence are assigned, policies on women come under the purview of the local authorities.

1. The situation of women in Wallis and Futuna

28. Thus, at the instigation of the Women's Bureau of the Pacific Community, the Women's Territorial Council was established on the Wallis and Futuna Islands in July 1993 to enable women from all sectors to meet and obtain a better grasp of the problems that they have in common and to promote equal rights. The Council's work has focused on economic issues, especially assistance for the development of local crafts.

29. Since October 1995, on the initiative of Caledonian organizations, an association called SOS Violences was established in Wallis and Futuna to help women to combat child sexual abuse.

30. Several new provisions on protection of women have recently been added to the local employment code: better terms of paid leave for pregnant women and those giving birth; a prohibition which precludes the termination of the contract of a salaried employee who is medically certified as pregnant, including during the period of leave to which she is entitled; and the right of a woman employee not to be kept in a job that is medically proven to be beyond her strength or incompatible with her state of health.

2. The situation of women in New Caledonia

31. In New Caledonia, no local law (*loi du pays*) has been adopted on customary civil status. Draft local laws, in conformity with Statutory Act No. 99-209 of 19 March 1999, are referred to the Conseil d'Etat, which ensures that they are consistent with France's international commitments and with constitutional principles and norms.

32. It is worth noting that the laws in force in New Caledonia do not allow any discrimination whatsoever between men and women; on the contrary, those regulating the working conditions of employees who provide services in New Caledonia expressly forbid it (cf. article 90-3 based on article 1 of local law No. 2002-021 of 20 September 2002).

33. The local law of 11 January 2002 on social security in New Caledonia revamped the general social security system by giving wide scope to the maternity insurance scheme so that affiliated members can receive substantial benefits in kind and in cash.

34. The number of marital disputes referred to the courts for adjudication has multiplied in New Caledonia, signalling a marked shift in the condition of Caledonian women. Many associations have mobilized over the past 15 years to encourage Kanak women to free themselves from family pressures. In these circumstances, Caledonian women have chosen to turn their backs on the random process of customary settlement, particularly with regard to acts of marital violence, and to opt instead for the application of criminal law.

35. Christine Salomon[2] draws attention to the fact that the 1990s were a legal and social turning point in the evolution of the situation of Caledonian women, in that "growing numbers of Melanesian women began using legal institutions either as courts of appeal against customary penalties […] or as courts of first instance". She recalls that "a number of Kanak women have also chosen in recent years to renounce their personal status and to opt for ordinary law in order to escape from certain customary rules relating to family law".

36. Mass campaigns have been stepped up to provide backing to Caledonian women who report cases of alcohol abuse, violent male sexual conduct and marital violence. Attention should be drawn to the considerable efforts to defend women's rights made by SOS Violences Sexuelles, an association jointly founded in 1992 by a woman judge and by Marie-Claude Tjibaou, a member of the Economic, Social and Cultural Council. New Caledonia now has several women's rights organizations and associations, such as the Maison Antoinette Kabar, a residential centre located in Poindimié, or the Coeur de Lys association, which brings together women from the municipalities of La Foa, Sarramea, Farino and Moindou. The *Cyberfemmes* collective has an Internet site (http://www.cyberfemmes-nc.com/index.php) containing useful information that Caledonian women can use as a resource in order to defend their rights, develop their talents and facilitate their integration. In 2006, the Assembly of the Southern Province ran a poster campaign using the slogan "Our women are talented".

3. The situation of women in French Polynesia

37. An order of 24 March 1945 put an end to the special status of French Polynesia. The law in force in French Polynesia does not therefore include, a priori, any provision likely to breach the republican principle of gender equality. Nevertheless, several local initiatives have been taken to ensure compliance with this fundamental principle of equality in Polynesian society, where local customs still carry significant weight.

38. The advancement of the rights of women and families is highlighted each year with the celebration of International Women's Day on 8 March. There are over 200 (faith-based or secular) associations formed to defend women's rights and interests by supporting their financial and social independence, and which sometimes focus on the development of craft enterprises. Following the adoption of Act No. 2000-493 of 6 June 2000, which promotes equal access for women and men to elected office and elective positions, an association called TE HINE MANOHITI, established at the instigation of women actively involved in public and political

[2] Research anthropologist at the Ecole des Hautes Etudes en Sciences Sociales (HESS).

life, organized and conducted briefings and training sessions on political participation at both the municipal level and in other representative bodies in the territory. This initiative encouraged many women to participate in public life, resulting in equal representation of women in the Territorial Assembly of French Polynesia, where almost 51 per cent of the members elected in the 2001 elections were women. It is also worth noting that the first and second vice-presidencies of the Assembly of French Polynesia are held by women.

39. With regard to labour law, collective agreements in French Polynesia provide for equal treatment of men and women, in conformity with the locally applicable labour code. In 2005, a local law formalized the arrangements for paying women on maternity leave their full salary, as compared with only 60 per cent in the past.

40. The establishment, in 1990, of a territorial women's and family-rights centre, recognized by the State, was a concrete response to a request from women for information and support in order to defend their rights and interests, whether in civil matters or in regard to complaints about physical violence. This centre is represented throughout the archipelago by local councillors, volunteers and local government employees, who disseminate information on its behalf.

41. Finally, with a view to supporting parents in the fulfilment of their responsibilities, two "parents' schools" will be established each year to help parents to address the emotional, educational or psychological deficiencies which couples transmit to their children. In 2006, the Government of French Polynesia announced the establishment of two parents' schools in Viarao and Papara. In 2007, it is expected to subsidize the establishment of two new units in the Windward Islands and one in Tuamotu.

42. The total credits allocated for crèches in 2006 amounted to 62 million Pacific francs (FCP). For 2007, FCP 68 million will be allocated for continued efforts in favour of a sector that is essential for family harmony and children's development. An inter-ministerial committee for family harmony, tasked with promoting family harmony as a prerequisite for social cohesion, was established in July 2006. An allocation of 80 million is needed in 2007 to finance this awareness-raising body.

43. More generally, with a view to fine-tuning measures designed for the advancement of women in the overseas France, a review will be conducted on the implementation, in those territories, of International Labour Organization (ILO) Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, No. 156 (1981). The ILO Convention concerning Equal Remuneration for Men and Workers for Work of Equal Value, No. 100 (1951) and the ILO Convention concerning Discrimination in Respect of Employment and Occupation, No. 111 (1958) are also applied by the overseas territorial communities.

44. France continues to examine appropriate measures that could serve to strengthen the implementation of the Covenant in the French overseas communities and works with the latter, having due regard to their areas of competence and administrative practices, to devise procedures

to disseminate information to make the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol better known - as evidenced by the consultative meetings and interactive debates held on the subject of the Committee on the Elimination of Discrimination against Women (CEDAW) that have been held in the French territorial communities.

IV. RECOMMENDATION CONTAINED IN PARAGRAPH 12 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

45. This observation by the Committee refers to the report of 10 July 1997 by the Judicial Review Commission chaired by Pierre Truche which deals, inter alia, with the question of the independence of the prosecution service.

46. The Government informs the Committee that this matter is currently the subject of debate within French society, particularly in the light of the forthcoming national elections. The Government will take the opportunity during the oral presentation of the present report to provide the Committee with relevant and updated information.

V. RECOMMENDATION CONTAINED IN PARAGRAPH 13 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

47. The amnesty acts of 9 November 1988 and 10 January 1990 were adopted in the framework of the settlement of the conflict between the different communities in the Caledonian archipelago. To the extent that these two acts both satisfied a need for social appeasement and safeguarded the interests of victims, the European Commission on Human Rights found them not to be in breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular article 2 thereof.

A. The problem of amnesties in periods of transition

48. In its report No. 23 of 8 July 2002 on the draft amnesty law which became Act No. 2002-1062 of 6 August 2002, the Law Commission of the National Assembly highlighted the fact that "an amnesty nullifies the criminal nature of certain offences by prohibiting criminal proceedings or annulling convictions that have been handed down".

49. While it seems of vital importance to ensure that States meet their obligation to bring the perpetrators of human rights violations to book, amnesties are a means of "appeasement" in countries going through a phase of national reconciliation.

50. The development of international criminal courts guarantees that the extremely serious crimes which they sanction do not go unpunished, as these crimes are never covered by amnesty acts.

51. Furthermore, as in the case of New Caledonia, the right of victims to reparation is preserved by the safeguard that allows them to sue for damages in civil proceedings.

B. The use of amnesties as a method of social appeasement and reconciliation in New Caledonia

52. In his letter dated 5 October 1988 addressed to the President of the Republic, Prime Minister Michel Rocard recalled that "building the future together presupposes, in sum, that light has already been shed on the past" and that, in these circumstances, "the draft law [see Act No. 88-1028 of 9 November 1988] provides for compensation for damage to persons and property caused by acts of violence associated with the political events in New Caledonia, together with a wide-ranging amnesty, from which crimes of murder remain excluded, however". Article 133-10 of the Criminal Code provides, in that regard, that "amnesties shall be without prejudice to third parties". This requirement, which implies that a victim's interests cannot be sacrificed through recourse to an amnesty, has been consistently upheld by all French amnesty acts.[3]

53. Article 80 of Act No. 88-1028 of 9 November 1988 introduced an amnesty for "offences committed before 20 August 1988 during the political, social or economic events linked to the determination of the status of New Caledonia or the territory's land tenure system". The Act, however, excludes from the amnesty "those who, by virtue of their direct and personal actions, were the main perpetrators of the crime of murder as defined in article 296 of the Criminal Code". Lastly, Chapter 1, Title VII, of the above-mentioned Act introduced a system of compensation for persons and property. The use of the amnesty mechanism signals the French authorities' determination to "resolve an inextricable situation, whether it be the result of the unrest that seriously jeopardized national unity or any other cause likely to compromise future civil peace".[4]

54. It is worth stressing that the Act was adopted by referendum, indicating that a national consensus had been reached on the need for social appeasement in New Caledonia.

1. The Act of 10 January 1999 in the framework of settlement of the dispute between different communities in the archipelago

55. Act No. 90-33 of 10 January 1990, introducing an amnesty for offences committed in connection with the events in New Caledonia, stated that the amnesty would apply to all offences committed before 20 August 1988 during the political, social or economic events linked to the determination of the status of New Caledonia or the territory's land tenure system, including the crime of murder. The inclusion of the crime of murder in the scope of the Act probably stemmed from a desire on the part of the Government to consolidate the compromise

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[3] Jeandidier, Wilfred, *Droit pénal général*, Montchrestien, collection Domat/droit privé, Paris, 1991, p. 305, No. 280.

[4] Michalski, Cédric, *L'assaut de la grotte d'Ouvéa-Analyse juridique*, Harmattan, Paris, 2004, p. 249.

embodied in the Matignon accords of 1988; indeed, it seems that a total amnesty had been envisaged when the autumn 1988 accords had been concluded. Many voices were subsequently raised in protest at this second general amnesty Act, which appeared to undermine the 1988 Act.

56. The Constitutional Council, in its decision No. 89-265 DC of 9 January 1990, ruled, on the one hand, that "the principle of national sovereignty in no way prevents the legislature, when enacting laws in the area of competence assigned to it under article 34 of the Constitution, from amending, supplementing or abrogating previous legislative provisions" and, on the other hand, that the legislature may "decide, on the basis of objective criteria, the offences and, where applicable, the persons, to benefit from the application of an amnesty".

57. The Act was also referred to the European Commission on Human Rights to answer the question of whether it was prejudicial, inter alia, to the right to life and the right to access to a court as guaranteed both by the European Convention on Human Rights and by the Covenant. Thus, after a case was laid before it by the Comité du 22 Avril 1988 à la mémoire des gendarmes d'Ouvéa, the European Commission on Human Rights, recognizing that the onus was on the State to take measures to prevent any possibility of violence, nevertheless concluded that this principle can be tempered in certain ways, including through the mechanism of an amnesty.

58. "The Commission observes in this regard that French legislation indisputably guarantees the protection of life, insofar as French criminal law punishes the crime of murder. It is true that, as with any criminal offence, the crime of murder can be included in an amnesty law. This fact does not per se contravene the Convention [for the Protection of Human Rights], unless it attests to a general practice designed systematically to prevent prosecutions of the perpetrators of such crimes" (Decision of 2 September 1992, complaint No. 16734/90, *Laurence Dujardin et al. v. France*).

59. The European Commission of Human Rights therefore recognizes that an amnesty that includes the crime of murder does not breach the European Convention for the Protection of Human Rights, provided that it is the result of exceptional circumstances. In the case of New Caledonia, the Commission assessed the exceptional circumstances as follows.

60. "[…] The Commission considers, in this regard, that the amnesty Act, which is completely exceptional in nature, was adopted in the framework of the settlement of the dispute between the different communities of the archipelago [and that] It is not for the Commission to make a judgement on the appropriacy of the measures taken by France in this regard. Indeed, a State is entitled to adopt, in the framework of its criminal policy, whatever amnesty laws it deems necessary, provided, however, that there is a balance maintained between the legitimate interests of the State and the interests of individual members of the public in having the right to life protected by law. In the present case, the Commission considers that such a balance has been struck and that no prejudice has been done to the aforementioned provision (ibid.).

VI. RECOMMENDATION CONTAINED IN PARAGRAPH 14 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

A. The role of women in the civil service

1. Data

Table 2

Civilians employed in ministries, by hierarchical category, as of 31 December 2004

Ministries	Reminder 2003	2004							
		Category A		Category B		Category C		Total civil personnel	
		Total	% female	Total	% female	Total	% female	Total	% female
Foreign Affairs	9 921	4 762	22.3	1 178	41.7	3 857	66.3	9 797	42.0
Social Affairs	23 913	5 999	54.3	7 653	71.6	10 478	81.4	24 130	71.6
Health	14 229	4 047	58.4	4 368	71.0	5 996	79.4	14 411	71.0
Employment	9 684	1 952	46.0	32 854	72.0	4 482	84.2	9 719	72.5
Agriculture	32 279	15 055	43.5	8 190	48.5	9 220	69.8	32 465	52.2
Culture	12 051	4 232	46.8	2 298	61.0	5 571	53.9	12 101	52.8
Defence	44 469	5 266	26.5	12 323	40.1	25 857	69.5	43 446	55.9
The Economy	185 214	44 424	39.3	58 708	58.5	80 295	70.5	183 427	59.1
National Education	1 100 337	833 090	62.6	109 467	79.4	159 502	66.0	1 102 059	64.7
School education	977 453	749 588	65.5	97 157	81.2	131 001	65.8	977 746	67.1
Higher education	122 877	83 497	36.6	12 310	65.3	28 501	66.8	124 308	46.4
Research[a]	7	5	n.s.	0	-	0	-	5	n.s.
Equipment	98 022	15 889	25.7	25 084	29.1	56 798	31.3	97 771	29.8
Non-aviation	87 425	8 739	28.4	22 803	28.7	55 452	30.1	86 994	29.5
Civil aviation	10 597	7 150	22.3	2 281	33.8	1 346	82.5	10 777	32.3
Interior	166 827	12 105	27.8	20 450	40.5	135 675	29.2	168 230	30.4
National police	132 082	6 459	14.1	12 103	27.9	115 000	20.8	133 562	21.1
Other police	34 745	5 646	43.4	8 347	58.8	20 675	75.8	34 668	66.4
Youth and Sports	5 758	3 623	21.9	575	81.9	1 543	69.9	5 741	40.8
Justice	66 192	13 759	51.7	16 617	74.0	38 218	43.8	68 594	52.7
Overseas	1 491	299	31.1	290	58.3	943	71.3	1 532	61.0
Prime Minister's Office	1 536	498	45.0	220	66.8	816	62.6	1 534	57.5
Total	1 748 010	959 001	59.3	263 053	63.2	528 773	52.3	750 827	57.8

Source: National Institute for Statistics and Economic Studies (Insee), examination of salary slips. Table in "National Civil Service Report - Facts and Figures 2005-2006", published by "Documentation Française", July 2006.

[a] Researchers.

Department of Administration and the Civil Service (DGAFP), Bureau of Statistics, Studies and Evaluation.

Field: Unemployed-youth. Main occupations. Metropole, overseas departments, other territorial authorities, abroad. The titles of the ministries are generic, and therefore stable, to avoid a multiplicity of names that could vary depending on the reference year. Budget annexes included.

Teachers: including student teachers; excluding researchers, institute directors, inspectors, educational advisers and security personnel.

Table 3

Women in managerial positions in government, general inspectorates and State courts (2002, 2003 and 2004)

Managerial and general inspectorate posts	Total No. of posts on 31.12.2002			Total No. of posts on 31.12.2003			Total No. of posts on 31.12.2004		
	Women	Total	% women	Women	Total	% women	Women	Total	% women
Posts assigned by the Government									
Managers of central government and the like	35	188	19	26	185	14	24	208	12
Permanent heads of mission at the rank of ambassador	17	174	10	21	179	12	19	180	11
Prefects	6	118	6	6	119	6	7	128	5
Rectors	8	31	26	7	31	23	7	31	23
Subtotal	66	511	13	60	504	12	57	547	10
Other government posts									
Departmental heads, deputy directors, assistant directors	179	785	23	192	795	24	206	792	26
Heads of general inspectorates	2	20	10	2	21	10	4	23	17
Treasurers, paymasters general	7	107	7	9	109	8	10	110	9
Heads of decentralized departments	181	1 953	9	231	2 062	11	9 255	2 101	12
Subtotal	369	2 865	13	434	2 987	15	475	3 026	16

61. With regard to civil servants in registries of judicial departments, the female participation rate is 84 per cent; it is 73 per cent in posts involving the performance of particular duties such as chief registrars, senior registrars and coordinators of regional government departments.

62. With regard to the judiciary, the female participation rate is 54 per cent; some 17 per cent of women occupy the most senior positions in the judicial hierarchy, such as those of chief justice, court president, State prosecutor and prosecutor.

Table 4

Male-female distribution in the judicial hierarchy

			Women		Men		Total
			Number	Proportion (%)	Number	Proportion (%)	
Court	Chief Justice	Ex-hierarchy	4	11.43	31	88.57	35
	President	Ex-hierarchy	8	16.00	42	84.00	50
	President	1st rank	38	28.36	96	71.64	134
	President	2nd rank	0	0.00	2	100.00	2
Prosecution service	State Prosecutor	Ex-hierarchy	3	8.57	32	91.43	35
	Prosecutor	Ex-hierarchy	1	2.17	45	97.83	46
	Prosecutor	1st rank	20	15.15	112	84.85	132
	Prosecutor	2nd rank	0	0.00	1	100.00	1
Total			74	17.01	361	82.99	435

NB: Total number of judicial officers	4 346	53.91%	3 715	46.09%	8 061

Other court management posts									
Managers of national courts	3	33	9	3	34	9	4	32	13
Managers of territorial courts	64	420	15	60	427	14	62	431	14
Presidents of administrative tribunals and administrative appeal courts	2	39	5	5	39	13	6	40	15
Presidents of regional courts of auditors	3	26	12	3	27	11	3	27	11
Subtotal	72	518	14	71	527	13	75	530	14
Total central administrative posts	219	1 026	21	223	1 035	21	238	1 055	23
Total decentralized posts	288	2 868	10	342	2 993	11	369	3 048	12
Total	507	3 894	13	565	4 028	14	607	4 103	15

Source: Surveys conducted in personnel departments. Table in *National Civil Service Report - Facts and Figures 2005-2006*, published by Documentation Française, July 2006.

DGAFP, Office of Statistics, Studies and Evaluation.

Table 5

Women in managerial posts in three civil service departments as at the end of 2004

Managerial posts	Women	Total	Proportion of women in %
Posts assigned by the Government			
Directors of central government departments and the like	24	208	12
Permanent heads of mission at the rank of ambassador	19	180	11
Prefects	7	128	5
Rectors	7	31	23
Subtotal	57	547	10
Managerial posts in higher education and research			
Directors of institutes of higher education under the authority of the Ministry of Education	9	71	13
University presidents (elected by university members)	12	94	13
Directors of higher education under the authority of other ministries	7	118	6
Directors of public research institutes	3	21	14
Subtotal	19	210	9
Managerial posts in the territorial civil service[a]			
Directors-general of services (DGS) and deputy directors-general (DGA) of regional and general councils	63	471	13
DGS, DGA and directors-general of technical services (DGST) for towns with over 40,000 inhabitants	65	408	16
DGS, DGA and DGST of inter-communal institutions	62	401	15
DGS, DGA and DGST of national public institutions	29	123	24
Subtotal	219	1 403	16
Managerial posts in the public hospitals sector[b]			
Technical posts	17	189	9
Senior heads of institutions	83	471	18
Heads of institutions	45	158	28
Subtotal	145	818	18
All civil service posts Total	1 006	8 027	13

Source: Surveys conducted in personnel departments. Table in: *National Civil Service Report - Facts and Figures 2005-2006*, published by Documentation Française, July 2006.

[a] Figures as at 31 December 2003.

[b] Figures as at 31 December 2005.

DGAFP, Office of Statistics, Studies and Evaluation.

2. Observations

63. While women's participation in the civil service has improved, efforts still need to be made at the executive level. As of the end of 2003, women held 58 per cent of posts in the three civil service branches (the State, local government and the hospital service) but only 12 per cent out of 7,757 senior civil service posts. Across all sectors, the proportion of women civil servants is high, but is lower in executive positions.

64. Women account for 56 per cent of civil servants and 57 per cent of "category A" civil servants. As of the end of 2003, women occupied 14 per cent of all management posts. Out of 504 Government-appointed posts, 12 per cent are held by women. Women also occupy 15 per cent of 2,800 other executive positions and 13 per cent of senior management positions in courts.

65. The proportion of women executives is slowly increasing: 13 per cent in 2002, 14 per cent in 2003 and 15 per cent in 2004. Two contradictory trends account for this increase: the number of women in Government-appointed posts has fallen (10 per cent in 2004, as compared with 12 per cent in 2003), but their numbers have increased in other senior government posts (16 per cent in 2004 as compared with 15 per cent in 2003) and in court management (14 per cent as compared with 13 per cent).

66. In Government-appointed posts, there were fewer female heads of department in central government in 2004 than in 2003 (24 as compared with 26), while the number of male departmental heads increased (208 as compared with 185).

3. Actions undertaken

67. The measures put into effect in the civil service to promote gender equality are aimed at continuing the work begun in 2002 and building on actions to get more women into executive posts.

68. The push is continuing for greater inclusion of women on panels, selection committees and consultative boards. In these different bodies, the aim is to increase the proportion of women to a third. Overall, preliminary results show that this proportion is maintained by government ministries. The proportion of women designated by the administration to sit on joint administrative boards (CAP) was 38.4 per cent in 2002, while women accounted for 30 per cent of the membership of joint technical committees and 38 per cent of members of panels.

69. The long-term plans to improve women's access to executive jobs and posts in the State civil service are being updated. On 29 March 2004, the Minister responsible for the Civil Service issued instructions aimed at giving new momentum to the long-term plans by providing for assessment of completed ministerial plans and an interim assessment of plans under way in ministries.

70. The Department of Administration and the Civil Service (DGAFP) is continuing to build up the network of designated gender-equality coordinators in the ministries. The network encourages exchanges of experiences and best practices between administrative authorities and joint work. Since 2002, the members of the network have met twice a year.

71. A working group, jointly set up in 2004 by the Minister for Parity and the Minister for Civil Service, made proposals focused on the following four areas of action: improving awareness of inequality; reorganizing working hours; developing access channels and recruitment criteria; and managing career development. The proposals include more flexibility and support for geographical mobility, the adoption of time management charts and increasing the number of women in the promotion pool.

72. These areas have opened up opportunities for building on the systems that already exist.

B. Gender equality in the workplace

1. Eliminating the gender wage gaps

73. The Equal Pay Act was adopted on 23 March 2006. Developed at the President's request, its purpose is to consolidate, within Europe, the French social model built on a high rate of female employment and a high birth rate. The Act reconciles the aim of growth and employment with the need for justice and social harmony, helping to modernize French society.

74. With this Act, the Government has chosen to give greater emphasis to social dialogue, while remaining results-oriented. The Act supplements the inter-occupational national agreement of 1 March 2004 on equality of opportunity in employment that was signed by the social partners and places equality in the workplace at the heart of collective bargaining in sectors and enterprises. It provides for: (a) mandatory negotiation of measures to eliminate gender wage gaps within five years; and (b) offsetting the effects of maternity leave on pay.

(a) Mandatory negotiation of measures to eliminate gender wage gaps

75. At the sectoral level, a target of 2010 must be agreed, during the mandatory negotiations, for the elimination of wage gaps. To that end, an analysis of any existing wage gaps is to be carried out using the report on the comparative status of overall employment and training conditions for women and men for each sector. If no talks have got under way within a year of publication of the Act, a representative trade union may request that negotiations commence immediately. If no agreement has been reached, the joint parity commission shall be convened at the initiative of the Minister for Labour. Any sectoral collective bargaining agreement that lacks a provision on the elimination of these gaps shall not be extended.

76. In enterprises, negotiations must be conducted on the basis of an analysis done using the annual report on the comparative status of overall employment and training conditions for women and men. Agreements on effective wages shall not be deposited with the competent authorities unless they are accompanied by the minutes of the negotiations on equal pay.

77. An assessment of the implementation of the Act, due at the end of 2008, will be submitted to Parliament by the Equal Opportunities Board. In any event, the Government will then table a draft law introducing a levy, based on payroll, to be imposed on enterprises that have not begun talks on the matter.

(b) Offsetting the effects of maternity leave on pay

78. The Act of 23 March 2006 provides for a compensation mechanism to offset the impact of maternity leave on pay: during leave of absence, female employees on maternity leave or males on adoption leave receive not only any general pay increases but also the average of pay increases given, during their absence, to employees in the same category or, alternatively, to employees in the same enterprise.

79. Furthermore, the period of maternity, adoption, childcare or child-raising leave is factored into the calculation of training entitlements.

2. Part-time work

80. With 17 per cent of its employees working part-time in 2003, France is close to the European average of 18 per cent. The overwhelming majority (82 per cent) of part-time workers are women, and are mostly employed in the tertiary sector, in particular, the education, health and social work sectors, domestic services and the hotel and restaurant trades.

81. In practice, over 30 per cent of part-time workers have not chosen to work part-time and would prefer longer hours.

82. In November 2004, the progress report by the National Assembly's delegation on women's rights and equal opportunities for men and women highlighted a certain number of difficulties associated with part-time work (insufficient working hours, inadequate pension rights, working hours with excessively long intervals between them, and irregular working hours), and advocated a series of measures aimed at improving the situation of part-time workers, four out of five of whom are women.

83. In that context, the Minister of State for Employment, Labour and the Professional Integration of Young People and the Minister for Parity decided to launch a dialogue with representatives of the main sectors involved, i.e. those where the level of involuntary part-time employment seems high. Accordingly, since June 2005, bilateral meetings have been held with professional federations and representatives of employees in the main occupations that use part-time labour (retail, cleaning services, urban public transport networks, hotels, cafés, restaurants, and protection and security enterprises, among others).

84. The preliminary outcomes of the discussions have underlined the fact that negotiations or the creation of best-practice charters or guidelines could be used to improve the quality and reduce the quantity of involuntary part-time work.

85. An agreement was reached, focusing in particular on specific sectors which rely heavily on part-time labour, to continue identifying "best practices" with a view to their dissemination; to draw up a compendium of collective agreements at the sectoral or enterprise level which deal with these issues, so as to bring them to the fore at the negotiating table; and to regulate and organize job-sharing. The work begun by the ministers is continuing along these lines.

3. Supporting enterprises in change management

(a) Developing the "equality" label

86. The credentials of a candidate for the label are examined by a certifying body[5] based on specifications that enterprises can use to present their activities in three main areas:

- Actions undertaken in the enterprise to promote workplace equality;
- Human resources recruitment and management; and
- The consideration given to parenthood in the workplace.

87. The decision on whether or not an enterprise qualifies for the equality label is taken by a commission composed of the social partners and State representatives.

88. Awarded for a three-year period, the label is subject to a mid-term review at the end of 18 months to verify that the label-holder continues to meet the required criteria.

89. At the instigation of the Minister for Parity and with the help of the social partners, the specifications were modified and simplified for enterprises with fewer than 50 employees.

90. To date, the label has been awarded to 19 enterprises, accounting for over 150,000 employees.[6]

91. Support for manpower and skills planning: the Equal Pay Act of 23 March 2006 offers consultancy grants for manpower and skills planning to enterprises and sectors involved in improving equality in the workplace and the work/life balance.

4. Developing institutional partnerships

92. Various types of partnership have been developed.

93. In February 2004, the Minister for Parity signed partnership agreements with ADIA and ADECCO, two temporary employment agencies. The agreements have three overriding objectives: to encourage the diversification of career choices for women and ensure them direct access to the labour market; to promote professional equality within temporary employment enterprises; and to promote equality of opportunity in client enterprises. The agreements run until 2007.

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[5] AFAQ AFNOR International.

[6] Airbus Central, Airbus France, Axa France, Barbin plc (insurance), BETC EURO RSCG (communications), Cetelem, Deloitte (audit and consulting), Dexia Sofaxis, EADS Astrium, EADS France, Eau de Paris, Eurocopter, L'Etape, Matra Electronique, Orange France, PSA Automobile, Services Funéraires de la ville de Paris, Space Transformation and Transports Wim Bosman Paris plc.

94. A memorandum of understanding on access for women to the building trade was signed on 6 June 2002 by the French Construction Federation (FFB) and different ministries (Infrastructure; National Education; Employment and Solidarity, Professional Education and Women's Rights and Vocational Training). On the basis of the memorandum, a study of the public image and perception of the building trade and prospects for future development was carried out. The resulting report, delivered at the end of June 2004, contains proposals on lines of communication and arguments to be developed for the various target groups. Several public information documents were compiled in 2004 and at the beginning of 2005 by FFB, in partnership with either the National Job Agency (ANPE) and the National Association for Adult Vocational Training (AFPA) or the National Office for Educational and Vocational Information (ONISEP), and were circulated among intermediate and secondary-school students, women job-seekers and enterprise managers.

95. In order to facilitate the creation of sustainable mechanisms for the employment of women in construction enterprises, a guide for occupational networks was prepared on the basis of a survey of efforts to get women into employment which was piloted at the local level two years ago by various networks (FFB, the State employment service and the decentralized women's rights and equality network). The guide was distributed during the second half of 2005.

5. The work/life balance

96. Today, 81 per cent of women aged between 25 and 49 work; they are, however, confronted on a daily basis with the difficulty of reconciling their home life and their working life. There is a direct correlation between increased participation of women in civic and social activities and the alleviation of the constraints upon them.

97. The Government has adopted measures to encourage the development of personal services and reduce their cost to households and enterprises. It has also taken measures to involve enterprises more fully in the work/life balance issue.

C. Greater involvement of enterprises

98. Three measures have been adopted for this purpose:

(a) A compulsory annual assessment of the efforts of enterprises to harmonize working hours and family time in conformity with the Act of 23 March 2006, mentioned above;

(b) Reductions and exemptions from social security payments and taxes for expenditure that enterprises incur to help staff meet family commitments; for example, the new Universal Employment Services Cheque (CESU) created by the Personal Services (Development) Act of July 2005. Enterprises and works councils can finance a range of services, including childcare, for their employees as part of a social policy. Combining the functions of the employment services cheque and the employment services voucher in a formula that is more "universal", the CESU can now be used (like a restaurant voucher) to pay registered entities (crèches, cleaning companies, etc.) and private employees. Family tax credits provide enterprises with an incentive to develop these forms of support, and they include, among other things, expenditure incurred to

fund childcare directly or indirectly. With family tax credit enterprises can deduct from income tax 25 per cent of their expenditure on measures to harmonize working life and family life. Up to €1,830 per employee each year of the money spent on the CESU is exempt from social charges;

(c) Extension of the scope of consultancy grants for manpower and skills planning (see above).

D. Family policy

99. The French family model is based on freedom of choice, which means, in practice, that both parents may continue to work if they so wish, and childcare arrangements are tailored to their professional circumstances.

100. France has both an extremely high female labour force participation rate (81 per cent of women between 25 and 49 years of age) and the highest fertility rate in Europe, at two children per woman (source: INSEE, 2006).

101. That being so, the Government, since 2002, has taken numerous initiatives to help reconcile working life with parenthood.

102. The following achievements were scored in 2005-2006:

103. Infant care benefit (PAJE), which was introduced by the Social Security Funding Act of 18 December 2003 in order to simplify child benefit, has continued to gain ground. It is available from the birth of the first child onwards and replaces childbirth and adoption benefits, as well as the different childcare allowances.

104. As part of an assessment of the reform, a satisfaction survey was conducted in 2005 among 3,000 recipients. It showed that the vast majority were satisfied with the amount of benefit that they received. While the "free choice of activity" supplement (CLCA) for parents who cut down on their working hours or stop work altogether is sometimes regarded as insufficient, childcare supplement (CMG) used to pay for a licensed childminder or live-in help, is viewed much more positively. Childcare supplement offers families childcare support, and can represent a significant proportion of childcare expenditure, especially now that the PAJE has sharply increased the amount of benefit for employers of childminders.

105. The Government has launched ambitious plans to increase the number of places in crèches: since 2002, 26,000 places have been created; 15,000 additional places were announced by the Prime Minister during his general policy speech in June 2005; and a further 31,000 places are planned between 2005 and 2008. A total of 72,000 places will thus have been created between 2002 and 2008, an increase of almost a third.

106. In July 2005, a target and management agreement was signed by the State and the National Family Allowances Office (CNAF) to increase the Office's social fund by more than 30 per cent over the period 2005-2008. The State has released an additional €2.4 billion for that purpose.

107. With the Act of 16 June 2005, the Government has improved the status of childminders in order to make conditions in this occupation easier, to offer security to parents and to increase the overall number of childminders. Childminders are now covered by a national collective bargaining agreement, in force since 1 January 2005, which offers them better conditions in terms of leave, duration of employment and pay, and establishes a right to ongoing vocational training (paid for entirely by the employer via a tax amounting to 0.15 per cent of the payroll), together with a mandatory contingency scheme for incapacity and disability. There are an estimated 352,000 licensed childminders who could, theoretically, look after around 920,000 children. Since the PAJE-CMG cover more costs than the now defunct family grant for a licensed childminder (AFEAMA), employment of childminders has risen by 10 per cent. In the second quarter of 2005, 32 per cent of families with a child born in the first quarter of 2004 took advantage of the PAJE-CMG to employ a childminder, while 1.5 per cent employed a live-in help.

108. A reform of parental childcare leave has been undertaken and provision made for one year's leave on better terms of remuneration after the third child. This leave, which is an extra option, came into effect on 1 July 2006, and can be taken on a full-time or part-time basis. The amount paid is 50 per cent higher than the former child-raising allowance.

109. The Act of 11 February 2005 takes account of the special circumstances of mothers of premature babies by enabling them to take extended paid maternity leave.

VII. RECOMMENDATION IN PARAGRAPH 15 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

110. At the outset, the Government wishes to inform the Committee about the statistical tool applied in these cases. This information comes, inter alia, in response to a recommendation made by the National Consultative Commission for Human Rights (CNCDH) during the preliminary examination of the draft of the present report.

111. With regard to judicial treatment of acts of violence by a person in a position of public authority, the statistical tools available to the Ministry of Justice currently only provide details of sentences handed down by criminal courts. The three different software applications currently in use provide no details on guidance given by prosecution services, the type of investigation conducted in such cases, or the measures ordered by the courts. On the other hand, once the "Cassiopée" application comes into general use, as planned for the first quarter of 2009, consolidated and more accurate statistics on the treatment of specific cases will be available. This application will be installed in 175 civil courts of first instance and will come with its own statistical infocentre. For the seven other courts in the Île de France, it should be possible to extract the same data.

112. Given the current state of the statistical tools at the disposal of the Ministry of Justice, regular counting of complaints lodged against police officers and gendarmes would require the prosecution services within civil courts of first instance to create a permanent mechanism to input the data manually. Such a mechanism poses considerable problems (lack of response from some prosecution services, difficulties in verifying the data received, time commitments in prosecution services). A more in-depth study of complaints filed on this matter may nevertheless be done as soon as the aforementioned "Cassiopée" programme is installed.

113. Pending this development, which will provide a clearer picture of follow-up to complaints against law enforcement officials, the Government will inform the Committee here below of its current procedure for follow-up to these complaints. Although it is lacking in certain respects, the procedure does provide guarantees in keeping with the requirements of the Covenant.

114. Pursuant to article 12 of the Code of Criminal Procedure, judicial investigations into acts of violence by law enforcement officials, like all procedures, are conducted under the supervision of the State prosecutor, who verifies their legality and ensures that all necessary investigations are undertaken in order to bring the truth to light.

115. Furthermore, when police officers or gendarmes perpetrate acts that constitute criminal offences or breaches of professional ethics, the inspectorates of the national police and the Gendarmerie may be notified by the judicial or administrative authority so that they may commence an investigation.

116. In accordance with article 15-2 of the Code of Criminal Procedure, the Office of the Inspector General of the judiciary can also be involved in such investigations, if the conduct of a police officer or criminal investigator during the course of his duty has been called into question.

117. All allegations against the police or gendarmes are "flagged" and as such are included in prosecution service reports submitted to the Minister of Justice, whose department ensures strict administrative follow-up to these cases.

118. In addition to administrative follow-up, pursuant to article 30 of the Code of Criminal Procedure, the Minister of Justice can issue written instructions as appropriate on a case, ordering, for example, a specific investigative measure or the prosecution of a specific person. It should be made clear that in no case can the Minister of Justice issue instructions to abandon a case or not to initiate proceedings.

A. Criminal prosecutions of law enforcement officials

119. With regard to the initiation of proceedings, the Code of Criminal Procedure contains no explicit rules on offences by law enforcement officials. In conformity with article 40, paragraph 1, of the Code of Criminal Procedure, "the State prosecutor receives complaints and information and considers the appropriate follow-up". He or she can therefore decide to bring a prosecution, to implement an alternative procedure, or to discontinue the case (Code of Criminal Procedure, art. 40 (1)). In order to make such a determination, pursuant to article 41 of the Code of Criminal Procedure, he or she must "take or ensure that all necessary measures are taken to investigate and prosecute breaches of criminal law". In any event the victim always has the option of exercising the public right of action by filing a complaint and suing for damages before the competent investigating judge (Code of Criminal Procedure, art. 85).

120. On the other hand, with regard to punishment, offences that public officials commit during the course of their duties are subject to special treatment, since they are treated under French criminal law as an aggravating circumstance.

121. It is important to note, however, that this aggravating circumstance is broad in scope, since it applies to "public officials", i.e. all persons vested with public authority and not just law

enforcement officials. For example, mayors, prefects and prison wardens performing their professional duties are also regarded as persons vested with public authority. That being so, the statistics that have been collected, as summarized below (paras. 122 to 125), should be analysed with care, since the figures include legal proceedings brought against public officials other than the police or gendarmes.

122. The number of convictions of public officials is relatively low (172 in 2005,[7] in comparison with 190 in 2004). These convictions were mainly for lesser offences.[8]

123. In 2005, there were 99 convictions for wilful violence (as compared with 78 in 2000, 91 in 2001, 88 in 2002, 101 in 2003, and 115 in 2004), 91 of them for violence that did not result in disability or incapacity for work for longer than one week. Depending on the gravity of the offence, the penalties most frequently handed down by the criminal courts are deprivation of liberty, with or without a stay of sentence and fines.

124. There have been very few convictions for infringements of personal freedom and of confidentiality of correspondence: 12 in 2001, 4 in 2002, 8 in 2003, 7 in 2004 and 5 in 2005.

125. With regard, more specifically to officers of the Department of the National Gendarmerie, five proceedings were instituted in 2005 for violations of human rights. Two are still under investigation, one resulted in two military personnel receiving suspended prison sentences (15 and 8 days respectively), another ended with a caution, and the last one was discontinued. In the first quarter of 2006, one case ended in a conviction and a fine, and another was discontinued. The last remaining case is under investigation.

B. Disciplinary measures taken against law enforcement officials

1. The national police

126. When complaints are made against law enforcement officials, the public prosecutor can ask the Office of the Inspector General of the National Police (IGPN) to conduct an investigation. Such investigations involve all appropriate checks, interviews, the collection of witness statements and visits to relevant locations.

127. When evidence seeming to support allegations is found during investigations conducted by the IGPN and the Office of the Inspector General for the Police [in Paris and its environs] (IGS), or by the local authorities, disciplinary measures, which are divided into four categories of increasing severity (from a caution to dismissal), may be imposed, pursuant to article 66 of Act No. 84-16 of 11 January 1984. These measures may be ordered quite quickly, even before the judicial authority has taken a decision, and without prejudice to any judicial penalties that could be imposed at a later stage.

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[7] The number of convictions in 2005 is based on provisional data from police records, taking account of the time taken to transfer and register conviction papers in the criminal records office.

[8] In 2005 there were 169 convictions for misdemeanour and 3 criminal convictions.

128. Thus in 2005, out of 2,936 disciplinary measures taken against police officers, 96 were for proven acts of violence and 16 resulted in the dismissal of the officers concerned.

129. Moreover, in practice, the Director-General of the National Police often takes the precaution of suspending an official implicated in a case from the very outset of the investigation, when the investigation seems to show that the allegations are well-founded. This is done pending the taking of disciplinary measures and, where appropriate, subsequent criminal penalties.

130. Furthermore, aside from investigations carried out at the request of the judicial authorities, the IGPN can, directly or indirectly, initiate an investigation into allegations of violence. If the allegations are substantiated, the IGPN reports the matter to the judicial authorities.

131. We wish to point out that in 2005 IGPN/IGS examined 1,535 case files, including 663 allegations of violence, 565 of them involving minor assault. These 663 complaints should be viewed in relation to the number of persons against whom proceedings were brought by the national police in 2005 (750,473 - a ratio of 0.088 per cent and down by more than one eighth compared to the figure of 0.101 per cent for 2004), and the number taken into police custody (404,085 - a ratio of 0.164 per cent, also down by more than one eighth on the 2004 rate of 0.188 per cent). These figures are evidence of a positive trend, since they point to a significant drop in the number of complaints of violence, as well as in the severity of alleged acts of violence (a higher proportion of minor assaults), notwithstanding the marked increase in the number of prosecutions brought and of persons on remand (up by 4.57 per cent and 5.15 per cent, respectively).

132. The aforementioned complementary mechanisms for launching investigations are also designed to ensure effective punishment of any breaches of ethics under the Code of Ethics of 18 March 1986. The Code is a legal instrument, which, if breached, can serve as a basis for administrative action, even if no criminal offence has been committed.

133. Articles 7, 9 and 10 of the Code of Ethics set out the obligation of absolute respect for all persons, whoever they may be, the obligation of proportionate use of force subject to strict necessity, and the prohibition of all forms of illegitimate violence and inhuman or degrading treatment. Regarding the protection of arrested persons, the obligation of absolute respect for persons prohibits the use by a police officer of any form of violence or inhuman or degrading treatment against persons in detention and requires that conditions of detention remain compatible with human dignity.

134. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is taken into account in ethics training. Particular attention is paid to the Code of Conduct for Law Enforcement Officials established by General Assembly resolution 34/169 of 17 December 1979, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held from 27 August to 7 September 1990. The training also systematically includes a presentation of the Declaration of the Rights of Man and of the Citizen.

2. The National Gendarmerie

135. Instruction No. 10668 DEF/CAB of 1 August 2002, concerning the powers of the Office of the Inspector General of the National Gendarmerie, defines the Office's structure and terms of reference. The Office has competence to conduct audits, studies, inspections and investigations of all branches of the gendarmerie in mainland France and in the overseas departments and territories, and of personnel working on assignments abroad.

136. Within the Inspector General's Office, a technical inspectorate has special responsibility for investigations entrusted to it by the judicial authority. The results of these investigations are divulged, since the reports are transmitted to the competent judges. Administrative investigations are also launched at the request of the gendarmerie command or independent administrative authorities (the National Security Ethics Committee). In 2005, the technical inspectorate had 64 judicial cases referred to it and 6 administrative investigations, of which 2 had been conducted by the National Security Ethics Committee.

3. Role of the prosecution service

137. As pointed out above (para. 114), pursuant to article 12 of the Code of Criminal Procedure, judicial investigations into acts of violence by law enforcement officials, like all proceedings, are conducted under the supervision of the State prosecutor, who makes sure that they are legal and that all necessary investigations are undertaken to bring the truth to light.

138. With regard to the offences of insulting or obstructing an officer during the course of his duty, as with any other offences, the prosecution service endeavours to verify the facts and establish whether the accused is guilty. It does this by following either the "real-time processing" procedure or the procedure whereby case documents are processed by mail. The context in which the events occurred, in particular the conduct of law enforcement officials, is also taken into account in order to provide the most appropriate response to the case in hand. Where necessary, the court to which a later application is made may order a further investigation.

139. Once the investigation is completed the State prosecutor must determine whether there is a case to answer pursuant to article 40 of the Code of Criminal Procedure. The Government does not consider it appropriate to revise this general principle of French criminal procedure, which provides the necessary guarantees for justice to be done.

140. It should be pointed out that legal proceedings that have been discontinued can always be taken up again at a later stage, provided that the time-limit for bringing a prosecution has not expired. Moreover, victims can lodge an appeal against a decision to discontinue a case with the competent State prosecutor, pursuant to article 40-3 of the Code of Criminal Procedure. They can also institute proceedings themselves by suing the accused before the competent court, or by filing for damages in a civil case with the senior investigating judge.

141. The status of members of the prosecution authorities, who are law officers and not civil servants, guarantees their objectivity in the exercise of their duties.

4. Other safeguard mechanisms

(a) National Security Ethics Committee

142. The activities of the National Security Ethics Committee, which is an independent administrative authority established by the Act of 6 June 2000, form part of the overall efforts to strengthen ethical requirements and ensure transparency, particularly with regard to the police and the gendarmerie. The Committee, through a Member of Parliament, can have cases referred to it by "any person who has been a victim of, or a witness to, events that they consider to constitute a breach of rules of ethics". Furthermore, the Prime Minister, Members of Parliament, and the Children's Ombudsman, acting on their own authority, can refer the same breaches of ethics rules to the Committee, which is also competent to ask ministers to refer cases to inspection bodies, such as the Office of the Inspector General of the National Police, so that investigations can be undertaken to bring the facts to light.

143. By way of example, in 2004 the National Security Ethics Committee received six complaints against the gendarmerie. It decided that it was not competent in two cases, and in three others it found that there had been no breach of ethics by a gendarme. The Committee upheld only one case, concerning a convicted rapist (of a 15-year-old minor), who had asked to attend the funeral of one of his children. The sentencing judge had authorized the attendance solely on condition that the detainee remained handcuffed throughout the ceremony. Under these circumstances, the National Security Ethics Committee recommended the use of other means, such as electronic tagging. The 2005 annual report of the National Security Ethics Committee shows that of the 69 cases examined, only one involved a complaint against the gendarmerie. In that particular case, a trainee had been refused access to a nuclear power plant by the local police which had been told that his name was on a gendarmerie file for committing acts of violence two years previously. The National Security Ethics Committee decided that it was an administrative matter. Since it was not competent to deal with the case, it transmitted the information to the National Committee for Information Technology and Liberties (CNIL) and the Ministry of Defence, which responded that the gendarmerie was authorized to maintain the file.

(b) Commission for the Monitoring of Holding Centres and Facilities and Waiting Areas

144. The Act of 26 November 2003 established the National Commission for the Monitoring of Holding Centres and Facilities and Waiting Areas to ensure respect for the rights of foreigners held there and respect for the rules governing hygiene, sanitation, amenities and equipment in such holding centres. The Commission's operating procedures are set out in Decree No. 2005-616 of 30 May 2005.

145. The nine-member Commission (consisting of two representatives of parliament, one member of the Council of State, one member of the Court of Cassation, one person with knowledge of the prison system, two representatives of humanitarian associations and two representatives of the administrations concerned) carries out on-site inspections.

146. It may make recommendations to the Government on how to improve material and humane conditions in the holding centres and waiting areas, and can be consulted by the minister on any project relating to these issues.

147. The Commission may hear any person able to provide information and may hear any complaint concerning non-compliance with the regulations of the centres or human rights violations there. It refers cases to the relevant authorities if it finds that a criminal offence has been committed or that there has been a breach of professional ethics.

148. The date of the Commission's effective establishment was 22 March 2006, and it started its inspections in April 2006. To date, it has inspected six administrative holding centres (Paris, Coquelles, Le Mesnil Amelot, Palaiseau, Plaisir and Lyon), one administrative holding facility (Nanterre) and the Roissy waiting area.

149. In accordance with the above-mentioned decree, the Commission will draw up an annual report, with recommendations where appropriate. This report will be submitted together with the public report on the main thrust of the immigration policy submitted by the Government each year to parliament.

150. The Government will take the Commission's recommendations carefully into account. It is foreseen that the Commission will meet quarterly, in plenary session.

(c) International mechanisms

(i) European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

151. Since France submitted its most recent periodic report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has conducted five visits to France. The reader can consult the reports on those visits and the Government's replies on the CPT Internet site (http://www.cpt.coe.int/fr/etats/fra.htm).

(ii) The national prevention mechanism envisaged in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

152. On 16 September 2005, France signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly on 18 December 2002. In the context of its candidacy for the Human Rights Council, France undertook to ratify the Protocol during its mandate. It commenced inter-ministerial consultations with a view to designating the Office of the Ombudsman of the Republic as a national mechanism for inspecting places of detention, subject to legislative reform of his status. In all events, the Government is determined that the new mechanism should respond to the requirements of the Optional Protocol.

VIII. RECOMMENDATION CONTAINED IN PARAGRAPH 16 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

A. Guarantees regarding protection of individuals

153. The French authorities pay close attention to the conditions of treatment which must be afforded to persons during arrest or in police custody, and they are vigilant about the conditions

under which law enforcement agencies may use force. These obligations obtain subject to the principle of non-discrimination, and are therefore applied equally, regardless of the origin of the person.

154. In order to guarantee effective protection to individuals and to prevent non-compliance with the police code of ethics, police training has been updated, ministerial instructions have been adopted, the National Security Ethics Committee (CNDS) plays a prominent role in this regard and, finally, criminal proceedings are taken against, and disciplinary measures imposed on, law enforcement officials.

1. Updating of police training

155. For several years, a special effort has been made to train police officers with a view to making all members of the national police aware of the need to comply strictly with their professional code of ethics, including in the difficult situations with which they are confronted.

156. Initial training includes a section on professional ethics, which has been improved since 1999, reminding police officers of their relevant obligations. In particular, training for police chief cadets includes, inter alia, a lecture by the President of the National Security Ethics Committee and a module entitled "The application of public freedoms to police work". This module highlights the risks of violating the law, freedoms and professional ethics, and includes the themes of "respect for personal freedom and the right to make an arrest" and "respect for the physical integrity of persons and the use of violence".

157. Furthermore, throughout their career, police officers undergo frequent training, particularly when they change grade or become criminal investigation officers. During this training, attention is again drawn to the need to comply with professional ethics, and particular emphasis is placed on the role played by superiors in passing on the values of the institution and guaranteeing that these rules are respected. By way of example, the training of police constables in the skills required for the work of criminal investigation officers is based on real-life working situations, with the aim of increasing the officers' professionalism, bearing in mind the requirements of professional ethics and of respect for persons.

2. Instructions aimed at strengthening respect for the dignity of persons

158. The circular of 11 March 2003 on guaranteeing the dignity of persons in police custody was issued based on work done at the request of the Minister of the Interior, by a multidisciplinary, inter-agency group comprising together regular departments of the police, the national gendarmerie, the Ministry of Justice, the Bar Association and the Medical Association. The Interior Minister's instructions as contained in the circular of 11 March 2003 are aimed at the implementation of "a policy of modernization of professional practices and of resources allocated for police custody […] in order to guarantee the dignity of the person".

159. To that end, they stipulate the need to treat persons in police custody with dignity and to observe the principles of necessity and proportionality with regard to placement in police

custody and security measures, consistent with the gravity of the offence. They further provide for the improvement of physical conditions pursuant to established norms, in particular those set by the European Committee for the Prevention of Torture (CPT).

160. The circular of 11 March 2003 instructs each departmental head to designate a police custody officer to carry out daily monitoring of the implementation of police custody measures as they affect the security and the dignity of persons. The task of these officers, which is defined at the local level in writing, covers all aspects of police custody (security, surveillance, accommodation, food, hygiene, medical care, incidents). This measure is being extended to include all departments.

161. The circular furthermore specifies the professional ethics requirements with which a police officer must comply.

162. With regard to minors, the circular of 22 February 2006, supplementing the aforementioned circular of 11 March 2003, details the behaviours and precautions which the police must follow when dealing with minors and when minors are placed under the responsibility of the police or the national gendarmerie, including during police custody; it states that, in these circumstances, "the actions of the police and gendarmes must continue to ensure absolute respect for the dignity of persons".

163. Finally, the circular of 17 June 2003, concerning the use of proportionate force during the enforcement of deportation measures, stipulates the need for recruitment and appropriate training. It also sets out the professional and technical actions that are authorized during an intervention, subject to medical requirements. These actions as a whole take due account of professional ethics and define the behaviours to be followed in order to guarantee respect for the dignity of persons subject to a deportation measure.

3. The role of the National Security Ethics Committee (CNDS)

164. The CNDS, which was established by the Act of 6 June 2000, is responsible for ensuring that professional ethics are upheld by all departments and authorities that provide security or protection services. It participates actively, through its annual reports, in promoting awareness among the police of the need to uphold professional ethics (see above, paragraphs 110-152).

4. Criminal proceedings and disciplinary penalties for law enforcement officials

165. With regard to the Committee's concern about investigations undertaken into complaints of ill-treatment, we refer to the response to the recommendation contained in paragraph 15 of the Committee's concluding observations (see above, paragraphs 119-141).

166. With regard more particularly to the Committee's concern about the number and seriousness of allegations of ill-treatment by law enforcement officials, it shall be recalled that penalties are in fact imposed. They may be criminal penalties, if the acts involved fall within the scope of criminal law and/or disciplinary measures imposed following investigations by the Office of the Inspector General of the National Police (see above, paragraphs 119-141).

5. Training in the use of weapons by law enforcement officials

167. Members of the gendarmerie use their weapons in pursuance of an act that is provided for or authorized by legislative or regulatory provisions (Criminal Code, arts. 122-124) or as a legitimate act of self-defence (arts. 122-125).

168. The situations in which weapons may be used are enumerated in articles L.2238-3[9] of the Defence Code of 20 December 2004 and article 174 of the Decree of 20 May 1903.

169. Officers, non-commissioned officers and gendarmes, in the absence of the judicial or the administrative authority, may only use armed force in the following situations:

(a) When they are subjected to acts of violence or assault or are threatened by armed individuals;

(b) When they cannot otherwise defend the ground which they occupy, or the stations or persons under their responsibility, or where resistance is such that it cannot be overcome other than by armed force;

(c) When persons invited to stop by means of repeated shouts of "Stop gendarmerie" attempt to escape from them or their investigations and can only be induced to stop by the use of arms;

(d) When they cannot otherwise immobilize vehicles, boats or other means of transport under the command of persons who refuse to obey an order to stop.

170. In view of the grave consequences that may ensue from the right of members of the gendarmerie to use their weapons other than in a legitimate act of self-defence, a particularly tight framework is required for the exercise of this right.

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[9] Article L.2338-3 of the Defence Code: "Officers and subalterns of the gendarmerie, in the absence of the judicial or the administrative authority, may only use armed force in the following cases:

(a) When they are subjected to violence or assault or are threatened by armed individuals;

(b) When they cannot otherwise defend the ground which they occupy, or the stations or persons under their responsibility, or where resistance is such that it cannot be overcome other than by armed force;

(c) When persons invited, by means of repeated shouts of 'Stop gendarmerie', attempt to escape from them or from a search that they are undertaking and can only be induced to stop by the use of arms;

(d) When they cannot otherwise immobilize vehicles, boats or other means of transport under the command of persons who refuse to obey an order to halt."

171. Consequently, the use of a weapon is only permitted (cumulatively):

(a) When there is no other way to stop a person who is getting away or to immobilize a vehicle;

(b) With respect to persons whose physical escape is preceded or accompanied by general or particular actions that show or suggest that they have participated in a major or serious offence (Circular No. 5003/GEND/T of 5 February 1945).

172. Compared with the number of operations undertaken, the cases in which weapons have been used by the gendarmerie are very few - fewer than 150 per year since 1998.

173. For example, 147 cases were registered in 2005, 9 of them in overseas France. These cases mainly involved the local units responsible for general surveillance, i.e. local brigades (BT) and the surveillance and intervention patrols of the gendarmerie (PSIG). To put this figure into perspective, the military staff of the Departmental Gendarmerie comprises a total of 66,537 persons.

174. In 55 per cent of cases, weapons were discharged in the legal framework of a legitimate act of self-defence. In the 62 other cases, the action was taken in accordance with article L.2338-3 of the Defence Code. Of these 62 cases, 41 occurred after criminals had used their vehicles as a weapon against law enforcement officers. No gendarmes were convicted, because the discharge of the weapon was legally justified in each case.

B. Measures adopted to reduce the frequency of the use of segregation in prisons

175. In the Remli judgement of 31 July 2003, the Conseil d'Etat introduced a change to the jurisprudence by ruling that segregation was an injurious measure, insofar as it made conditions of detention worse, and that this measure could be appealed, on grounds of abuse of authority, before the administrative courts.

176. Since that date, prisoners in segregation units have had the option of filing an urgent application for a stay of segregation measures, provided that they can prove that the matter is urgent and there is sufficient evidence to raise serious doubts about the decision.[10]

177. In the wake of this judgement, the prison service decided to undertake a major reform of administrative segregation, in particular by clarifying, in a decree, the rules of competence and the method for calculating the duration of segregation.

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[10] For example, the urgent applications judge of the Paris administrative court, in a ruling of 9 August 2004, suspended a segregation measure imposed on a prisoner because of its particularly lengthy duration, the adverse psychological impact on the person concerned and the absence of any evidence to suggest the existence of a current risk to the maintenance of order in the establishment (Stay Order, Paris Administrative Court, No. 0418191).

178. The segregation procedure was modified by two decrees of 21 March 2006, which entered into force on 1 June 2006. This wide-ranging reform remedies the shortcomings of the former procedure, which, since it was not spelt out in detail by the instruments in force at the time, had created a number of disparities in local practices. It now provides better safeguards and stronger legal protection for prisoners.

179. To begin with, a prisoner can now appoint counsel or a representative to assist or represent him, and can consult his file before any decision to impose or extend a segregation measure is taken by the prison administration.

180. Second, the role of law officers in following up on segregation procedures has been strengthened. As a result, any decision to segregate a prisoner must be immediately communicated to the judge responsible for the enforcement of sentences, in the case of a convicted person, or the law officer seized of the case file, in the case of a person in pretrial detention. Furthermore, these persons' views must be sought before the measure is extended beyond one year.

181. As for the maximum duration of administrative segregation, no strict limits have been laid down, given the special profile of some prisoners whom it is sometimes difficult, if not impossible, to keep in ordinary detention.[11]

182. Prisoners who are particularly violent are sometimes segregated for a long period of time, because of their profile.[12]

183. Having been invited to rule on the matter, the European Court of Human Rights, taking into consideration the conditions and the system of segregation in French prisons, and on a case-by-case basis, ruled that keeping a prisoner in segregation for a period of eight years did not constitute inhuman or degrading treatment within the meaning of article 3 of the European Convention on Human Rights, bearing in mind the particular personality and dangerousness [of the person in question] (ruling in *Ramirez-Sanchez v. France*, 4 July 2006).

184. On the other hand, the circular of 9 May 2006 on placement in segregation states that a period of segregation may not be extended beyond one year, unless no other solution has been found to enable the prisoner to benefit from the regular system of detention. Furthermore,

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[11] For example, on 7 August 1998, a prisoner, Mr. X, escaped from Fleury-Merogis prison during a medical extraction procedure. In September 2002, explosive material was found in his cell. On 15 March 2003, he escaped from Fresnes prison centre with the help of external accomplices who attacked the institution using heavy weapons. This prisoner was apprehended on 11 July 2003. He was placed in isolation after that date.

[12] For example, Mr. Z. killed one of his fellow prisoners and on numerous occasions made threats and attempted acts of violence against the entire prison population. He took prison staff hostage. He has been in isolation for three years, since every attempt to return him to ordinary detention has failed. In this situation, only an extension of his placement in isolation will guarantee the safety of staff and his fellow prisoners.

article D.283-1 of the Code of Criminal Procedure prohibits the extension of the measure for longer than two years, unless segregation is the only means of guaranteeing the safety of persons or the institution. Periods prior to segregation are now factored into the calculation of the maximum duration of segregation.

185. In the framework of reform of the segregation procedure, training was set up for regional directors and prison governors, the authorities competent to decide, in conjunction with the Minister of Justice, on the segregation of a prisoner. Their attention was drawn, inter alia, to the fact that, since a segregation measure makes conditions of detention worse, every effort must be made to find alternative solutions that safeguard the security of persons and the institution. They were also asked to be especially vigilant about, and attentive to, the potential physical and psychological consequences for a prisoner of a protracted period of segregation.

186. An effort has also been made to systematize proposals for transfers of convicted and segregated prisoners, at their request, with a view to their placement in ordinary detention in another institution.

187. Both the efforts made to raise awareness among all the authorities competent to decide on the imposition of segregation measures and the tighter framework established for the use of the procedure have brought about a marked reduction in the number of segregation measures, particularly those of long duration. Thus, as at 1 January 2007, out of 58,402 persons in detention, 377 were in segregation (0.6 per cent), 129 of them at their own request. Of this number, 96 had been in segregation for over a year, 62 of them at the initiative of the prison administration (0.1 per cent of the prison population). By comparison, on 1 January 2006, out of a total of 58,344 prisoners, 517 were in segregation (0.9 per cent), 134 of them for over one year. Of this number, 88 had been placed in segregation at the initiative of the prison administration.[13]

1. Treatment of prisoners' complaints and applications

188. There are numerous mechanisms available to prisoners to submit complaints or applications both to internal bodies and bodies external to the prison services.

(a) Processing within the prison service

189. Prisoners can submit requests, complaints or suggestions to the governor of the facility at any time.

190. They can also apply to the regional director for reconsideration of a decision, if they wish to challenge a decision for which the governor of the facility has competence, or to the Minister of Justice, if the decision comes from the regional director.

191. In addition, all administrative decisions that have injurious effects, such as segregation decisions, disciplinary measures and the withholding of correspondence, can be challenged before the administrative courts.

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[13] The figures are current as of 1 January 2007. It should be pointed out that they were only updated on a regular basis from 1 January 2006 onwards.

(b) Processing outside the prison service

(i) Oversight committee

192. An oversight committee chaired by the departmental prefect and comprising several administrative and judicial authorities exists in each prison.

193. The Committee chairman receives prisoners' complaints about health issues, security, food, the provision of care, work, discipline and compliance with the regulations, as well as prisoners' education and social rehabilitation.

(ii) The judicial authorities

194. Prisoners may also submit their requests or complaints to the judicial authorities during the various mandatory visits that are carried out in prisons.

195. Prisoners may correspond with many judicial authorities, to which they can address their complaints by sealed letter without interference on the part of the prison management.

(iii) Members of Parliament

196. Since adoption of the Act of 15 June 2000, a provision was made in article 720-I-A of the Code of Criminal Procedure stating that deputies and senators are authorized to visit prisons at any time. The Act, however, only grants them the right to visit a prison in the framework of their general mandate for oversight of prisons, although, when they go there, they can have private interviews with prisoners, provided that they have obtained prior permission.

197. Deputies and senators are among the authorities with which any prisoner may correspond by means of a sealed letter.

(iv) The administrative authorities

198. Prisons are subject to general oversight by the inspectorate of prisons, law officers, prison service officials and prefects and, depending on their respective areas of competence, any other administrative authority empowered to inspect prison service bodies (labour inspectorate …).

199. In this framework, prisoners may ask to be interviewed by law officers and civil servants tasked with inspecting or visiting prisons without any member of the prison staff being present.

200. Moreover, prisoners are authorized to submit complaints, without any intervention by the prison administration, by means of a sealed envelope addressed to the administrative authorities (see below).

(v) The National Security Ethics Committee (CNDS)

201. The CNDS (see paragraphs 142-143 and 164 above) has wide investigative powers: the relevant authorities are required to provide it with all relevant information and evidence. It may interview any individuals, including prisoners, whether they have been convicted or charged

(ever since 2005, prisoners have been able to correspond with the chairman of the CNDS by means of sealed letter), and it can task one or several of its members to carry out checks in situ, including in prisons.

202. The CNDS issues opinions, formulates recommendations and may also propose amendments to legal texts. These opinions and recommendations are intended to remedy failings that have been observed and to prevent their recurrence. The relevant public authorities are required, within the time limit set by the Committee, to report back to it on the action taken to follow up on the Committee's opinions.

203. The Committee receives each year approximately 15 complaints about the prison service. Its opinions and recommendations are in the public domain (see www.cnds.fr). An annual report is submitted to the President of the Republic.

(vi) Representatives of the Ombudsman of the French Republic

204. From the end of 2005 onwards, representatives of the Ombudsman of the Republic began working in 10 prisons, as part of a pilot project designed to facilitate access for prisoners to the services of the Ombudsman, whose mission is to facilitate the amicable settlement of disputes between citizens and administrative bodies.

205. In this framework, prisoners may contest prisons' internal practices, which may be modified through dialogue with the relevant departments.

206. The representatives of the Ombudsman have been seized of around 700 cases a year in the 10 institutions involved.

207. The mechanism is expected to be extended over a two-year period, beginning in 2007; the representatives of the Ombudsman would thus become active in 25 new institutions.

(vii) Establishment of an independent monitoring mechanism

208. The operational shortcomings of these monitoring mechanisms inside and outside the prison service was highlighted in March 2000 in a report on the improvement of external monitoring of prisons that was produced by the committee chaired by the Chief Justice of the Court of Cassation, Mr. Guy Canivet. Like the reports emanating from the two parliamentary committees of inquiry of the Senate and the National Assembly, this report concluded that there was a need for external monitoring of prisons by an independent authority.

209. The creation of the CNDS helped in part to improve the existing monitoring mechanisms (see above, paragraphs 201-205).

210. The project on independent external monitoring of prisons is now included in the process of ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18 December 2002 and signed by France on 16 September 2005. The Protocol requires States parties to create independent national prevention mechanisms endowed with their own resources and powers to undertake, inter alia, inspections of places of detention as defined in the Protocol (see above).

2. Suicides in prison

(a) Statistical data

Table 6

Number of suicides in prison (1980-2005)

	Average prison population	Number of suicides	Suicide rate per 100 detainees
1980	39 562	39	0.099
1981	37 509	42	0.112
1982	34 129	55	0.161
1983	38 787	57	0.147
1984	42 621	59	0.138
1985	43 816	64	0.146
1986	47 529	64	0.135
1987	51 537	60	0.116
1988	50 407	77	0.153
1989	47 232	62	0.131
1990	47 978	59	0.123
1991	50 783	67	0.132
1992	51 828	95	0.183
1993	52 288	101	0.193
1994	55 418	101	0.182
1995	55 988	107	0.191
1996	56 522	138	0.244
1997	56 008	125	0.223
1998	55 366	118	0.213
1999	55 247	125	0.226
2000	50 626	120	0.237
2001	48 318	104	0.215
2002	53 503	122	0.228
2003	58 574	120	0.205
2004	60 901	115	0.189
2005	59 791	122	0.204

Table 7

Data on suicides in prison (2003-2005)

	2003					2004					2005				
	Convicted prisoners		Remand prisoners		Total	Convicted prisoners		Remand prisoners		Total	Convicted prisoners		Remand prisoners		Total
Age group	M	F	M	F		M	F	M	F		M	F	M	F	
16/20 years			5	1	6	3		4		7	3				3
21/25 years	11	1	13		25	8		7		15	11		8		19
26/30 years	9	1	6	1	17	11		5		16	9		7		16
31/35 years	13	1	6		20	9		8	1	18	11		3		14
36/40 years	5	1	5		11	5		6		11	12		5	2	19
41/45 years	8		10	1	19	6		8	1	15	5	1	15	1	22
46/50 years	5	3	8		16	4		7		11	4		5		9
51/55 years	2				2	5		8		13	3		8		11
56/60 years	1		1		2	2		2		4	1		4		5
61/65 years					0			1		1	1		1		2
+66 years			1	1	2	1		3		4			2		2
Total					120					115					122

(b) Action to prevent suicide in prison: follow-up to the mission report by Professor Jean-Louis Terra on the prevention of suicide by detainees

211. On 23 January 2003 the Minister of Justice and the Minister of Health jointly commissioned Professor Terra (a psychiatrist) to undertake an assessment of both quantitative and qualitative action taken to develop proposals on expanding and streamlining the existing system.

212. In the light of the report's conclusions, submitted on 12 December 2003, a work plan comprising two main components was developed: (i) a national crisis intervention training plan; and (ii) improvement of the existing system.

(i) National crisis intervention training plan

213. The aim of the plan is to ensure that every detainee is able to contact someone trained in identifying suicide crises at any time of the day or night in case of need. To that end an ambitious target was set for the prison administration: the training of 2,200 officers by the end of 2005. To meet this target, close coordination was required between the Prison Administration Directorate, the Department of Health (DGS), the Department of Hospitalization and Health-Care Organization (DHOS) and the National Prison Administration College (ENAP). The initial training courses were updated and improved. The National Prison Administration College updated the content of initial training courses for all staff involved in suicide crisis prevention, with technical support from Professor Terra. The number of hours devoted to the subject was doubled as a result of the modernization process.

214. Trainer training courses have been introduced in order to develop in-service training. Crisis intervention training courses have been designed and run by DGS since 2001, inter alia in the context of the Ministry of Health's "national strategy of action against suicide for 2000-2005".

215. Between 2004 and 2006 nearly 5,000 officials took part in these new initial training courses (2,450 in 2004 and 1,080 in 2005).

(ii) Improvement of the existing system

216. The existing system is being improved through:

(a) The elimination of factors conducive to suicide: studies are under way with a view to incorporating Professor Terra's recommendations into the specifications for future institutions and into current reconstruction projects;

(b) The promotion of a multidisciplinary approach: each institution must include suicide prevention among the subjects addressed by existing multidisciplinary committees (local integration committee, work classification committee, committee on indigence, etc.) or create a special committee on suicide prevention.

217. Suicide prevention is given prominence in the new health/justice methodological guide to health care for detainees, which was distributed by joint circular DHOS/DGS/DSS/DGAS/DAP of 10 January 2005.

218. In July 2005 a note to regional prison service directors (DRSPs) reminded the directors of the strategies developed in the light of the conclusions of Professor Terra's report to reduce the number of suicides in 2009. The DRSPs were urged to be particularly vigilant in assessing potential suicides and in ensuring that such assessments were undertaken systematically when new inmates were admitted. The DRSPs were also asked to report on steps taken to set up special committees on suicide prevention or to assign the subject to an existing committee in the institutions for which they were responsible.

219. The prison administration gives high priority to suicide prevention. The existing system is being assessed under the guidance of, among others, Professor Terra.

IX. RECOMMENDATION IN PARAGRAPH 17 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

A. The principles laid down in the Order of 2 February 1945 applicable to minors

220. Article 2 of the Order of 2 February 1945, a seminal instrument on the subject of juvenile delinquency, lays down the principle that priority should be given to educational action. Punishment should be resorted to only where educational measures prove inadequate in the light of the minor's personality. This precept is based on the fundamental notion that the child is an individual whose character is being formed and that re-education should take precedence over punishment. The application of this principle has a number of implications: provision should be made for specialized judges and educational services; there should be a procedure for studying the minor's personality and keeping track of his or her development; and more protective arrangements should be put in place than those for adults. Under existing legislation, the procedure applicable to minors derogates to some extent from general legal principles in that the same judge can have jurisdiction to investigate the case, to try the minor subsequently and to ensure follow-up to the educational measure ordered or the sentence passed. This plurality of functions is justified by the vital importance of obtaining insight into the minor's character.

221. As priority is given to education, it is essential to find ways of taking whatever measures are most appropriate for the minor before putting him or her on trial. Juvenile judges or the investigating judge must order a background or character investigation before the minor appears before a trial court. It follows that there is no provision for an immediate summary trial in the case of minors. Pursuant to the Act of 9 September 2002, however, the public prosecutor can refer a case involving a minor who is a repeat offender straight to the juvenile court: the minor will then be tried within a period of between 10 days and one month.

222. When rendering judgement, the juvenile court must recognize minority as a mitigating circumstance, which means that a minor under 16 years of age is liable to only half the sentence prescribed in the Criminal Code. Where the minor is between 16 and 18 years old, this mitigating factor is an option that can be set aside by a reasoned decision of the juvenile court or the juvenile assize court (which tries crimes committed by minors aged between 16 and 18).

223. While minors are not subject to the jurisdiction of the ordinary criminal courts (except for police courts), they may be prosecuted in the same way as adults for offences which fall under French law into three categories: minor offences (maximum fine of 1,500 euros or double that amount for repeat offenders); major offences (maximum of 10 years' imprisonment); and serious crimes (for which the maximum penalty is a life sentence).

1. The public prosecutor, prosecution and alternatives

224. When an offence is brought to the attention of the public prosecutor, the latter may decide to institute criminal proceedings on the basis of the evidence adduced. The public prosecutor may also, where appropriate, instruct the police or gendarmerie to undertake additional investigations. Another option is to discontinue the proceedings should the circumstances so warrant.

225. Since the 1980s more specific attention has been given to the response of the French judicial system to victims of offences. In 1992 legal action on behalf of victims was taken in two cases that resulted in conditional discontinuation and criminal mediation. In the latter, a meeting is suggested between the offender and the victim in the presence of a third party with a view to reaching an out-of-court settlement.

226. In response to amendments to the legislation, public prosecutors have gradually developed alternatives to prosecution that are specially designed for first offenders who have committed an offence with a limited impact on the victim and on society.

227. These alternative measures offer a wide range of possibilities, both for adults and for minors, ranging from a simple reminder of the law to a reparation measure (reflection on the offence committed), discontinuation subject to reparation, referral to a health-care, social or vocational body, an order of curative measures (with the prosecutor proposing compulsory treatment) or a civic training course.

228. If the alternatives decided on by the public prosecutor with the consent of the perpetrator and the victim fail to work owing to the offender's non-compliance, the proceedings are reinstituted and the minor is referred, following an investigation, to a court for a ruling.

229. In 2004 a total of 168,809 cases were dealt with by the French prosecuting authorities and:

- 21,507 cases were discontinued;
- in 4,476 cases the minors were acquitted;
- 59,113 alternatives to prosecution were ordered.

230. In 2005:

- 20,705 cases were discontinued;
- 63,408 alternatives to prosecution were ordered.

231. By incorporating new core provisions of the Order of 2 February 1945, the Act of 9 September 2002 (Act organizing and planning the justice system - LOPJ) and the Act of 9 March 2004 (Act adapting the justice system to evolving crime patterns) have improved the responses of the criminal justice system to juvenile offenders by streamlining judicial responses and by diversifying institutional care.

2. Streamlining of justice system responses in the wake of the Acts of 9 September 2002 and 9 March 2004

232. The development of diversified responses on the part of the judicial system is the main aim of the Act organizing and planning the justice system (LOPJ), which seeks to improve such responses and adapt them to problems arising in the case of minors. The legislature sought to reaffirm the fact that coercion and education are two inseparable features of action involving minors.

233. The civic training course had already been introduced under the Act of 9 September 2002 as the third type of criminal penalty that can be imposed by the juvenile court and the assize court. In addition to educational measures (handover to parents, reparation, freedom subject to supervision, placement) and penalties, the juvenile court and the assize court can now impose educational penalties on minors aged between 10 and 18 years (reparation measure or requirement to attend a civil training course). Failure to comply with an educational penalty may entail a placement measure, an educational measure designed to make the penalty more effective.

3. Diversification of institutional care

234. The LOPJ also establishes closed educational centres (CEFs), in which minors can be placed only in cases of judicial supervision, a suspended sentence with probation or penalty adjustment.

235. These centres, which supplement the existing components of the system for placement of juvenile offenders (educational action hostels (FAEs), immediate placement centres (CPIs) and reinforced educational centres (CERs)), are distinguished by the fact that the placement measure involves judicial coercion and by the educational aim that they serve. The specific character of

the educational activities undertaken in the centres is crucial when it comes to achieving the goal that they have been assigned by the legislation in force. This type of placement calls for continuous supervision of the minor within and outside the centre.

236. The CEF component completes the placement system run by the Youth Judicial Protection Service (PJJ) and licensed private-sector agencies by catering for juvenile offenders in the 13 to 18 age group in cases of judicial supervision, a suspended sentence with probation or penalty adjustment. By withdrawing minors from their regular social environment, they serve as an alternative to imprisonment. Their main aim, however, is to integrate young people by means of a robust, intensive and structured educational scheme.

237. Strict supervision, an intensive programme of activities and strongly committed educational teams are all prerequisites for a successful response to the needs of these young repeat offenders.

238. This type of response, based on the mandatory presence of the minor and on constant educational supervision, has led to a reduction in the number of minors in custody and facilitated more effective action to address their manifold shortcomings and difficulties.

239. There are currently 18 CEFs (some 20 new CEFs are to be opened during 2007). As at 31 December 2005, 463 minors had been admitted since the opening of the CEFs. Less than 4 per cent of minors run away and more than 50 per cent do not reoffend on release, which constitutes a successful outcome compared with the previous record of the young people concerned.

4. General jurisdiction of the public-sector PJJ for monitoring minors in custody and follow-up to sentencing since 1 January 2005

240. The decision to amend the Order of 2 February 1945 on juvenile offenders by the Act adapting the justice system to evolving crime patterns of 9 March 2004 had two main objectives:

(a) To promote greater specialization of the institutions dealing with juvenile offenders, be it special juvenile courts or the public-sector Youth Judicial Protection Service;

(b) To offer the specialized juvenile court greater flexibility by enabling it to combine an educational measure with a penalty or an adjusted penalty.

241. The Act of 9 March 2004 added a further dimension to a system that had already been enhanced by inputs from the Act of 9 September 2002, which introduced educational penalties,[14] a new category of measure that fits into the present system between educational measures and penalties in the strict sense of the term.

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[14] The following educational penalties may be imposed by the juvenile court or the juvenile assize court: confiscation; prohibition of contact with the victim of the offence, the joint principals or the accomplices; debarment from appearing at the site of the offence; reparation measure; and compulsory civic training. Failure by a minor to comply with an educational penalty entails an educational placement order.

5. Enhanced specialization of the institutions dealing with juvenile offenders

242. Pursuant to a general principle in force since 1 January 2005, jurisdiction for the enforcement of penalties is conferred on the juvenile judge, the juvenile court and the special juvenile chamber, which replace the judge, court and chamber responsible for the enforcement of sentences.

243. However, this principle of jurisdiction is subject to a number of limitations:

(a) When the convicted persons have reached the age of 21 years;

(b) When the convicted persons have reached the age of 18 years on the date of the adjudication, unless the specialized juvenile court handing down the judgement rules by a special decision that the juvenile judge has jurisdiction;

(c) When the convicted person has reached the age of 18 years and the juvenile judge relinquishes jurisdiction in favour of the judge responsible for the enforcement of sentences.

244. The juvenile judge is now required, pursuant to article 727 of the Code of Criminal Procedure, to visit prisons.

B. Specialization of the public-sector Youth Judicial Protection Service

245. The responsibility of the public-sector Youth Judicial Protection Service for the enforcement of sentences passed by specialized juvenile courts is a general principle applicable to preparation for enforcement, implementation and follow-up to convictions.

246. This general jurisdiction for convicted persons up to the age of 21 years covers all aspects of the enforcement of sentences, in an open or closed environment, during the preparation or implementation of, or during the follow-up to, alternatives to imprisonment, custodial sentences (tailored to the characteristics of the offender) or adjusted sentences.

247. This general principle is subject to certain limits:

(a) The jurisdiction of the public-sector PJJ is linked to that of the juvenile judge; in cases where the latter does not have jurisdiction, the public-sector PJJ cannot be appointed;

(b) Where the juvenile judge has jurisdiction, he or she may refer the case to the Integration and Probation Correctional Service (SPIP) when the convicted person has reached the age of 18 years.

1. Greater flexibility to combine an educational measure with a penalty or an adjusted penalty

248. In the case of a penalty or adjusted penalty for which a mandatory probation measure may be applied, the juvenile judge, acting as a judge responsible for the enforcement of penalties, may impose on the convicted person one of the measures set out in articles 16 and 19 of the aforementioned Order: handover to parents, placement or freedom subject to supervision. These measures may be modified during the period of enforcement of the sentence.

249. This combination is therefore possible in the case of the following penalties or adjusted penalties: a suspended prison sentence with probation; a suspended prison sentence with a community service order; socio-judicial surveillance; conditional release; placement under electronic surveillance; a semi-custodial sentence; non-custodial placement; deferment of sentence and enforcement in instalments; and temporary leave from custody.

2. Development of a consistent definition of the mandate of the Youth Judicial Protection Service

250. The new mandate entrusted to the public-sector Youth Judicial Protection Service is consistent with the legislative reform introduced by the Act of 9 September 2002 organizing and planning the justice system, the purpose of which was to ensure that all juveniles in conflict with the law, including the most refractory offenders, have access to educational opportunities through the establishment of juvenile detention facilities and continuous action by Youth Judicial Protection Service educators within juvenile wings.

251. The assignment to the public-sector PJJ of responsibility for preparing and following up adjusted penalties completes this process, enabling the specialized Service to prepare juvenile detainees for their release, to ensure that sentences are tailored to their individual characteristics and to ensure that their return to liberty is a gradual process.

252. The decree implementing the Act of 9 March 2004 thus transfers all the functions performed by the Integration and Probation Correctional Service to the Youth Judicial Protection Service, while maintaining the specific character of the latter whose work is primarily educational.

253. The aim is to ensure that the period spent in detention is also used for educational purposes and involves, for example, some form of training or work on family relations. Another aim is to improve preparations for the minor's release by developing a project and possibly arranging for an adjustment of penalty.

254. Educational action in detention together with the preparation of, and follow-up to, penalty adjustments consistent with such action will eventually reduce both the number and duration of custodial sentences passed on minors[15] and help to prevent reoffending.

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[15] There has in fact been no increase recently in the number of juvenile detainees, which stood at 739 on 1 January 2004, 744 on 1 June 2005 and 732 on 1 January 2006.

255. Lastly, with regard to the outlook for 2007, mention should be made of the improved conditions of detention of juveniles.

3. Improvement of the conditions of detention of juveniles

(a) The juvenile detention facilities programme

256. Pursuant to Act No. 2002-1138 of 9 September 2002 organizing and planning the justice system, the Department of the Prison Administration (AP) and the management of the Youth Judicial Protection Service (PJJ) are required to launch a programme involving the opening of seven detention facilities specially designed to accommodate minors (EPMs).

257. Each EPM will eventually be able to accommodate up to 60 juvenile detainees. As a result of the work carried out by the prison administration on a prison map for "juveniles", which is designed to serve the interests of young people and families by giving priority to proximity and hence to family bonds, also during the period of confinement, it will be possible to maintain 34 of the 58 existing juvenile wings (QMs), in which PJJ educational teams have been operating since 2003.

258. In addition to the 77 prison administration officers, 70 of whom are surveillance staff, each EPM will be served by 43 PJJ professionals forming a Juvenile Detention Facility Educational Service (SEEPM).

(b) A new juvenile detention regime

259. Jointly with the establishment of juvenile detention facilities, the Department of the Prison Administration and the management of the Youth Judicial Protection Service developed a new juvenile detention regime. Two decrees are currently being enacted.

260. The new regime is organized in line with the principles of action in support of juvenile detainees (training, preservation of family bonds, role of persons exercising parental authority, health).

261. It also involves a reform of the disciplinary regime. For instance, placement in a disciplinary block will be resorted to only in exceptional cases.

262. Lastly, it abolishes segregation measures for juveniles, replacing them with a more appropriate protective measure.

(c) Provision for legal aid for minors in judicial proceedings

263. The legal aid mechanism established by Act No. 91-647 of 10 July 1991, on legal aid, ensures that minors will be defended in civil and criminal proceedings.

264. Under article 5 of the Act, in the event of a conflict of interest between members of a single household, separate means tests may be carried out for each of the persons concerned.

This provision is of particular relevance to minors who are the victims of offences committed within the family unit. In these situations, the legal aid bureau will not take account of parental earnings in excess of the thresholds set down in the Act.[16]

265. Article 5 was recently amended by Order No. 2005-1526 of 8 December 2005, to take account of another situation where separate means testing may be effected. In considering an application for legal aid to assist a juvenile offender, article 5 provides that no account shall be taken of the assets of parents or other members of the child's household who fail to demonstrate sufficient interest in the child.

266. Furthermore, article 9-2 of Act No. 2002-113 of 9 September 2002 supplements the Act of 10 July 1991 by exempting the victims of intentional attempted murder or assault from means testing so that they can receive legal aid. This provision applies to child victims of offences for the purposes of investigation and trial proceedings.

267. In addition, under article 388-2 of the Civil Code, an ad hoc tutor may be appointed to represent a child victim, and may in turn appoint a lawyer to defend the child's interests and represent the child in court, particularly in criminal proceedings.

268. It is important to note that legal aid bureaux can always waive the means-test condition if, in accordance with article 6 of the Act of 10 July 1991, a case "appears worthy of special attention in view of the subject of the dispute or the probable costs of the proceedings". This provision applies equally whether the minor is the victim or the offender. The minor may thus qualify for legal aid because of the circumstances in which the offence was committed.

269. Full use is made of this system by the legal aid bureaux. Indeed, the vast majority of minors' applications for legal aid are granted, the rate for 2005 being close to 90 per cent.[17]

270. Moreover, a full-time juvenile defence service staffed by lawyers has been set up under the protocols on improving criminal defence, agreed between barristers and the courts pursuant to articles 91 and 132-6 of the Decree of 19 December 1991 implementing the Act of 10 July 1991, and this ensures legal assistance during police custody and criminal investigation proceedings, both in the criminal courts and the juvenile courts ruling on tutelary support measures.

271. In a further development, Act No. 2002-113 of 9 September 2002 and Decree No. 2003-300 of 2 April 2003 extended the scope of the agreements concluded between the Bar and the courts under the protocols on improving criminal defence in order to assist minors who are the victims of an offence, whatever its gravity, during criminal investigations and in the criminal courts.

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[16] These thresholds, which are adjusted depending on family size, are revised each year as the lowest income tax bracket. In 2006 the legal aid threshold was €859 and the threshold for partial legal aid was €1,288, unadjusted. [Ref: L'aide partielle http://ec.europa.eu/civiljustice/legal_aid/legal_aid_fra_en.htm#3.]

[17] Out of 977,757 applications in 2005, 875,871 were granted.

272. A Ministry of Justice circular dated 19 August 2003 facilitated the rapid implementation of this measure by expediting the creation of legal support units for victims and minors - already established by barristers in many jurisdictions - in keeping with the protocols on improving criminal defence procedures.

273. Since this scheme was launched on 3 April 2003, 36 of the 38 protocols now being implemented have included provision for these units, which offer - though the scheme itself makes no provision for this - free pretrial legal advice and assistance for child victims during criminal investigations and criminal court hearings.

274. In addition, in those jurisdictions where the Bar has not yet put a scheme in place, the manual on criminal policy on marital violence recommends that, in cases of domestic violence, the presiding judge should make quite sure that the child victim is present and, if not, should adjourn the proceeding and send the complainant another notice stating that their presence is required and reminding them of what support is available to them.

275. The legal aid scheme is soon to be improved by a decree extending the scope of legal aid to include assistance for juveniles appearing before a police court or local court on category 1-4 charges. This change will ensure that juvenile offenders have the assistance of counsel under the legal aid scheme, regardless of the gravity of the offence (a minor offence, a major offence or a serious crime).

C. Number and duration of placements in pretrial detention in recent years, with particular reference to minors: recent trends

276. At the outset, it is worth noting that, under article 4-1 of the Order of 2 February 1945 on juvenile crime, “a minor against whom proceedings have been brought must have a lawyer. Where no lawyer is appointed by the minor or his or her legal representative, the prosecutor, juvenile court or investigating judge shall instruct the president of the Bar to appoint a court lawyer”.

277. Thus no violation of minors’ right to legal counsel in judicial proceedings is possible.

1. Overall trends

278. Under the Act of 15 June 2000, the decision on pretrial detention is now taken, not by the investigating judge, but by the liberty and custody judge following a public hearing. The accused is assisted by a lawyer of their choice or a court-appointed lawyer.

279. The number of persons (adults and minors) placed in pretrial detention during an investigation rose from 19,534 in 2001 to 23,196 in 2005. This upward trend is due in part to the increase in the number of persons charged over the same period (up from 44,058 in 2001 to 53,833 in 2005).

280. However, the percentage of persons who are charged and placed in pretrial detention has declined overall in recent years (44.7 per cent in 2001 and 43.4 per cent in 2005), although it did increase in 2002 (48.6 per cent) and 2003 (46.3 per cent).

Table 8

Pretrial detention rates

	2001	2002	2003	2004	2005
Individuals charged	43 711	48 746	51 821	55 640	3 494
Individuals in pretrial detention	19 534	23 691	24 001	23 800	3 196
Rate of pretrial detention	44.7%	48.6%	46.3%	42.8%	43.4%

Source: Prosecution services.

281. The number of persons placed in pretrial detention under the immediate referral procedure has been relatively stable in the last three years (19,989 in 2003; 20,824 in 2005). The rules governing pretrial detention under the immediate referral procedure (appearance before the court within three working days of being placed in detention), mean that the length of detention is relatively short.

282. The average duration of pretrial detention in connection with an investigation is lengthening, reflecting the increase in the average length of investigations, itself partly a result of prosecuting services' policy of referring only the most complex criminal cases to investigating judges. Between 2001 and 2005 the average length of pretrial detention increased from 6.1 months to 8.7. The average length of detention varies depending on the type of offence: 17 months for serious crimes (for which an investigation is mandatory) but 7.1 months for major offences (*délits*) (5.5 in 2002; 6.2 in 2003).

283. Pretrial detention may continue beyond the investigation and the trial, until the court decision becomes final (exhaustion of remedies). Similarly, anyone who appeals against a prison sentence handed down by a lower court will be placed in pretrial detention. Thus the average duration of pretrial detention for an entire proceeding was 24.3 months in 2004 for serious crimes, the same figure as for 2001, and 4.1 months for major offences (all criminal proceedings, including cases that were subject to an investigation). This figure has remained relatively stable in recent years (3.7 months in 2001 and 4.1 months in 2004 for major offences).

Table 9

Total pretrial detention served up to final decision

	2001	2002	2003	2004
Average duration of pretrial detention for major offences (months)	3.7	3.4	3.8	4.1
Average duration of pretrial detention for serious crimes (months)	24.3	24.9	23.6	24.3

Source: Criminal records office.

2. Pretrial detention of minors

284. Minors may be placed in pretrial detention while an investigation is being conducted by an investigating judge or a juvenile judge.

285. The data given below relate to placement of minors in pretrial detention and other measures (note that a minor may be placed in pretrial detention more than once in the course of a single investigation).

286. Juvenile courts issued 1,111 pretrial detention orders in 2005, as against 938 in 2004.

287. In cases investigated by investigating judges and completed in 2005, liberty and custody judges issued 1,110 pretrial detention orders in respect of minors; 1,079 of those cases were subsequently referred to the juvenile court or resulted in charges being brought in the juvenile assize court.

288. The average length of pretrial detention during investigations of major offences by investigating judges is relatively stable (around 3 months) and is clearly on the decline in respect of serious crimes (10.9 months in 2001; 9.8 months in 2004).

289. According to the criminal records office, the average length of pretrial detention of convicted minors, from the beginning to the end of proceedings, was 14.1 months in 2004 for serious crimes (266 convictions) and 2.5 months for major offences (1,956 convictions).

290. In order to assist rehabilitation of minors, juvenile courts favour pretrial educational measures. Placement orders, probation and reparation measures accounted for 58.8 per cent of pretrial measures in 2005 (52.6 per cent in 2001), and show a steady rise (+15.2 per cent in 2005, +5.5 per cent in 2003, +12.2 per cent in 2004, +14.5 per cent in 2005).

Table 10

Juvenile offenders: pre-sentencing measures

	1999	Trend	2000	Baseline trend	2001	Trend	2002	Trend	2003	Trend	2004	Trend	2005
All pre-sentencing measures	22 027	+2.8	22 637	-3.6	21 396	+16.0	24 812	-0.2	24 761	+9.6	27 139	+10.2	29 915
Social investigation, social orientation and investigation measures (IOE), expert opinion	6 013	+5.5	6 342	-8.7	5 666	+11.9	6 340	+6.9	6 779	+12.4	7 618	+0.9	7 686
Placement, supervised release, reparation	10 774	+5.9	11 406	+4.4	11 264	+15.2	12 975	+5.5	13 691	+12.2	15 358	+14.5	17 581
Court supervision	3 274	-2.7	3 186	-6.1	3 289	+23.8	4 073	-19.3	3 285	-1.8	3 225	+9.7	3 537
Interim detention	1 966	-13.4	1 703	-34.0	1 177	+21.0	1 424	-29.4	1 006	-6.8	938	+18.4	1 111

Source: Juvenile court tables.

291. In addition, one of the priorities of the Ministry of Justice is to develop the closed educational centres established by the Act of 9 September 2002 (see above, paragraphs 234-239).

X. RECOMMENDATION CONTAINED IN PARAGRAPH 18 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

292. At the outset, it should be noted that even though the Gendarmerie Nationale is a military corps, when it performs civil policing functions involving public security and maintenance of law and order, it acts under orders and the supervision of the administrative and judicial authorities.

293. The powers of the gendarmerie under the relevant laws and regulations may be exercised both during law-and-order and public-security operations.

294. The flying squad is specially trained in maintenance and restoration of order. There are strict rules governing its deployment. Under Inter-Ministerial Directive No. 500 of 9 May 1995, the civilian authorities are required to submit a written request for the deployment of the gendarmerie. A civil authority presence is required throughout law and order operations. The civilian authorities have sole power to order the operation, to decide on the use of force, and to authorize the use of weapons (after due warning, except where provided under article 431-3 of the Criminal Code,[18] which also applies to the police).

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[18] [REF 13].

Criminal Code, article 431-3:

"An unlawful assembly is any gathering of persons on the public highway or in any place open to the public where it is liable to breach the public peace.

"An unlawful assembly may be dispersed by the forces of public order after two orders to disperse have been issued without success by the prefect, the sub-prefect, the mayor or one of his deputies, any judicial police officer in charge of public safety, or any other judicial police officer, bearing the insignia of their office.

"These orders shall be given in such a way that the persons taking part in the unlawful assembly are informed of the obligation to disperse without delay, the modalities to be specified by a decree of the Conseil d'Etat, which shall also determine the insignia to be borne by the persons referred to in the previous paragraph.

"However, the representatives of the forces of order called on to disperse an unlawful assembly may resort to the direct use of force where acts of violence are carried out against themselves or if they are not in a position otherwise to protect the place they are occupying."

295. In law-and-order operations, except in special cases as provided under article 431-3 of the Criminal Code, the use of force or of weapons is authorized only by the civil authority, and based on a specific written protocol in the form of a series of formal applications. The general application, which provides the framework for deployment, is filed by the prefect of the civil defence zone. The specific application, drawn up by the civil authority that is named in the general application or is responsible for handling emergencies, may mention or exclude the use of force. The special supplementary application is the only one that allows for the use of weapons in response to the situation on the ground.

296. Where public security operations are concerned, authorization to use weapons other than for legitimate self-defence is granted to gendarmerie officers and non-commissioned officers in situations where a person attempting to escape fails to obey their warnings or a vehicle fails to stop when ordered to do so by a gendarme (Defence Code, art. L. 2338-3).

297. The use of weapons is governed by all relevant regulations[19] and the case law of the Court of Cassation:

(a) It must be clear that the person or vehicle is attempting to flee (refusal to heed repeated calls of "Stop, gendarmerie" or signals or gestures to stop) and that the gendarme is acting in an official capacity (i.e., is in uniform);

(b) There must be grounds to suspect that the person fleeing is involved in a serious offence;

(c) The member of the gendarmerie must be on duty (with the criminal investigation police or administrative police) and carrying a service weapon, and the discharge of the weapon must be "absolutely necessary".

298. The gendarmerie has also adopted several non-lethal weapons for use in situations of lesser urgency where the use of firearms is not appropriate. Examples are the telescopic protection baton, the taser and the flash-ball.

299. The use of weapons should be seen as an exceptional measure. The gendarmerie's right to use force or weapons has not been called into question by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the National Commission on Security Ethics (CNDS) or the European Court of Human Rights. The European Court permits the use of weapons in order to stop criminals escaping, if there is no other way to immobilize them immediately or subsequently (European Convention on Human Rights, art. 2-2 (b)).

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[19] Cf. Circular No. 6347 DEF/GEND/OE/SDOE/REGL of 7 March 2006, on the use of service weapons by members of the gendarmerie in the course of their duties.

300. Indeed, the Court of Cassation, in a discussion of article 174 of the Decree of 20 May 1903, which is revived in article L. 2338-3 of the Defence Code, explicitly recognized that the article is consistent with the European Convention.[20] The Criminal Division of the Court of Cassation found that "Contrary to the argument put forward, article 174 of the Decree of 20 May 1903 is consistent with the provisions of article 2-2 of the European Convention on Human Rights and does not conflict with any provision of domestic law."

301. This was further confirmed by the Court of Cassation when, in strict application of article 2-2 of the European Convention, it issued a decision on 18 February 2003 - confirmed, inter alia, by a decision of 13 April 2005 - stating that the use of weapons by gendarmes must be "absolutely necessary given the particular set of circumstances". In this way, the Court of Cassation has harmonized the procedure as requested by the Committee,[21] ensuring that law and order officers belonging to different administrative units but confronted with dangerous situations that are identical or similar, are subject to a single rule that confines the use of force solely to situations where it is absolutely necessary, and only in the degree required to attain a legitimate objective.

XI. RECOMMENDATION CONTAINED IN PARAGRAPH 19 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

302. The Committee's observation in this regard no longer applies, since compulsory military service has been abolished. Act No. 97-1019 of 28 October 1997, article 2, suspended conscription for young persons born after 31 December 1978 with immediate effect and in phases up to 1 January 2003 for those born before 1 January 1979.

A. Compulsory three-phase national service replacing military service

1. Defence education

303. Defence education was introduced in 1998 and forms part of the secondary school curriculum at the junior and senior levels.

304. The purpose of defence education is to strengthen the ties between the Army and the nation and to make youngsters aware of their duty of defence, by introducing them to the principles and structure of national defence and European defence.

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[20] Although it formed part of a decree, article 174 already had the force of law because it derived from the Act of 22 July 1943, as validated by Order No. 45-532 of 31 March 1945 (J.O. 4 April, p. 1843).

[21] Welcomed in legal commentary: cf. Criminal Division, 18 February 2003, Dalloz 2003, p. 1317, note by F. Defferard and V. Durtette; Criminal Division, 13 April 2005, Dalloz 2005, p. 2920, note by J.L. Lennon.

2. Registration

305. Registration, either at a town hall or at the consulate of their country of residence, is mandatory for all French men and women on reaching the age of 16. At this time, French nationals report their civil status, their family and social situation and whether they attend university or work, and receive a certificate of registration.

3. Defence call-up and training

306. All French nationals also attend defence training between the date of registration and their 18th birthday. Training lasts one day and comprises a general introduction to defence and what it involves and to opportunities for enlisting in the Army or doing voluntary service. Participants also receive instruction in risk prevention and basic first-aid training. French proficiency tests are used to identify those experiencing difficulties and to inform them about the employment and social integration schemes available.

307. Failure to comply with these obligations disqualifies participants from sitting for State-administered examinations until the age of 25. The injunction may be lifted, however, if the individual's situation is regularized.

308. Defence training is attended by 800,000 young adults every year.

B. Voluntary service as a component of national service

309. Voluntary service allows individuals either to personally serve the community at large on a temporary basis as part of a public interest project (community service), or to get help from the State in resolving problems with finding employment and/or social integration (integration training).

1. Community service

310. Community service lasts from 6 to 24 months and is open to 18 to 28-year-olds of French or European Union nationality. Community service may be performed in any non-State corporate body in metropolitan France, abroad or the French overseas territorial units in respect of full-time work approved by the competent minister in three areas of action:

(a) Defence, security and prevention;

(b) Social cohesion and solidarity;

(c) International and humanitarian cooperation.

311. Around 6,000 young people do community service in France and abroad.

2. Integration training

312. Integration training is provided under the "Defence: a second chance" programme run by the Public Defence Integration Institution (EPID), which targets 18 to 21-year-olds with major gaps in their schooling and education and serious problems with employment and social integration, as identified on the defence training day.

313. This voluntary option offers schooling and civic and vocational training lasting 6 to 24 months delivered in training centres that will eventually cover the whole country.

314. The aim is to take in some 20,000 trainees a year at the end of 2007.

XII. RECOMMENDATION CONTAINED IN PARAGRAPH 20 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

315. Act No. 2003-1176 of 10 December 2003, which entered into force on 1 January 2004, made far-reaching changes to the right of asylum as applied in France. The recognition of persecution by non-State actors and the introduction of a form of protection to supplement the 1951 Convention relating to the Status of Refugees are two important steps forward in this regard. In addition, a single body, the Office for the Protection of Refugees and Stateless Persons (OFPRA), now has sole jurisdiction in asylum matters, i.e. has the power to grant protection under the Convention or subsidiary protection, as the case may be; and a single instance, the Refugee Appeals Commission, has sole authority to rule on appeals against asylum decisions.

316. In keeping with the doctrine of the Office of the United Nations High Commissioner for Refugees (UNHCR), France has abandoned the criterion of State persecution in interpreting article 1 of the Convention relating to the Status of Refugees. Hence, provided that the conditions for application of the Convention are met, refugee status is granted even where the threat of persecution comes from non-State actors.

317. A form of subsidiary protection supplementing that granted under the 1951 Convention has been introduced. This protection is aimed at anyone who can demonstrate that they risk being subjected, in their own country, to capital punishment, torture or other treatment that violates article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It also applies to civilians in situations of armed conflict or civil war who are at serious, direct and personal risk. While the criteria applied are stricter than those set for the old system of territorial asylum, subsidiary protection is mandatory when the conditions are met, whereas protection under the territorial-asylum system was discretionary. For subsidiary protection, too, no account is taken of the source of the persecution. The primacy of the 1951 Convention is reflected in the Code of Entry and Residence of Aliens and the Right to Asylum: subsidiary protection can be granted only to those who do not meet the conditions of asylum under the Convention.

318. While there has certainly been an increase in both absolute and percentage terms in numbers receiving subsidiary protection, the increase is in fact relative. It is attributable in part to the carryover from year to year of cases requiring thorough examination in the light of the new protection standards. Moreover, the new rules have themselves given rise to a new kind of asylum application, which has compounded the issues that OFPRA has to address. Subsidiary

protection does not replace protection under the Convention - on the contrary the application of the subsidiary protection rules generates greater numbers of protected persons. Indeed, it was following the introduction of subsidiary protection that the concept of the "social group" acquired a further dimension in doctrine and case law, both in terms of the issues arising (excision, forced marriage, sexual orientation) and in terms of the countries of origin in question. In cases where it has found evidence to warrant the granting of subsidiary protection, the Refugee Appeals Commission has only made a determination based on a reasoned decision concerning recognition of refugee status under the 1951 Convention.

319. Under the new Act, France recognizes, as do most European States, that non-State authorities such as international organizations may, in certain circumstances, be considered as providing protection to the population. In order to warrant such consideration, the authorities must control the territory to which the applicant is to be returned, and they must be willing and able to enforce the applicant's rights and protect him or her from violations, as would an internationally recognized State.

320. The concept of internal asylum has been introduced into the French legal system; it allows scope for the diverse security situation in countries of origin to be taken into account and authorizes OFPRA to reject asylum applications from persons who could have access to protection in a part of their country of origin and could reasonably be sent back there. The Act guarantees prudent application of the concept of internal asylum by requiring systematic assessment of the reasonableness of returning the applicant to the part of the country concerned.

321. The French courts have also made the application of the concept of internal asylum subject to stringent conditions. The Constitutional Court, in a ruling of 4 December 2003, interpreted the Act as meaning that OFPRA "may reject an asylum application from a person who would have access to protection in a part of his or her country of origin, if that person has no grounds to fear being subjected to persecution or a serious violation there, and if it is reasonable to expect that he or she can remain in that part of the country. The Office, at the time of taking its decision, shall take into account the general conditions prevailing in that part of the country, the applicant's personal situation and that of the persecutor". The conditions applied are thus very strict: the person concerned must not only be under threat but must also be able to remain over the long term in the part of the country to which he or she has relocated and lead a normal life there. The Conseil d'Etat and the CRR have also interpreted these criteria in a manner which ensures considerable protection for applicants.

322. The priority procedure is applied to nationals of countries considered as safe countries of origin. The Act defines a "safe country of origin" as a country that respects the principles of freedom, democracy, human rights and the rule of law, in which it may be presumed that persecution cannot be perpetrated, authorized or left unpunished. It is not unreasonable to provide for more rapid processing of applications from nationals of countries where, in principle, persecution and violations of human rights are neither perpetrated nor tolerated. Applicants are not penalized by the priority given to asylum applications from nationals of countries on the list of safe countries of origin: OFPRA is obliged to respond to these applications, and ensures that each case is examined on its merits in keeping with French constitutional principles. Persons whose applications are handled under the priority procedure are given a hearing by OFPRA under the conditions prescribed by law. Lastly, the persons concerned have the right to remain

in France until OFPRA issues a decision on their application. The following countries are considered safe for the purposes of the application of the priority procedure: as of 30 June 2005, Benin, Bosnia and Herzegovina, Cape Verde, Croatia, Ghana, India, Mali, Mauritius, Mongolia, Senegal, Ukraine; as of 16 May 2006, Albania, Madagascar, Niger, Tanzania, The former Yugoslav Republic of Macedonia.

323. Cases handled under the priority procedure must be processed within 15 days in most cases and within 96 hours if the person is being held in a holding centre with a view to deportation (see paragraph 324 below).

324. The priority procedure has proven its usefulness. The distinction between applicants on the basis of their country of origin means that applications can be handled in a differentiated manner while respect for the Convention relating to the Status of Refugees is still ensured. The other criteria for processing of cases under the priority procedure are equally justified: cases in which the applicant represents a serious threat to public order, public security or State security; or in which the application is based on deliberate fraud or misuse of the asylum procedures, or is solely aimed at preventing execution of a deportation order. The United Nations High Commissioner for Refugees is not opposed to the introduction of accelerated procedures which shorten the waiting period for asylum-seekers, provided that procedural guarantees are respected, as is the case in France. The concept of safe country of origin does not contravene the Convention relating to the Status of Refugees in particular.

325. In 2005 OFPRA received 12,056 applications under the priority procedure (2,020 of them from persons in administrative detention), representing 23 per cent of total applications. The 15-day period allows enough time for the applicant to be called for interview in accordance with the requirements laid down by law. It should be noted that, in the first quarter of 2006, 69 per cent of the cases registered under the priority procedure were in fact reviews. The persons concerned had thus already had more than 15 days for their application to be processed. For the same reasons, most of the persons whose cases are handled under the priority procedure have already had a reply from the CRR in connection with a suspensive appeal. The 15-day or 96-hour time limits may exceptionally be exceeded, if the procedure so requires.

326. Foreigners for whom a deportation order has been issued may be placed in administrative detention facilities for a period of up to 32 days. Upon their arrival in a holding centre they are informed of their rights in regard to asylum. Following such notification they have five days within which to apply for asylum. Such applications are given the highest priority. OFPRA may call the applicant to a hearing, in which case he or she is escorted to its offices. Persons in detention are assisted by an association which helps them exercise their rights.

327. In keeping with its commitments under the European Union's Council Regulation (EC) No. 343/2003 of 18 February 2003, establishing the criteria and mechanisms for determining the member State responsible for examining an asylum application lodged in one of the member States by a third-country national (the Dublin II Regulation), France transfers asylum-seekers to other European States if, in the light of specific criteria and information obtained from the persons concerned (passports, identity cards, dated train or airplane tickets bearing their names), those States prove to be responsible for examining the applications. By signing that Regulation,

all the member States have agreed that asylum applications shall be considered in accordance with the Convention relating to the Status of Refugees, irrespective of which State handles the application.

328. The procedure of applying for asylum "at the border" does not entail an examination of an asylum application on its merits. It is a procedure of admission to French territory which falls under the jurisdiction of the Ministry of the Interior; the purpose of the procedure is to grant or deny entry to foreign nationals seeking asylum who do not possess the necessary documents for admission. The procedure is governed by article L.221-1 of the Code of Entry and Residence of Aliens and the Right of Asylum, which provides that aliens who are seeking entry on the grounds of asylum but do not have the documents required for admission may be detained in a holding area for the time strictly necessary to determine whether their asylum application is manifestly unfounded. The Ministry of the Interior decides whether or not to admit the applicant, after consulting OFPRA. The opinion issued by the OFPRA "asylum at the border" division is solely concerned with whether or not applications are manifestly unfounded. If the applicant is admitted to France, he or she then applies for asylum under the same conditions as other applicants already in the country. Asylum applications submitted at the border are all registered and transmitted to OFPRA. An opinion is issued within 48 hours on average. Applications submitted at Roissy airport are handled on site by OFPRA officials; those made in other airports or in ports are handled by telephone, and in all cases an interpreter is used if necessary.

329. Representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) may have access to persons in holding areas, provided that they have obtained individual authorization. This takes the form of a personal card which they can use to obtain an access permit for the holding area at each visit. The representatives can hold interviews with border police officers, OFPRA officials and persons in the holding area who are seeking entry on the grounds of asylum. Authorized associations also have access to the holding area.

330. Concerning the specific case of foreigners seeking asylum when they arrive in France by sea, in a ruling of 29 July 1998 that was issued following a decision handed down on 12 May 1997 by the Jurisdiction Disputes Court (*Tribunal des conflits*) (Bensalem and Taznaret case), the Conseil d'Etat found that such foreigners could not be held on board and that they should be placed in holding areas under the conditions set forth in articles L.211 et seq. of the Code of Entry and Residence of Aliens and the Right of Asylum. The French authorities, whose acts are governed by the principle of legality, have taken this ruling into account.

XIII. RECOMMENDATION CONTAINED IN PARAGRAPH 21 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

331. The Act of 10 December 2003 on the right of asylum has strengthened the protection afforded in France to persons facing risks to their lives, liberty or integrity, by setting forth the principle that, for the purposes of granting refugee status or subsidiary protection (see paragraphs 315 to 330 above) persecution "may be carried out by State authorities, parties or organizations controlling the State or a substantial part of the State territory", but may also include that perpetrated by "non-State actors, where the authorities are unwilling or unable to provide protection" (article L.713 of the Code of Entry and Residence of Aliens and the Right of Asylum).

XIV. RECOMMENDATION CONTAINED IN PARAGRAPH 22 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

332. Further to the recommendations of the Human Rights Committee, France has introduced changes to the rules on access to holding areas by associations and representatives of the United Nations High Commissioner for Human Rights. Under article L.223.1 of the Code of Entry and Residence of Aliens and the Right of Asylum, the delegate or representatives of the Office of the United Nations High Commissioner for Refugees now have access to a holding area in which foreign asylum-seekers may be held for the time required to examine their application.

333. The conditions of access are laid down in articles R.223-1 to R.223-14 of the Code of Entry and Residence of Aliens and the Right of Asylum, which also sets forth the conditions for access by humanitarian associations to the holding area.

334. Under the terms of that regulation, the UNHCR delegate and representatives have access to the holding area "in conditions ensuring their effective access to asylum-seekers".

335. The delegate and representatives, who are individually authorized, "may interview the chief of the border control service, OFPRA officials and personnel from the International Organization for Migration responsible for humanitarian assistance". They may also "hold confidential interviews with persons being held in the holding area".

336. The only restrictions that may apply to access to the holding area are those relating to "public order and transport security".

337. Practical arrangements for access to the holding area, in particular the frequency of the visits, "are decided by mutual agreement" between UNHCR delegates and the Minister of the Interior, in order to enable UNHCR "to accomplish its mission".

XV. RECOMMENDATION CONTAINED IN PARAGRAPH 23 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

338. France has gradually built up a body of specific anti-terrorist legislation, which has been regularly updated since the Act of 9 September 1986. Since the 11 September 2001 attacks, the substantive legislation and procedural regulations have been reinforced by the adoption of the Acts of 15 November 2001, 9 September 2002, 18 March 2003, 9 March 2004 and 23 January 2006.

339. In no sense do these acts establish a law of exception; they are merely special laws which provide for derogations and are similar to those that already exist in the legislation on economic and financial crime or organized crime; anti-terrorist legislation is now part of this framework.

340. As in any other area, the greater the infringement of liberty, the greater the degree of prior and effective judicial control.

341. The system maintains the procedural guarantees for the persons subjected to such measures so as to ensure their right to a fair trial. The individuals concerned have the right to be assisted by counsel and benefit from permanent judicial control over the investigation and over the coercive measures applied by the specialized bodies; they may also appeal against any decisions by the judicial authority and against convictions handed down by the court of first or second instance, irrespective of the gravity of the charges against them.

A. Procedural guarantees in regard to anti-terrorist legislation

342. The provision in the Act of 23 January 2006 for holding persons in custody for six days in terrorism cases is strictly regulated by article 706-88 of the Code of Criminal Procedure.

343. This period of custody, which must remain an "exceptional" measure, is subject to a substantive restriction, in that it may be allowed only "if there is a serious risk of imminent terrorist action in France or abroad, or if the requirements of international cooperation make this essential".

344. The decision on extended custody is also subject to a procedural restriction, in that it must be taken only by a written and substantiated decision by the liberty and custody judge.

345. Exceptional extension of custody in terrorism cases is thus subject to authorization by a judge, who is the guardian of individual liberty under article 66 of the Constitution. The judge is independent of the investigation. The judge acts on referral from the public prosecutor or the investigating judge but does not answer to them and enjoys full decision-making independence.

346. Concerning the possibility of meeting with counsel after 72 hours of remand in custody, the Constitutional Council, in a ruling issued on 11 August 1993, stated that "the difference in treatment provided for by the legislation reflects differences in situation arising from the nature of these offences, and thus does not stem from unjustified discrimination".

347. This provision, and anti-terrorist legislation in general, is consistent with the legislation on organized crime, which also provides that persons remanded in custody for such offences can only see a lawyer after 72 hours in remand.

348. The anti-terrorist legislation provides both for a medical examination carried out at the request of the person in custody and a compulsory medical examination at the beginning of each of the two additional periods of extension, which is carried out by a doctor appointed by the public prosecutor, the investigating judge or the criminal investigation officer. The doctor is required to give an opinion as to whether the extension of custody is compatible with the person's state of health.

349. If the person in custody has not been granted his or her request to telephone a person with whom he or she normally lives or a parent, a brother or sister or his or her employer, in order to notify them of the custodial measure, he or she may submit the request again after 96 hours in custody (article 706-88 of the Code of Criminal Procedure).

350. Detention on remand is subject to very strict time limits.

351. For a terrorist crime, article 145-2 of the Code of Criminal Procedure provides for a maximum period of four years' detention on remand, which may be extended twice by four months in each case. For terrorist conspiracy, the maximum period is three years.

352. These extensions are subject to a very strict procedure laid down in the above-mentioned article.

353. Decisions to remand individuals in detention and to extend such detention are taken by the liberty and custody judge, who is independent of the investigation. The decisions are subject to appeal, and must be considered by the examining chamber within a very short time limit.

354. A detainee may submit an unlimited number of applications for release.

B. Scope of anti-terrorist legislation

355. It is the judicial authorities which determine whether a case falls within the scope of the anti-terrorist legislation.

356. When the public prosecutor requests an investigating judge of ordinary jurisdiction to defer to the competence of an anti-terrorist judge, the parties, including the defence, are notified in advance and invited to submit their comments to the examining magistrate.

357. Investigating judges may also disqualify themselves of their own motion or at the request of the parties. The party that did not submit the request is invited to submit comments. The case is then referred to the ordinary court with territorial jurisdiction.

358. An order by an investigating judge disqualifying himself or herself, or by an anti-terrorist investigating judge ruling on his or her jurisdiction may, to the exclusion of any other appeal, be referred within five days of notification, at the request of the public prosecutor's office or of the parties, to the Criminal Division of the Court of Cassation, which shall appoint a judge to continue the investigation. The parties are notified of the decision of the Criminal Division of the Court of Cassation. These provisions also apply to decisions in which the examining chamber rules on its jurisdiction (articles 706-18, 706-19 and 706-22 of the Code of Criminal Procedure).

C. Use of video surveillance

359. The crime prevention bill currently under discussion in the French parliament does not include provisions allowing for systematic use of video surveillance equipment in custody facilities. Video recording is only mandatory in the case of ordinary criminal offences; it would be optional in the case of terrorist offences. This is justified in view of the need to reconcile respect for individual rights and national security. Accordingly, even in terrorism cases, video recording may be ordered by the public prosecutor or, where appropriate, by the investigating judge.

360. This information is of course provided without prejudice to any amendments that may be made to the text during the parliamentary debates.

XVI. RECOMMENDATION CONTAINED IN PARAGRAPH 24 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

361. The Government should like to begin by setting out the constitutional basis of the French position on the issue of "minorities", and shall then demonstrate to the Committee that this position, which is not incompatible with article 27 of the Covenant, does not constitute an impediment to diversity in all its forms in French society.

A. Constitutional basis of the French position

362. The traditional doctrine of French law on minorities stems from principles rooted in the history of France and enshrined in the Constitution. It is based on two fundamental concepts:

(a) Equality of citizens' rights, which implies non-discrimination;

(b) The unity and indivisibility of the nation, encompassing both the territory and the population.

363. Accordingly, when the Conseil d'Etat was asked to give its opinion as France was considering signing and ratifying the framework Convention for the protection of national minorities, it stated that the Convention was by its very purpose contrary to article 2,[22] now article 1, of the Constitution, which affirms that "France shall be an indivisible [...] Republic" and the principle that the French people is composed of all French citizens "without distinction as to origin, race or religion" (opinion of 6 July 1995).

364. On an entirely different issue, the Constitutional Council, in Decision No. 91-290 DC of 9 May 1991, recalled the two pillars of the French legal system:

(a) The concept of "the French people" has constitutional value, as it is mentioned in the first preambular paragraph of the Constitution of 1958[23] and in the preamble to the Constitution of 1946;[24]

(b) France is "an indivisible" Republic under former article 2[25] of the Constitution of 1958, now article 1, and ensures "the equality of all citizens before the law, whatever their

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[22] The numbering changed with the adoption of Constitutional Act No. 95-880 of 4 August 1995: former article 2 became article 1 of the Constitution.

[23] "The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789 and confirmed and complemented by the Preamble to the Constitution of 1946."

[24] "The French people proclaim once again that all human beings, without distinction as to race, religion or belief, possess inalienable and sacred rights."

[25] See footnote 1.

origin"; the Constitutional Court has thus ruled that the reference in legislation to "the Corsican people, which is a constituent part of the French people", is unconstitutional, as the Constitution only recognizes the French people, composed of all French citizens without distinction as to origin, race or religion.

365. The indivisible nature of the Republic is reflected in that of the French people, which cannot include "peoples" recognized as such.

366. In concrete terms, this approach establishes the principle that the affirmation of identity stems from a personal choice, not from applicable criteria defining a given group a priori. Such an approach protects each individual's right to identify with, and to reject, a given cultural, historical, religious or philosophical tradition. Any defence of cultural specificity must go hand in hand with the fundamental right to refuse it. France has always upheld this view before international organizations, pointing out the possible adverse effects of an overly rigid conception of the protection of minorities, in particular the attempt to lay down general criteria for membership of minorities or even to carry out censuses of people belonging to these minorities.

367. In general, these constitutional considerations prevent France from adhering to international conventions recognizing minorities as such, and as holders of collective rights.

368. France considers that the application of human rights to all nationals of a State, on an equal and non-discriminatory basis, provides its citizens, irrespective of their situation, with full protection which they may claim. This conception of human rights thus sets a particularly high standard.

B. Position of France with regard to article 27 of the Covenant

369. France recalls that the scope of article 27 of the Covenant may be broken down into four obligations, in the light of the "doctrine" of the Human Rights Committee (general comment No. 23: Article 27 (Rights of minorities)), read in conjunction with that of the Committee on Economic, Social and Cultural Rights:

(a) The right of persons belonging to minorities to the normal exercise of freedom of association, of assembly, and of expression. The exercise of these rights should not depend on a decision by the State:

(i) France emphasizes that freedom of association, of assembly and of expression is guaranteed in French law. It is recognized for all persons, without distinction as to sex, origin, religion or belief. This freedom is also enshrined in the European Convention on Human Rights; in the event of violation, the European Court of Human Rights may impose individual and/or general sanctions. There is nothing in French law to prevent persons who identify themselves as members of a given group from forming an association;

(ii) In France, the exercise of these freedoms is not subject to prior authorization. These freedoms are not restricted in any way. Only freedom of association is subject to a simple formality, prior notification, for the purpose of verifying that the object of the association is not contrary to public order or to public morality;

(b) The right of individuals belonging to a linguistic minority to use their own language among themselves, in private or in public: although French is the official language of the Republic, people are free to use languages other than French outside French institutions. The institutional framework recognizes the existence of "languages of France" and encourages their use in schools of the Republic (see below);

(c) Positive measures taken by the State, whether through its legislative, judicial or administrative authorities, to ensure protection not only from the acts of the State itself but also from the acts of other persons within the State party: in France the rule of law applies to State bodies and individuals, without distinction. Positive measures of protection are thus those that have already been adopted and are contained in the Constitution and rules that have constitutional value, which apply to everyone, including State bodies;

(d) Positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group: in the light of the constitutional considerations outlined above (paras. 362 to 368), France does not recognize specific rights arising solely from belonging to a minority.

370. The federating principle of the unity of the French people does not, however, mean that the legal framework denies the cultural diversity of France; it is merely a firm reminder that all citizens are equal, irrespective of the basis on which they have built their identity. It is also one means of implementing the principle of non-discrimination throughout the Republic. That is why France has pursued policies and actions which, while promoting the principle of equal treatment between persons without distinction of origin, allow all persons in practice, irrespective of whether or not they identify themselves with one or more groups, to exercise their rights and freedoms without discrimination based on their identity. France has, however, as will be seen, pursued policies and actions that are consistent with the requirements laid down by the Covenant, without derogating from its constitutional provisions.

C. General thematic activities and special activities relating to overseas populations

1. General thematic activities

(a) Freedom of religion and conscience

371. The principle of State secularism and the principle of separation of church and State ensure the protection of individual freedom of conscience and guarantee the principle of free practice of religion.

372. French legislation provides explicitly for kosher or halal meals to be available in hospitals, canteens and refectories of schools and military barracks, and for authorized leave for the observance of Jewish, Muslim and Armenian religious holidays, and for major events specific to each faith (such as first holy communion or bar mitzvahs). Special provisions have been enacted on ritual slaughter in abattoirs according to the rules of the Jewish and Muslim faiths. Provision is also made for special areas in cemeteries for members of religions other than Christianity, etc.

373. The public authorities have long encouraged religious communities to establish representative institutions so that special consultative bodies can be set up with the task of presenting proposals. One example is the Representative Council of Jewish Institutions in France, which brings together more than 60 Jewish associations; another is the oldest Jewish institution in France, the Consistory of Paris (*Consistoire de Paris*), which dates back to 11 December 1808. The Consistory deals with the religious affairs of a community of nearly half a million, safeguarding the interests of Jewish life through services ranging from places of worship to religious instruction, and from the celebration of marriage to ritual slaughter. Similarly, since 1905, the Protestant Federation, encompassing most of France's protestant churches and associations, has represented French Protestantism to the public authorities and the media, and has provided services in areas such as television (*Présence Protestante*), radio, army and prison chaplaincies, bible study and ecumenical relations. More recently, the French Council of the Muslim Faith (CFCM) was established to represent the Muslims of France. It deals with issues including the construction of mosques, Muslim spaces in cemeteries, the organization of religious holidays, the appointment of Islamic clerics for hospitals, prisons and secondary schools, and the training of imams.

(b) Freedom to learn minority languages in public and private schools and training institutions

374. The regional languages of France are part of its national cultural heritage. While French is the language of the Republic under the Constitution, multilingualism is officially encouraged. There are some 75 languages of France, which have been spoken by generations of French citizens in metropolitan and overseas France, and which are not official languages in other countries. Berber and Algerian Arabic dialect are languages of France, to mention only the African languages. This shows that France's attachment to national unity goes hand in hand with respect for its heritage, to which its diverse languages are a living testimony.

375. The Act of 4 August 1994 on the use of the French language (the "Toubon Act") provides in article 21 that "the provisions of this Act shall apply without prejudice to the laws and regulations on the regional languages of France and shall not oppose their use". The Framework and Planning Act on the Future of Education of 23 April 2005 confirms the place of regional-language teaching within the educational system. Article 20 of the Act provides that regional-language teaching shall be developed under agreements concluded between the State and the local or regional authorities to give these authorities the opportunity to develop activities aimed at spreading the teaching of regional languages and cultures.

376. The Decree and Order of 31 July 2001 provide for the reform of bilingual education in regional languages in primary and secondary schools, beginning in the 2001-2002 academic year. The reform includes the establishment of the Academic Council for Regional Languages

responsible for academic policy on regional languages in the regions concerned. Bilingual education in regional languages may be provided either in a specialized "regional language" school or in "regional language" sections. Under article 2 of the Decree, the Council will be responsible for the status and promotion of regional languages and cultures in the regional education authorities (*académies*), ensuring diversity of teaching methods and encouraging relevant activities to that end. According to a report of 2002 by the French Ministry of Culture and Communication (*Report to Parliament on the use of French*, 2003), some 250,258 pupils (in all forms of education except that provided by associations) were taught regional language and culture in primary and secondary schools in the public sector and in the private sector under contract.

377. The Framework Act of 13 December 2000 on overseas France stipulates in article 34 that the regional languages in use in overseas departments are part of the linguistic heritage of the nation. As such, they benefit from improved policies aimed at facilitating their use (see below).

(c) The right to preserve a traditional way of life

378. The National Advisory Commission on Travellers established by Decree No. 99-733 of 27 August 1999 is responsible for making proposals to better integrate travellers into the national community and to counter discrimination against them in all its forms. Act No. 2000-614 of 5 July 2000 on the hosting and housing of travellers is intended to recognize and guarantee this population's way of life by providing for facilities that enable travellers to live in mobile homes in decent conditions. As at 1 January 2006, virtually all the departmental plans on travellers' facilities (93 of the 96) had been signed and published. There was a marked increase in the pace of implementation in 2004, a trend expected to continue in 2006 and 2007. As at the end of 2005, 18 per cent of the camp facilities provided for in departmental plans had been set up, and 25 per cent of sites had received State subsidies (accounting for 70 per cent of the investment).

(d) Free access to the media

379. Freedom of choice with regard to the language of expression in the media was introduced by the Act of 29 July 1982 on audio-visual communication. One of the objectives assigned to the public television broadcasting services under article 5 of the Act is to support the expression of regional languages and culture. Under the Act of 1 August 2000 on freedom of communication, public service radio and television broadcasting companies must contribute to the expression of the main regional languages of metropolitan France. Act No. 86-1067 of 30 September 2006 amending the Act of 30 September 1986 provides in title II on public audiovisual communication that public service companies "shall promote the French language and present [France's] cultural and linguistic heritage in its regional and local diversity".

380. An array of regional stations on the Radio France network broadcast programmes with a regional language and culture focus. Typical examples are France Bleu Alsace and France Bleu Radio Corse. France Bleu Alsace has two separate stations, one broadcasting in French and the other in the regional language. France Bleu Radio Corse *Frequenza Mora* is a regional Radio France station in Corsica offering 14 hours of fully bilingual programming daily.

381. Radio France Internationale (RFI) also plays a key role in promoting and transmitting, in France and abroad, the culture and heritage of persons from a minority background. All its programmes are available in 20 languages on its website. RFI offers a very wide range of programming on current events and cultural or social issues, with a particular focus on Africa and the African diasporas.

382. Lastly, the Freedom of Communication Act of 2000 provides that the Audio-visual Media Board shall ensure that "an adequate share of airtime is allocated for programmes by associations with a community-relations role, defined as one that fosters exchanges between social and cultural groups and the expression of different socio-cultural currents of thought ...". A number of "community" radio stations run by associations, such as Africa No. 1, Mangembo FM, Média Tropical, Beur FM and Radio Orient, broadcast cultural, educational and musical programmes on a daily basis, encouraging and promoting intra- and extra-cultural exchanges among the French population.

(e) Access to education and training

383. The French system favours equality and universality of education provision, in particular through free education and anonymous competitions. It has nevertheless been necessary to implement an equity policy to offset geographical or social disadvantages that prevent the principle of equality from being fully realized in educational competition.

384. The Ministry of Education recently introduced "*Classes préparatoires aux grandes écoles*" (classes to prepare students for the entrance examinations to the top-ranking higher education establishments) in upper secondary schools in disadvantaged neighbourhoods. The focus of this initiative is now directed further upstream, particularly at partnerships between the upper secondary schools in these neighbourhoods and the *grandes écoles* established, inter alia, under the auspices of the Interministerial Committee on Integration, where the emphasis is on integration of young people from disadvantaged neighbourhoods, especially those from immigrant backgrounds. The aim is to raise the aspirations of successful students and encourage them to apply for higher education. This measure is supported by 30,000 "merit scholarships" awarded each year to upper secondary school pupils, one third of which are granted to young people from the priority neighbourhoods identified under the urban policy. These scholarships may be followed by further "merit scholarships" in higher education.

385. In this way, Priority Education Zones (ZEP) have been given a boost, and preparatory classes for the *grandes écoles* have been introduced in upper secondary schools in disadvantaged neighbourhoods; more recent measures include the Fondation Euris, the scheme designed by the Higher Business School and the Priority Education (ESSEC) agreements signed with "Sciences Po", the social sciences institute in Paris. The latter three initiatives grant preferential treatment based on socio-economic considerations rather than ethno-racial or ethno-religious criteria, as they target students from disadvantaged areas or modest backgrounds. Fondation Euris, for example, provides substantial support to talented but disadvantaged pupils by awarding merit scholarships. The ESSEC scheme introduced a form of tutorship arrangement in partner schools for pupils from disadvantaged backgrounds in order to increase their chances of successfully pursuing ambitious higher education studies. Lastly, the Sciences Po Priority Education

Agreements programme introduced a selection process that is separate from the competitive entrance examination procedure and targets a certain number of pupils from schools that have signed the agreements.

(f) Access to employment

386. The Charter of Diversity in the Enterprise was signed in November 2004 by several dozen large enterprises, which have undertaken to ensure diversity in their recruiting and to encourage career advancement through the promotion of cultural, ethnic and social diversity among their staff.

(g) Access to housing

387. With regard to housing, the French Government has introduced a proactive policy on urban renewal aimed at relieving the isolation of urban ghettos and encouraging social diversity. An extensive corrective plan to finance 500,000 low-income housing units over the course of five years was also implemented; the plan also provides for putting 100,000 private housing units back on the market during the same period, starting in 2005.

2. Measures promoting respect for the cultures of the populations of overseas France

388. In French Guiana, French Polynesia, New Caledonia, Mayotte and Wallis and Futuna, indigenous populations (Amerindians, Polynesians, Kanaks, Mayotteans, Wallis and Futuna Islanders) and non-indigenous populations coexist in varying proportions.

389. In the overseas departments/regions (DOM/ROM) and the overseas territorial communities (COM), the Civil Code and local custom based on oral tradition coexist.

390. In these areas, the law of persons is governed by customary law. Article 75 of the Constitution stipulates that “Citizens of the Republic who do not have ordinary civil status, as referred to in article 34, shall retain their personal status so long as they have not renounced it.” This constitutional provision guarantees the population of overseas France full respect for their customs and traditions, in particular, in the sensitive area of the family.

391. Personal status law currently remains in effect in New Caledonia, Wallis and Futuna and Mayotte. Personal status law has not been in effect in French Polynesia since the Order of 24 March 1945.

392. The Government intends to provide the Committee with a non-exhaustive list of the measures taken by France to protect and promote the cultural diversity of the population in overseas France.

(a) French Guiana

393. The Amerindian population of French Guiana encompasses six ethnic groups, of which the Arawak and the Galibi, who have settled on the coast, are the most numerous (numbering

approximately 6,000). The Palicur, the Emerillon and the Wayampi (several hundred) mainly inhabit the shores of the Oyapock River. The Wayana live inland along the upper reaches of the Maroni River.

394. The Noirs-Marrons or Bushi-Nenge are the descendants of peoples who settled in the Surinamese hinterland and on the Maroni River in order to escape slavery. The Noirs-Marrons comprise four ethnic groups: the Boni (or Aluku), who have settled in Apatou, the Papaïchton and Maripasoula; the Djuka, who have settled in Grand-Santi along the Maroni River; and the Paramaca and the Saramaca, who are native peoples of Suriname.

395. The Hmong peoples settled in French Guiana much more recently, in the 1970s, in order to escape the war in Indochina. They formed two main villages: Cacao and Javouhey.

396. In 1989, in response to strong territorial claims, the villages of Aouara and Hattes (in western French Guiana) were granted the status of a fully-fledged commune.

397. The Amerindian peoples of Guiana have enjoyed a very liberal regime since the establishment of the Inini territory in 1930.

(i) Specific legal aspects

398. Specific regulations that take into account the customary practices currently in use in French Guiana have gradually been established.

399. With the aim of protecting Amerindians in the areas of health and culture, an order of 14 December 1970 made access to Amerindian territory conditional on prefectorial authorization.

(ii) Support for local languages and cultures

400. With regard to educational and cultural strategies, the Overseas General Principles Act of 13 December 2000 provides for action in support of regional languages and cultures in the overseas departments. French Guiana is a special case, given the presence there of Amerindian minority ethnic groups whose languages had not, until recently, been integrated into the education system. With the participation of the Institute for Development Research (IRD) and the Ministry of Overseas France, the Ministry of Culture introduced a multi-year (2000-2003) action plan entitled “Linguistic practices in Guiana” in order to promote knowledge of and codify Amerindian languages, as well as to develop teaching materials.

401. In terms of giving greater prominence to the regional languages of overseas France, the Act of 2 August 1984 concerning regional jurisdiction in Guadeloupe, French Guiana, Martinique and Réunion, stipulates that the regional council should determine which additional educational and cultural activities related to knowledge of regional languages and cultures can be organized in schools within the region’s jurisdiction.

402. Article 34 of the Overseas General Principles Act of 13 December 2000 recognizes the regional languages used in overseas departments as part of the nation’s linguistic heritage. As

such, they benefit from policy support aimed at facilitating their use. This article also specifies that the Act of 11 January 1951, known as the "Deixonne Act on the teaching of local languages and dialects", is applicable to the regional languages in use in overseas departments.

403. The Planning and Finance Act for the Future of Education of 23 April 2005 confirmed the importance of regional language instruction within the overall education system. Under article 20 of the Act, the expansion of such instruction is to be organized under agreements concluded between the State and the territorial communities. These agreements must give the territorial communities concerned the opportunity to adopt measures that support the spread of instruction in regional languages and cultures, the learning methods for which have been extended to include Tahitian, the Melanesian languages and Creole, in accordance with article 34 of the Overseas General Principles Act of 13 December 2000. Furthermore, the signing of these agreements must confirm and strengthen the partnerships that already exist with these territorial communities within the academic councils for regional languages that were set up within the four overseas local education authorities (*académies*) of French Guiana, Guadeloupe, Martinique and Réunion, pursuant to the Decree of 31 July 2001 establishing academic councils for regional languages.

404. With regard to teacher education and training, in the overseas departments, Creole and Amerindian languages have until now been taught in a few schools more on an experimental basis than as a course of standard instruction. Nevertheless, the gradual application of the Deixonne Act to the Creole languages in use in the overseas departments should make it possible to enhance the structure of such learning and to extend it to all levels of instruction. Implementation of these new measures is now one of the priorities set out in the academic plans of the overseas departments. The Decree of 31 July 2001 established academic councils of regional languages to develop and oversee regional language learning policies.

405. At the secondary level, Creole is an optional subject and, since the 2004 session, it has been an optional paper leading to the baccalaureate. Beginning with the 2007 examination session, it will be included on the list of living languages 1 or 2 that candidates may choose as a set paper within the general and technological series. Following the example of Creole, Tahitian and the Melanesian languages may also be selected as a set or optional paper leading to the baccalaureate.

406. The arrangement whereby, as of 2006, all candidates taking competitive examinations for recruitment as schoolteachers have been able to opt for a paper in a regional language is one of the measures taken to strengthen proficiency in these regional languages, beginning in school. Moreover, in the area of teacher training, a CAPES[26] (Certificate of Aptitude for Secondary School Education) in Creole was introduced in 2002.

407. The Antilles-Guiana University offers a university diploma at the master's level in regional languages and culture, while the Faculty of Arts in Martinique has offered a bachelor's degree in

[26] See index.

Creole since 1995. The Guianese branch of the University Institute of Teacher Training (IUFM) of the Antilles-Guiana region offers introductory courses in Amerindian languages for all second-year students.

408. With regard to cultural initiatives, in the areas of research and publishing assistance, local languages projects receive support either from the Ministry of Overseas France or other institutions.

409. The Ministry of Overseas France supported the research programme entitled "Writing the history of the Kali'na", which was conducted by the Institute for Development Research (IRD) of French Guiana on the adaptation of education to the cultural characteristics of the ethnic groups of French Guiana (published in March 2000), together with the programme on patterns of linguistic interaction in French Guiana, which was conducted by the IRD[27] of French Guiana and the University of Orléans. In addition, the Ministry of Overseas France has taken steps to sustain and build on the efforts already begun, particularly those in favour of the Amerindian languages of French Guiana, with a view to devising specific educational content for pupils and teachers. It has consequently pledged its continuing support for research programmes on the languages of French Guiana.

410. Other legal measures that take into account the local customs of French Guiana have also been introduced.

411. As far as land issues are concerned, Decree No. 87-287 of 14 August 1987, concerning land provisions contained in the Code of State-Owned Property that are specific to French Guiana, grants Amerindians the right to land in the form of assignments, free concessions and collective user's rights (hunting, cultivation of brushwood). In giving effect to these regulations, the prefect has issued orders recognizing the collective user's rights of each of the Amerindian communities. Lastly, the Act of 30 December 1989 recognizes the right of these communities of inhabitants to genuine ownership.

412. Regarding the appointment and remuneration of traditional chiefs, in view of the fact that, since the entry into force of the decentralization acts of 1982, the executive branch of each department is headed by the president of the general council, traditional chiefs are appointed by order.

413. With regard to communal administration, developments relating to land laws were extended following the establishment of Amerindian communes (the commune of Camopi on the Oyapock River, in 1969, and the Galibi commune of Awala Yalimapo, which was established in 1989 by prefectorial order).

414. As far as civil status is concerned, an order of 8 July 1998 established a one-month deadline for registration of births, replacing the three-day time limit under ordinary law, in the communes bordering on the Maroni and Oyapock Rivers.

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[27] See index.

415. With regard to protected areas, the project to build a park in the Guianese tropical rainforest was developed in response to commitments undertaken by the Government at the 1992 Rio Conference and is consistent with the resolve to become a centre of excellence in the field of sustainable development and a tool for the long-term preservation of the Guianese forest ecosystem.

416. A working approach devised in consultation with the local communities has made it possible to make respect for traditional ways of life the focus of the tropical rainforest biodiversity project. Among the proposed actions are:

(a) Making optimum use of local knowledge and encouraging local initiative;

(b) Ensuring long-term sustainability of the slash-and-burn agriculture technique in order to take advantage of ecological potential;

(c) Establishing a network of protected areas.

417. In 2003, following a hiatus of nearly five years, fresh impetus was given to the project. The question of zoning remains under negotiation.

(b) New Caledonia

418. In New Caledonia, the distribution of the population (196,836 inhabitants according to the latest general census of 1996) by ethnic origin is as follows: 44.1 per cent Melanesian; 34.1 per cent European; 9 per cent Wallis and Futuna Islanders; 2.6 per cent Tahitian; 2.5 per cent Indonesian; and 7.5 per cent other origins.

419. The fundamental unit of Melanesian society is the clan, which consists of a group of several families. An extensive network of exchanges and alliances has been built up between these various clans. Each clan traces its origin to a particular piece of land, making New Caledonian soil a succession of sites imbued with mythical significance.

420. Changes in New Caledonia as a result of the Organic Law of 19 March 1999 reflect an attempt to strike a balance between the principle of "republican equality" and recognition of the distinctive features of the original inhabitants. It contains provisions in favour of customary law and measures relating to culture.

(i) Specific legal aspects

421. The Act provides for the gradual transfer of power to New Caledonia, institutes New Caledonian citizenship for the purpose of voting in elections for local institutions (provincial assemblies and the Congress of New Caledonia) and confirms the customary civil status of the Kanaks.

422. The Kanaks have been French citizens since the Constitution of 1946, article 80 of which laid down the principle of recognition of all persons who trace their origins to overseas France as being French citizens.

423. The preamble of the Nouméa Accord of 5 May 1998 explicitly recognizes Kanak identity and institutes New Caledonian citizenship.

424. The effects of New Caledonian citizenship, as enumerated in article 77 of the Constitution, mainly relate to electoral status. Moreover, under article 24 of the Organic Law, local legislators can introduce measures for the "protection of local employment" that favour New Caledonian citizens and persons who demonstrate a sufficient length of residence according to local law.

(a) The coexistence of ordinary law and customary law

(i) Customary civil status

425. In conformity with article 75 of the Constitution, the Kanak population of New Caledonia was granted specific civil status, known thereafter as customary civil status, as recognized in Title 1 of Organic Law No. 99-209 of 19 March 1999. It is estimated that nearly 90,000 persons in New Caledonia currently hold this status.

426. The requirement to register persons with customary civil status in special civil status registers maintained in each commune by the mayor, acting as civil registrar, was laid down in a decision of the Nouméa Superior Court of Appeal on 28 February 1920. It was reiterated in Order No. 631 of 21 June 1934, establishing a civil status for indigenous people, was amended and supplemented by Decision No. 424 of 3 April 1967, which, in turn, was supplemented by Circular No. 13-2815 of 25 August 1967.

427. The Decision of 3 April 1967 defined the rules governing the public registry for citizens with specific civil status, which coincide to a large extent with the rules on ordinary-law civil status but make certain accommodations, such as, for example, a 30-day deadline for registration of births.

428. In addition to the usual registers (birth, marriage, death), the communes also keep records on population census figures for each tribe. The birth of a child with customary civil status must be registered, as is the case under ordinary law, in the commune of birth. The person reporting the birth may also ask for the child to be registered as a member of the father's tribe.

429. In order to prevent the break-up of traditional structures, the imperial administration, by an order of 24 December 1867, conferred legal status on the customary structure of a tribe comprising the members of one or more clans in a particular location. This geographical criterion was supplemented in the Order of 9 August 1898, which introduced the notion of districts or groups of tribes headed by high chiefs, who, in principle, were to be appointed by consensus by the council of elders, while the management of tribal affairs was to be left to tribal chiefs.

430. The special Melanesian regime consists of a living, customary law based on oral tradition that varies depending on the locality; it currently covers the law of persons - civil status, marriage, adoption, and the transfer of property - and the system of tenure, which lays down the principle of collective tribal ownership.

431. A debate is under way regarding the scope of application of Kanak custom in the courts. While the Nouméa Court of Appeal was issuing an interpretation contrary to article 1 of Act No. 70-589 of 9 July 1970 on the civil status of persons in ordinary law,[28] arguing that customary law governed only personal status and capacity, matrimonial regimes, inheritance and gifts, the Court of Cassation stated in two decisions[29] that customary law could not be regarded as a supplementary law.

432. More recently, in a decision dated 16 December 2005, the high court was called upon to determine whether article 7 of the Organic Law, which stipulates that persons for whom personal status is in force are governed "in civil matters by their customs", applies to civil law as a whole, or only to the areas of civil law dealt with by these customs (the fact is that many aspects of the law, such as educational assistance, are actually ignored by custom).

433. The Court of Cassation retains full jurisdiction over customary regulations in order to govern all relationships of a private law nature covered by the Civil Code (persons, property and contracts). Contrary to the statutes of Mayotte, which limit the scope of application of customary law to certain areas of the law of persons, the statutes of New Caledonia apply to the whole of civil law, thus ruling out the notion of an ordinary law regime that could fill the gaps left by custom.

(b) The right of reversion

434. The provisions of article 7 of the Organic Law derogate in part from article 75 of the Constitution in that they offer the possibility not only of reverting from customary civil status to ordinary civil status, but also from ordinary civil status to customary civil status (arts. 11, 12, and 13).

(c) The recognition of customary lands

435. Land issues are of particular importance from the dual standpoint of the recognition of Kanak identity and the economic stability of the territory.

436. The areas governed by custom include "customary lands" and property belonging to persons with customary civil status. The Organic Law defines "customary lands" as reservations allocated to groups subject to special local rules and lands allocated by the territorial communities or public land agencies (the Rural Development and Land Improvement Agency) in order to respond to claims made on the basis of ties to the land.

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[28] "This Act applies to provisions governing personal status and capacity, matrimonial regimes, and inheritance and gifts, encompassed by ordinary civil status, which is referred to in article 75 of the Constitution."

[29] Second Division of the Court of Cassation, 6 February 1991 (Bulletin 1991, II, No. 44 and Dalloz 1992, 93) and First Division of the Court of Cassation, 13 October 1992 (Bulletin 1992, I, No. 248).

437. From the legal standpoint, these lands are not governed by classic notions of ownership. Consequently, the Organic Law reiterates the principle that they are inalienable, unassailable, non-transferable and unseizable, thus using the same terms as the order issued by Governor Guillain in 1868 and Territorial Decision No. 67 of 10 March 1959 on the system of "indigenous reservations".

438. The Rural Development and Land Improvement Agency, which was established in 1988 has reassigned approximately 80,000 hectares of land to the Melanesian community since 1989. The tribes have been granted collective ownership of the land.

(d) Lack of specific jurisdiction

439. Given the implications of the existence of a Melanesian specific civil status alongside ordinary civil status, Order No. 82-877 of 15 October 1982 established the terms of reference for customary assessors in the territory of New Caledonia, whose task is to assist the courts in cases involving disputes among persons subject to the specific civil regime, particularly over land issues (five assessors for each customary zone).

440. Article 19 of the Organic Law confirms the role of this specific legal organization by allowing customary assessors to provide assistance to civil courts of first instance and appeal courts seized of "litigation and applications relating to customary civil status or to customary lands". The function of these assessors, who must be at least 25 years old and demonstrate competence and impartiality, and who serve in even numbers and are entitled to vote, is to help judges improve their understanding of the customary regulations that they are required to apply to persons subject to civil law local status.

441. The Court of Cassation has stated that customary civil law should be applied systematically by the ordinary courts, with the assistance of customary assessors, in all matters involving persons with local status.

442. Lastly, in keeping with the Nouméa Accord, which places custom among the primary components of Kanak identity, the Organic Law of 19 March 1999 devotes a chapter to the Customary Senate and customary councils (arts. 137-152).

443. Over the past 20 years, the recognition granted to the customary authorities has become more explicit and the role of these authorities has expanded, especially after 1988, when the territory was divided into eight customary zones.[30] These zones are represented by customary councils, with each zone constituting several clans or *tertres-lignages* that recognize a common and consistent set of customary rules, beliefs and practices, as well as ties to a common ancestor considered to be the oldest known representative of all the constituent families. Each of these zones determines, according to its own practices, the composition of its customary council, which is consulted in all matters by the Senate, the High-Commissioner and the Government.

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[30] Hoot Ma Whaap, Paici, Camuki, Ajie Aro, Xaracùù, Djubéa-Kaponé, Iaai, Drehu and Nengoné.

A customary advisory council was established but was replaced by the Customary Senate following the Nouméa Accord. New Caledonia currently has 57 districts and 340 tribes, 14 of which are so-called "independent" tribes, meaning that they are not subject to jurisdiction of the administrative districts.

444. The division of powers has now been clearly established: the President of the Government of New Caledonia is informed of the appointment of the customary authorities after the appointments have been certified by the Customary Senate, and, at the local level, the customary authority remains the vital link with the public authorities. The administrator of customary affairs, acting as a liaison between the Melanesian authorities and the Government, formalizes the decisions taken by the tribe by recording the minutes of the customary assembly - a role that had been performed since the beginning of the century by the gendarmerie. In the event of a dispute over the interpretation of the minutes of the customary assembly, the matter is referred by the parties to the customary council.

445. The Customary Senate, which replaces the advisory council established by the Referendum Act of 9 November 1988, is consulted on questions relating to custom, and participates in the formulation of local laws affecting Kanak identity.

446. It is composed of 16 members, who are appointed by each customary council in accordance with practices recognized by custom and who each year elect a chairperson and a bureau.

447. The Customary Senate of New Caledonia participates in the drafting of statutes on matters of land law and civil law.

(ii) Support for regional languages

448. Measures have also been taken in the area of culture and to improve the status of the regional languages of overseas France: school programmes falling within the remit of the provinces have been adapted to reflect cultural and linguistic realities; and the Kanak languages have been recognized as languages of instruction and cultural expression (Organic Law of 19 March 1999), in keeping with commitments made in the areas of education, scientific and university research and the training of trainers. Article 215 of the Organic Law of 1999 also provides for the conclusion of a special agreement between New Caledonia and the State in order to contribute to the cultural development of New Caledonia. This agreement was signed on 22 January 2002. With regard to education and teacher training, in the framework of this special agreement between the State and New Caledonia commitments have been made in the areas of education, scientific research, university teaching and the training of trainers.

449. University teaching of the four Kanak languages as an optional subject for the baccalaureate leading to a two-year preliminary degree (DEUG) was introduced at the University of New Caledonia in 1999. The special agreement provides for the establishment of a bachelor's degree in regional languages and culture as an extension of the DEUG. This bachelor's degree is included as part of the institutional development contract for 2000-2003 concluded between the Ministry of National Education and the University of New Caledonia.

450. The agreement also provides for instruction in the Kanak languages to be included in the training offered to primary and secondary schoolteachers by the Territorial Teacher Training Institute and the University Institute of Teacher Training (IUFM) of the Pacific region, respectively. As far as the IUFM is concerned, this training was included in the institutional development contract signed with the Ministry of National Education for the period 2000-2003. In addition, the special agreement provides for the establishment of an academy of Kanak languages as a public territorial establishment.

(iii) Protection of the environment of indigenous peoples

451. In New Caledonia, the environment and the implementation of article 8 (j) of the Convention on Biological Diversity [31] are primarily a matter for the provinces. Chapter 3.1.1 of the Nouméa Accord stipulates that responsibility for the "exploitation, exploration, management and conservation of natural biological and non-biological resources in the economic zone" is to be transferred immediately to the Congress of New Caledonia and that for the maritime domain is to be assigned to the provinces.

452. France set up the IFRECOR[32] programme as part of the International Coral Reef Initiative. This is a national initiative aimed at the protection and sustainable management of the coral reefs of the overseas territorial communities, based primarily on direct local participation. The incorporation of indigenous knowledge and inclusion of local and indigenous communities in conservation strategies represents a step forward for such programmes.

(iv) Support for local cultures

453. With regard to "traditional knowledge", in 1980 France established an Ethnological Heritage Council and Mission, under the auspices of the Ministry of Culture, to preserve key constituents of the identity of local cultures and to help coordinate policy on ethnological research throughout metropolitan and overseas France.

454. France participates in the "Database of best practices on indigenous knowledge" project developed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) with the aim of harnessing traditional knowledge that is consistent with the objectives of sustainable development.

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[31] Article 8 (j) recognizes the contribution of local and indigenous communities to the conservation and sustainable use of biological diversity and is now almost fully reflected in national positive law by the Overseas General Principles Act, No. 2000-1207 of 13 December 2000 (art. 33), which states: "The State and the local authorities encourage the respect, protection and maintenance of the knowledge, innovations and practices of the indigenous and local communities that are based on their traditional ways of life and that contribute to preserving the natural environment and the sustainable use of biological diversity."

[32] See index.

(c) Wallis and Futuna

455. The traditional social structures of Wallis and Futuna remain strongly influenced by the Roman Catholic Church. They still retain a largely clannish view of the family and of joint ownership of land holdings.

456. The customary structure in Wallis and Futuna comprises three levels: the traditional chief or "Sau", more commonly referred to as the "king"; the customary ministers; and the village chiefs, of whom there are five or six in each administrative district.

(i) Specific legal aspects

457. The Act of 29 July 1961 confers French citizenship on the inhabitants of the Wallis and Futuna Islands. This Act also stipulates that French citizens "who do not have ordinary civil status shall retain their personal status so long as they have not expressly renounced it" (art. 2) and that "the Republic guarantees the people of the territory of the Wallis and Futuna Islands the free practice of their religion, as well as respect for their beliefs and customs, provided that these are consistent with the general principles of law and the provisions of the present Act" (art. 3). In terms of jurisdiction, article 5 provides for the establishment of a court of general jurisdiction under the responsibility of the Nouméa court of appeal and a court of local law. The court of general jurisdiction is the only court competent to handle criminal matters; it has jurisdiction for civil and commercial cases, subject to the authority of the court of local law. This customary law court is competent to handle disputes between citizens subject to local law status over the application of this status, as well as disputes over property held according to custom. In criminal matters, the competence of the ordinary law courts is spelt out in the 1961 Act.

458. The status of Wallis and Futuna (Act of 29 July 1961) takes indigenous political structures into account. In fact, it specifically maintains the tradition of "kings," and thus reflects a social organization based on customary rules. These "kings" are members of a territorial council, which assists the high-level administrator. The territory is divided into three administrative districts that correspond to the three "kingdoms" (Wallis, Sigave and Alo).

459. The three "traditional chiefs" (Sau) of Wallis and Futuna, who are commonly referred to as "kings", are the supreme customary authorities. They are each supported by five local leaders, or "Aliki Fau", more commonly referred to as "customary ministers", and by a master of ceremonies and chief of "police".

460. The customary titles mentioned above are set out in article 3 of Order No. 19 of 20 May 1964, concerning the organization of the administrative districts, issued by the high-level administrator of the territory. The responsibilities of the ministers may vary depending on the "king" in question, but essentially pertain to agriculture, teaching, health, cultural affairs and public roads.

461. The main function of the chiefdom is to ensure compliance with the customary rules that it guarantees. These rules govern relationships within the community and between the community and its surrounding environment.

462. The system of remuneration of traditional chiefs is defined by local orders pursuant to article 13 of Order No. 19 of 20 May 1964 on the organization of the administrative districts. It provides wages and a life annuity paid by the State, since the administrative districts, unlike the communes, do not have any tax revenue of their own.

463. Each "king" embodies the "territorial memory" of his people and is their supreme judge. He is expected to know the genealogy and property boundaries of each family.

464. "Kings" participate in the institutional functioning of the territory in the capacity of:

(a) Vice-chairperson of the territorial council, of which the three traditional chiefs of the three kingdoms are actually ex-officio members. The territorial council is chaired by the high-level administrator and includes three members who are appointed by him with the approval of the territorial assembly. This body is tasked with examining draft proposals that must be submitted to the territorial assembly (art. 10). Article 40 of Decree No. 57-811 of 22 July 1957 provides for the transfer of power to the territorial assembly. The following, in particular, are submitted to it for consideration: questions concerning: the "recording, drafting and codification of customs" (para. 5); "the protection of nature and the plant kingdom" (para. 11); "hunting" (para. 26); "cultural centres" (para. 30); and "the protection of monuments and sites" (para. 34);

(b) Chairperson of one of three administrative district councils, which geographically encompass the historic "kingdoms" (Uvéa on Wallis, and Alo and Sigave on Futuna). The other members are elected under conditions dictated by custom. This body, which represents the administrative district in judicial proceedings (article 8), considers proposals prepared by the high-level administrator or his representative in the administrative district, especially those relating to the administrative district's budget.

465. Ownership of land is collective, inalienable and non-transferable, according to customary law, which applies to persons subject to personal status. Such persons account for 99 per cent of the population of Wallis and Futuna.

466. The importance of custom is therefore reflected primarily in land laws. Three types of "property" may be distinguished:

(a) Public property, which belongs to the king, although customary rights to harvest and collect wood may be exercised thereon;

(b) Village property, which, in principle, is divided among families and may be used for collective cultivation;

(c) Family property, as held by the extended family, which generally includes a residential plot, a cultivated plot and a coconut grove;

(ii) Support for regional languages.

467. With regard to enhancing the status of the regional languages of overseas France, the Agreement on the Concession of Primary Education of 10 February 2000 provides that lessons

in nursery and elementary schools may include courses or activities delivered or designed in the Wallisian or Futunian languages. This provision was included in the previous agreement, which dates back to 1995.

468. Ongoing experiments have been conducted since 1998 on the inclusion of local languages in primary education. An evaluation will be carried out when the experiments are completed. At the secondary level, four professors teach vernacular languages at the rate of one hour per class.

469. The Pacific branch of the University Institute of Teacher Training (IUFM) in Wallis and Futuna, which is responsible for training the territory's teachers, offers a module in the teaching of vernacular languages during its three-year training course.

(d) Mayotte

470. The island of Mayotte has benefited from cultural and religious cross-fertilization, predominantly of African, Bantu, animist and Islamic influences. The Muslim religion was introduced there in the fifteenth century and plays a major role in the organization of society: 95 per cent of the population of Mayotte are Sunni Muslims.

471. The Mayotte people speak either Shimaore (derived from Swahili) or Shibushi (derived from Malagasy) as their mother tongue.

(i) Specific legal aspects

472. The Constitutions of the Fourth and Fifth Republics brought the dual civil status regime into widespread use,[33] while confining the scope of proper law to rules on the status and capacity of persons, matrimonial property regimes and inheritance and gifts.[34]

473. A civil personal status which combines many legal traditions, in particular the rules of the Sunna, is in effect in Mayottean society, which is predominantly Muslim.

474. Several instruments have helped bring civil law in Mayotte into line with that in force in metropolitan France.

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[33] Articles 81 and 82 of the Constitution of 27 October 1946 and article 75 of the Constitution of 4 October 1958, which provides that, "citizens of the Republic who do not enjoy ordinary civil status, as referred to in article 34, shall retain their personal status unless they decide to renounce it." The phrase "as referred to in article 34" refers to the list of legislative matters, among which are included personal status and capacity, matrimonial regimes and succession, ownership regulations and civil rights.

[34] Areas covered by article 59, paragraph 2, of Act No. 2001-616 of 11 July 2001, concerning Mayotte.

475. Order No. 2000-219 of 8 March 2000, on civil status in Mayotte, stipulates that both spouses must be physically present at a marriage ceremony, so that their consent may be freely and fully given. A registrar must also be present.

476. Act No. 2001-616 of 11 July 2001, concerning Mayotte, affirmed the right of women with local law civil status to freely pursue an occupation on a self-employed or employed basis, and to exercise the rights and responsibilities which such freedom entails. The Act also lays down the rules for reconciling local law civil status with ordinary civil status and the procedures for renouncing local law status.

477. Order No. 2002-1476 of 19 December 2002, extending and modifying civil law in Mayotte, helped bring civil law in Mayotte into line with that in metropolitan France.

478. The Overseas France Finance Act No. 2003-660 of 21 July 2003, modifying Act No. 2001-616 of 11 July 2001, concerning Mayotte, brought about significant progress in the area of gender equality by establishing the principles of monogamous marriage, and dissolution of marriage by divorce, prohibiting unilateral repudiation and forbidding discrimination between children on the grounds of sex or legitimacy, in matters of inheritance. Article 68 of the Act of 21 July 2003 amended Title VI of the Mayotte Statutory Act of 11 July 2001 for the purpose of limiting the scope of local law personal status to the rules on the status and capacity of persons, matrimonial property regimes and inheritance and gifts, to the exclusion of any other area of social life.

479. Divorce Act No. 2004-439 of 26 May 2004 supplemented this reform in two ways: by applying the ordinary law divorce procedure to divorces between persons with local law civil status and by granting access to the ordinary law courts to the earliest petitioner for a divorce.

480. The Immigration and Integration Act No. 2006-911 of 24 July 2006 takes into account the specific problems of irregular immigration encountered in Mayotte. It aims to put an end to fraudulent declarations of paternity by limiting the number of cases of legitimation. It also makes it compulsory for persons with customary civil status to marry in a town hall in the presence of a registrar and two witnesses.

481. The profound changes to local law civil status set in motion by these legislative reforms unquestionably paved the way for progress which is true to the principles of the Republic without undermining the very existence of this status, which is guaranteed by the Constitution.

(a) Cadi courts

482. In Mayotte, citizens with local law civil status may, at the request of the earliest petitioner, bring certain cases before a cadi court, a customary court that applies Muslim law.

483. Having been given explicit endorsement in article 1 of the Treaty of 25 April 1841, cadi courts are regulated by Decision No. 64-12 bis of 3 June 1964 adopted by the Comoros Chamber of Deputies on the reorganization of Muslim legal proceedings, and the Decree of 1 June 1939, concerning the indigenous justice system in the Comoros archipelago, as modified by Order No. 81-295 of 1 April 1981 on the system of justice in Mayotte.

484. Three courts form the pillars of the customary justice system:

(a) The 17 cadi courts, located in each of the Mayotte communes, are competent to hear cases involving questions of personal status and inheritance of property up to a value of €300. Petitions are submitted to the court in writing, usually in Shimaore, then translated by the secretary and clerk of the court;

(b) The Higher Cadi Court rules on appeals against decisions of the cadi courts and acts as a court of first instance in cases involving property worth more than €300. It also hears cases which fall under the jurisdiction of the cadi courts, if the latter find it necessary to relinquish jurisdiction because of the complexity of a case;

(c) The Muslim Cassation Division of the High Court of Appeal, consisting of a presiding judge and two cadis who do not have voting rights, has competence to rule on appeals against decisions of the Higher Cadi Court.

485. Since the Overseas France Finance Act No. 2003-660 of 21 July 2003 and the Divorce Act No. 2004-439 of 26 May 2004 were passed, the cadi courts have been able to hear cases involving disputes between persons with local law civil status relating to matters of personal status and capacity and marriage but excluding divorce and separation. They may also hear petty disputes over inheritance, gifts and obligations.

486. Cases involving criminal offences, tutelary support and serious and major disputes over obligations do not come under their jurisdiction.

487. Until the entry into force of the Immigration and Integration Act No. 2006-911 of 24 July 2006, the cadis officiated at weddings between persons subject to local law.[35] Since then, these marriages have been celebrated in a town hall in the presence of a registrar and two witnesses.

488. Cadis are not only judges but also play a role in mediating and regulating social and family life.

(ii) Regional language support

489. With regard to the promotion of the regional languages of overseas France, the agreement on the future of Mayotte of 27 January 2000 provides for a specific agreement between the community and the State on cultural development, promotion of the Mahorai's identity and the development of francophonie.

490. Article 23 of the Act of 11 July 2001, concerning Mayotte, introduces article L. 3533-1 into the General Territorial Communities Code. The new article sets out the functions of the Culture, Education and Environment Council with regard to culture and education in the overseas regions and departments.

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[35] Such marriages were, nevertheless, celebrated in the presence of a civil registrar after the introduction of Order No. 2000-219 of 8 March 2000 on civil status in Mayotte (art. 16).

491. Furthermore, articles L. 3551-24 and L. 3551-25 contain specific provisions on languages. Hence, the community may conclude agreements with public radio and television broadcasting companies with a view to encouraging the production of programmes aimed at developing the languages and culture of Mayotte. The territorial community, subject to the same conditions, can propose a plan to improve French language learning and to develop teaching of the languages and culture of Mayotte. The practical aspects of implementation of the plan are set out in an agreement concluded between the departmental community and the State.

492. The very specific circumstances of the territorial community, in which two local languages, Shimaore and Shiboushi, are spoken by the vast majority of the population in a context where illiteracy is widespread and command of the French language is poor, prompted the General Council to set up a French language institute in 1997. The object of the institute is to conduct linguistic research into the two languages, design methods for teaching French as a second language which take into account the specific nature of the Mahorai identity, develop educational tools, train trainers to use these methods (Mahorai schoolteachers have, for the most part, a better command of the local languages than of French) and update documentation.

(e) French Polynesia

(i) Specific legal aspects

493. The Organic Law No. 2004-192 of 27 February 2004 granted autonomous status to French Polynesia, stipulating, in article 1, the notion of "respect for its geographical specificities and the identity of its people". The territorial community has full jurisdiction over the environment, exploitation of natural marine resources and cultural development. Moreover, the Polynesian languages are recognized, and Tahitian language and culture are on the curriculum in schools.

(ii) Support for local languages and culture

494. In the chapter on cultural identity, article 57 of the Organic Law of 27 February 2004 stipulates that French is the official language of French Polynesia. Its use is mandatory in public legal entities and private legal entities providing a public service and for users in their dealings with administrative authorities and public service institutions.

495. The law, however, states that the Tahitian language is a fundamental component of cultural identity. The linchpin of social cohesion and a means of day-to-day communication, the language, like other Polynesian languages, is recognized and preserved alongside the language of the Republic, so that the cultural diversity with which French Polynesia is so blessed may be safeguarded.

496. The languages of French Polynesia are French, Tahitian, Marquesan, Paumotu and Mangarevan. Natural and private legal persons can use those languages freely in their documents and agreements, which are not rendered void by the fact that they are not written in the official language.

497. The University of French Polynesia offers a Tahitian language course (preliminary degree course (DEUG), bachelor's degree or master's degree) and the Polynesian branch of the Teaching Training School of the Pacific University has provided training for the secondary

school teaching diploma (CAPES) in Tahitian and French since 1998. A compulsory Tahitian test is planned during recruitment of local schoolteachers by the administrative authority of French Polynesia. Furthermore, the University of French Polynesia offers a teaching module in Tahitian as part of the training that it provides for local civil service competitive examinations. There is also a project on the establishment of a Marquesan language academy.

XVII. RECOMMENDATION CONTAINED IN PARAGRAPH 25 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

A. Legislative reform of the legal age for marriage

498. Article 1 of Act No. 2006-399 of 4 April 2006 "strengthening the prevention and punishment of domestic violence and violence against minors" brought the minimum legal age for marriage for girls into line with that for boys. By raising the minimum legal age for marriage for women from 15 to 18 years of age, as was already the case for men, this law brought an end to a difference between men and women with respect to marriage that had existed since 1804. The new article 144 of the Civil Code provides henceforth that "a man or a woman cannot marry before reaching the age of 18".

499. The provisions of article 144 of the Civil Code apply ipso facto to all the overseas territorial communities (COM), and overseas departments and overseas regions (DOM/ROM). Firstly, article 18 of the Act of 4 April 2006 stipulates that "the provisions of the present Act are applicable in New Caledonia, French Polynesia and the islands of Wallis and Futuna". Statutes and regulations apply ipso jure in the overseas departments and regions (Guadeloupe, French Guiana, Martinique and Reunion) based on the principle of "legislative identity" or "assimilation" (Constitution, art. 73). Lastly, article 144 of the Civil Code, concerning the status of persons, applies ipso jure in Mayotte (Act 2001-616 of 11 July 2001, concerning Mayotte, art. 3) and in Saint-Pierre and Miquelon (Act 85-595 of 11 June 1985, concerning the status of the Saint-Pierre and Miquelon archipelago).

500. Furthermore, marriage of a minor in French territory requires both parental consent and a waiver of the age limit authorized by the State prosecutor. Waivers are only granted for compelling reasons (Civil Code, art. 145). Elements were added to this clause during the examination of the draft law on verifying the validity of marriages, which was adopted on 12 October 2006. Article 1 provides that, as part of the formalities prior to the celebration of a marriage, minors intending to marry must be interviewed by a registrar without the future spouse or their legal representatives being present.

B. Rules on the notification of births

501. Article 56 of the Civil Code regulates the notification of births, stipulating that notification must be effected by the father or, in his absence, by a member of the medical staff or any other person who witnessed the birth. This rule is designed to spare the mother this task - which must be completed within three days of the delivery (Civil Code, art. 55) - since it is difficult for a mother to present herself before a registrar so soon after delivery. That said, there is now a practice whereby mothers can give notice of a birth at the civil registry desk in maternity clinics, which makes things easier for them.

502. The list in article 56 is non-exhaustive, and notification can come from anyone present at the birth, including the mother herself when there were no witnesses to the birth or the persons listed in the above-mentioned article are unable to effect notification.

C. Legislative reforms on equal inheritance rights for "legitimate", "natural" and "adulterine" children

503. Children born out of wedlock enjoy the same rights as those born of married parents, provided that their parentage is established.

504. The last remaining discriminatory practice regarding inheritance rights of adulterine children was repealed by the Act of 3 December 2001, concerning the rights of surviving spouses and adulterine children, which also updated a number of provisions of inheritance law that apply in all the overseas territorial communities, departments and regions (with some special arrangements), as well as in Mayotte and Saint-Pierre and Miquelon. France has therefore taken account of the ruling rendered by the European Court of Human Rights on 1 February 2000 in the *Mazureck v. France* case, which upholds the principle that children have an equal right to their parents' estate, whatever the status of their filiation.

505. Furthermore, given the importance of full equality between children, whether they are born in or out of wedlock, Order No. 2005-759 of 4 July 2005, which reformed the concept of parentage, removed any distinction between "legitimate" and "natural" children.

XVIII. RECOMMENDATION CONTAINED IN PARAGRAPH 26 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS

506. The courts, be they administrative or ordinary courts, are the primary independent authority for the protection and implementation of human rights.

507. Specialized bodies have also been established at the national level to prevent and rectify human rights violations, in particular the National Consultative Commission for Human Rights (CNCDH), the Ombudsman of the Republic, the Children's Ombudsman, the National Commission for Information Technology and Liberties (CNIL), and the High Authority to Combat Discrimination and Promote Equality (HALDE).

A. The National Consultative Commission for Human Rights (CNCDH)

508. The statutes of the CNCDH are being revised in order to meet the requirements of the Paris Principles adopted by the United Nations General Assembly on 20 December 1993.

509. A draft law, which aims to provide a legislative basis for the CNCDH and guarantee its independence, was submitted to the Law Commission of the National Assembly in November 2006 and is currently being examined.

1. Composition

510. The Commission is composed in such a way as to meet two objectives: to ensure an exchange of information between the State and civil society, and to guarantee pluralism of opinions and beliefs in respect of human rights.

511. The State (Executive) is represented on the Commission by representatives of the Prime Minister and the 17 ministers principally concerned.

512. A deputy and a senator, appointed by the Speakers of the respective houses of Parliament, ensure liaison with the legislature.

513. Members of the Conseil d'Etat and of the bench facilitate contact with the judiciary.

514. The Ombudsman brings to bear his office's experience of relations with the country's various national and local administrations.

515. Pluralism of beliefs and opinions is guaranteed by the selection of a wide range of civil society representatives: representatives of 33 national associations for the promotion and protection of human rights in all their aspects; representatives of the 7 trade union confederations; 47 public figures (including representatives to the Catholic, Muslim, Protestant and Jewish faiths, academics, members of the diplomatic corps, the bar, sociologists …); 7 French experts who sit in a personal capacity on international human rights bodies: the Committee on the Elimination of Racial Discrimination, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Committee on Economic, Social and Cultural Rights, the European Committee for the Prevention of Torture, and the Committee on the Elimination of Discrimination against Women.

2. Functions

516. In conformity with its constitutive decree of 30 January 1984, as amended, the Commission's terms of reference cover the entire spectrum of human rights: individual, civil and political liberties; economic, social and cultural rights; new areas that have opened up as a result of social, scientific and technological progress; and humanitarian action and law.

517. The functions assigned to it initially, which focused on action in France to defend human rights in the world, were expanded to include all national issues with a bearing on human rights.

518. The Commission, which has retained the functions that it had in the international arena, contributes to the preparation of reports submitted by France to international organizations. It expresses its views on the position of France in multilateral negotiations on human rights. It brings grave violations of human rights in the world to the attention of French diplomatic representatives. It cooperates with other national institutions devoted to the promotion and protection of human rights.

519. The Commission has a twofold function: it monitors and makes proposals both upstream of government action - during the preparation of draft laws, regulations, policies and programmes - and downstream, when verifying respect for human rights in relation to administrative practices.

520. The Commission, which is an independent body, gives consultative opinions to the French Government. In matters referred to it by the Prime Minister or members of the Government or that it takes up on its own motion, the Commission publishes its views and studies.

B. The Ombudsman of the Republic

521. Since its inception in 1973, the Office of the Ombudsman of the Republic has been tasked with improving relations between the French administration and citizens.

522. Appointed for six years with no possibility of removal from office - an arrangement that guarantees his independence - the Ombudsman examines, on a case-by-case basis, flawed texts or procedures and some kinds of abusive behaviour. He proposes tailor-made solutions and fundamental reforms.

523. Since 2000, any natural or legal person who, in a matter that concerns them, considers that one of the institutions mentioned in article 1 has not fulfilled its duty as a public service provider, may submit a complaint and ask for it to be referred to the Ombudsman of the Republic through his Member of Parliament or a senator.

524. Since 2005, the Ombudsman of the Republic has had representatives, whom he appoints, throughout the territory. The representatives provide the persons mentioned in article 6, paragraph 1, with information and assistance necessary for the submission of complaints.

525. In order to familiarize vulnerable groups with the institution of the Office of the Ombudsman, the Ombudsman and the Minister of Justice signed an agreement on 16 March 2005 providing for the installation in prisons, on an experimental basis, of offices of representatives of the Ombudsman. The aim is to allow prisoners to receive specific information on the role and tasks of the Ombudsman and the procedures for bringing matters to his attention. Ten prisons, with a total of 7,500 prisoners, i.e. 10 per cent of the French prison population, were selected: Fresnes Prison; Les Baumettes Prison Centre in Marseilles; Aix-en-Provence-Luynes Prison; Saint-Etienne Prison; Melun Detention Centre; Bapaume Detention Centre; Poissy Central Prison; Nanterre Prison; Epinal Prison; and La Farlède Prison in Toulon.[36] The pilot phase was completed in 2006 and the positive results led to the gradual expansion of the arrangement, with the establishment, in 2007, of 25 representatives' offices in prisons. This first phase of expansion will make it possible to reach out to a total of 26,500 prisoners.[37]

C. The Children's Ombudsman

526. The Office of the Ombudsman for Children was established by Act No. 2000-196 of 6 March 2000. The Act vested this independent authority with a role in defending and promoting children's rights as set out in the Act or covered by the international commitments that France has ratified or approved (art. 1).

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[36] See: http://www.mediateur-republique.fr/fic_bdd/pdf.

[37] Ibid.

527. In the course of his duties, the Ombudsman receives individual complaints about violations of children's rights by public or private persons. The Ombudsman has territorial representatives who, depending on the density of the population, operate at the departmental or regional levels, collecting information, providing guidance and coordinating the efforts of all persons concerned with the situation of the minor named in the complaint.

528. A distinctive feature of this independent authority is that individuals can refer cases to it directly without having to go through a Member of Parliament.

529. Consequently, the Office can receive complaints from minors themselves, in which case it may notify the minor's legal representative of the complaint; and from minors' legal representatives and public associations which defend children's rights.

530. It follows that, while the Office of the Ombudsman for Children complies with the general principle of non-intervention in court proceedings, its mandate is sufficiently broad for it to take an interest in all areas that affect children, including judicial matters.

D. The National Commission of Information Technology and Liberties (CNIL)

531. The CNIL was established as an independent administrative authority by Act No. 78-17 of 6 January 1978, concerning information technology, files and liberties.

532. The Commission is a pluralist body comprising 17 commissioners: 4 parliamentarians (2 deputies and 2 senators), 2 members of the Economic and Social Council, 6 high court representatives (2 members each from the Conseil d'Etat, the Court of Cassation and the Audit Court), 5 public figures designated by respectively the Speaker of the National Assembly (1 person), the Speaker of the Senate (1 person) and the Cabinet (3 persons).

533. The members serve for a term lasting five years or, in the case of members of parliament, a period of time corresponding to their electoral mandate.

1. Functions

534. Any citizen may contact the CNIL in order to:

(a) Bring a complaint concerning difficulties in exercising his rights to information, to make an objection, and to access to, or the rectification of, his personal data, and concerning abuses or irregular practices;

(b) Seek advice before using personal data;

(c) Gain access to police or gendarmerie files;

(d) Ask for the contact details of an official responsible for the file so that he can exercise his rights vis-à-vis that official.

535. When a matter is referred to it by a citizen, the CNIL can:

(a) Act as a mediator with a view to reaching an amicable settlement of a problem, in particular with regard to the exercise of the right to have access to information and the right to object to inclusion of one's personal information in a database or its use for the purposes of commercial soliciting;

(b) Conduct checks on persons or bodies that exploit personal information;

(c) Impose penalties;

(d) Refer serious violations to the Department of Justice.

E. The High Authority to Combat Discrimination and Promote Equality

536. The President of the Republic decided to establish an independent authority to deal with all the different forms of discrimination enumerated in two European directives of 2000 and 2002. Thus, the directives were incorporated into domestic law by the Act establishing the High Authority to Combat Discrimination and Promote Equality (HALDE), which was promulgated on 30 December 2004 and published in the Official Gazette on 31 December 2004.

537. The High Authority is a collegiate body with 11 members who are appointed by presidential decree for a non-revocable and non-renewable five-year term. An 18-member consultative committee has been set up to forge links between the Authority and civil society.

538. The High Authority has competence for all forms of discrimination, whether direct or indirect, that are prohibited by law or by virtue of an internal commitment that has been ratified by France.

539. It is entrusted with two main tasks: dealing with cases of discrimination, and promoting equality, in the private and public sectors.

540. Cases of discrimination may be referred to the High Authority directly by the victim, through a member of parliament or a French member of the European Parliament, or jointly by the victim and an association. The High Authority may also take up a case on its own motion, if there is no objection from the person who has been identified as a victim.

541. Without encroaching on the powers of the justice system, the High Authority can ask for clarifications, interview individuals, consult documents or even, in some cases, carry out inspections in situ.

542. Its powers were strengthened by Act No. 2006-396 of 31 March 2006, concerning equality of opportunity (arts. 41-47). Subject to the agreement of the State prosecutor, it can now propose a deal whereby the perpetrator of an act of discrimination can pay a fine and, where appropriate, compensation to victims, in exchange for the discontinuation of criminal proceedings.

543. In cases involving public-service providers, the High Authority can ask the authorities to order investigations by inspection bodies or corps. It can also initiate mediation proceedings. In the latter case, the fact that it can publish its recommendations regarding the administrative authority against whom the complaint is brought provides a powerful incentive to cooperate.

544. Since its creation in April 2006, it has been seized of a total of 900 cases. Almost half (45 per cent) relate to employment. Origin is the predominant factor in cases of discrimination (40 per cent).[38]

545. The High Authority carries out studies and research on the promotion of equality, and encourages and supports initiatives of public and private organizations aimed at the adoption of charters of good practice on equal treatment.

546. The High Authority can also issue recommendations on legislative and regulatory texts. The Government consults it with regard to texts on combating discrimination or promoting equality.

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[38] Annual report of HALDE on website: http://www.halde.fr?