UNITED
NATIONS

HRI

International
Human Rights
Instruments

Distr.
GENERAL

HRI/CORE/1/Add.17
18 January 1993

ENGLISH
Original: FRENCH

CORE DOCUMENT FORMING PART OF THE REPORTS
OF STATES PARTIES

FRANCE

[2 December 1992]

TABLE OF CONTENTS

*/ The annexes, as submitted by the French Government in French, may be consulted at the United Nations Centre for Human Rights.

I. LAND AND PEOPLE

1. As of 1990, the population of metropolitan France, covering a territory of 551,602 square kilometres, had reached 57.2 million, with an annual population growth rate of five per cent for the period 1982-1990. Languedoc-Roussillon, Provence-Alpes-Côte d'Azur and Ile-de-France are the regions which have shown the largest population growth since 1982, these regions alone accounting for more than 60 per cent of total growth. In most of the other regions, in particular those in the west, growth rates are decelerating. A vast sparser population zone is become increasingly marked in the centre of the country and is extending towards the northeast. People live, for the most part, in cities: there are 30 major cities with a population of 200,000 or greater; 119 with a population of over 50,000 and 414 with a population of over 20,000. Among these latter cities, 144 are in the region of Ile-de-France. The population of communes located outside the metropolitan sphere has barely varied over the past 15 years, remaining around 5.8 million. The population of the major towns - 23.5 million inhabitants - has likewise remained relatively stable. In contrast, rural communes situated on the periphery of urban centres have grown very rapidly. Population growth between 1975 and 1990 thus occurred essentially in the suburbs and the neighbouring rural communes, reaching totals of 17.6 million suburbanites and 9.7 million outer suburbanites and near-city rural dwellers.

2. The combined populations of the overseas departments (Guadeloupe, Martinique, Guyana, Reunion), the overseas territories (New Caledonia, French Polynesia, Wallis-and-Futuna) and the communities of Saint-Pierre-and-Miquelon and Mayotte amount to 1,896,800. The overseas departments, with seven cities of over 50,000 inhabitants, account for more than three-quarters of the overseas population, or 1,457,900 inhabitants. The substantial population growth is the result of several factors: a considerably higher birth than death rate, owing to a still high fertility rate; a youthful population structure; and a reversal in migratory trends, with more arrivals than departures.

3. During the 1970s and 1980s the structure and evolution of the family was substantially altered by a decline in the number of marriages, a growing trend towards cohabitation, a decrease in the fertility rate, and a rise in the divorce rate. The number of births outside of marriage, on the rise in recent years, accounted in 1988 for more than one-quarter of all births. Based on the total number of births, the fertility index showed 1.78 births per female in 1990. A fertility analysis by generation demonstrates a stabilization in completed fertility of approximately 2.1 births per female in the generations born towards the period 1950-1955. That stabilization can be expected to continue in the following generations, if the increase in the birth rate for females over 30 compensates for the decrease observed in females under 25.

4. The gross mortality rate has remained low for several years: 9.2 deaths per 1000 persons. Expectation of life at birth has been increasing steadily since the end of the 1970s as a result of gains made in combating circulatory disorders and a decline in perinatal and infant mortality. Considerable progress has been made in combating infant mortality, in particular neonatal mortality during the first four weeks of life, the mortality rate for that period decreasing by 73 per cent between 1965 and 1988. The infant mortality rate also declined, going from 9.5 per thousand in 1982 to 7.3 per thousand in 1990.

5. As of 1 January 1990, the number of individuals over 65 years of age equalled 7.9 million (60.9 per cent females) or 19.1 per cent of the population, while the 0 to 19 year old age group continued to shrink. Among the elderly, 2.1 million individuals were over 80 and 878,000 were over 85. By the year 2020 the over-65 population group will probably represent 20 per cent of the population and it is likely that the over-85 age group will number 2.5 million by the year 2040. The growing number of elderly reflects a low birth rate as well as the efforts to reduce the mortality rate.

6. Without causing an increase in the total number of abortions, the legislation in force since 1975 has led to the nearly total elimination of abortions performed outside of the health system, under conditions which seriously endangered women's health and reproductive capacities. There were 162,958 reported abortions in 1988 and 162,908 in 1989. The Government continues to develop its efforts in the area of sexual and contraceptive education, which is the only way to achieve a gradual decrease in the number of abortion requests.

7. The alien population includes persons born outside of France - immigrants in the proper sense of the word - and minors born, for the most part, in France of alien parents. The alien population varies according to the number of arrivals, departures, births, and deaths and the number of individuals granted French nationality. There were 3,580,000 aliens in 1990, of which 1,300,000 came from European Economic Community countries. Aliens made up 6.3 per cent of the total population, a share which was essentially the same as that in 1982. The region of Ile-de-France receives the major share of the immigrants, who tend to settle in the outlying areas rather than in Paris, and in 1990, that region accounted for over 38 per cent of registered aliens. The stabilization in the number of aliens has been accompanied by an increase in the number of French nationalities granted: 1.77 million, or 3.13 per cent of the total population, at the time of the last census.

8. In 1990 France's gross domestic product (GDP) amounted to 6,484,100 million francs, or 114,926 francs per capita. For that same year, the annual average gross disposable income per capita was 78,410 francs or 6,534 francs per month. The share allocated to social benefits rose from 29 per cent in 1980 to 34 per cent in 1990. The labour force - which includes both the economically active and the unemployed, according to the definition of the International Labour Office - was estimated at 24.37 million. The proportion of economically active individuals aged 25 to 49 remains very high, representing 96 per cent of the men and 74 per cent of the women in that group. Feminization of the workplace has been a growing phenomenon since the early 1980s, with the employment rate for women 15 years of age and over reaching 45.8 per cent in 1990. In that same year, there were 1,334,540 female heads of household, representing 6.2 per cent of the total number of households.

9. The minimum wage, the evolution of which takes into account both prices and salaries, was 31.94 francs as of 1 April 1991, representing a gross monthly amount of 5,397.86 francs for 169 hours of work. Since 1988, the differences between the average remuneration for categories at the extreme ends of the scale have stabilized. In 1990, a skilled worker received an average of 74,300 francs per annum while a manager received 3.12 times that amount, or 232,100 francs per annum. Men received an average net annual salary of 119,900 francs while women received 90,700 francs, giving men an apparent 32.1 per cent advantage over their female colleagues.

10. The slowdown in economic growth has been reflected in a rise in unemployment. In 1990, the number of unemployed, as defined by the International Labour Office, reached 2.22 million, representing an unemployment rate of 9.12 per cent of the labour force.

11. The French Government has provided as an annex a series of tables and graphs describing the principal demographic, economic and social indicators of France.*/

II. GENERAL POLITICAL STRUCTURE

12. The French tradition of commitment to human rights dates back to the eighteenth century. It was enshrined in the Declaration of the Rights of Man and of Citizens of 1789, to which reference is made in the preamble of the Constitution of 4 October 1958, and which has the value of a constitutional norm. The tradition has grown through the ages to become a part of the French institutional and intellectual heritage and has more recently been enriched by France's accession to many international conventions. The current system of protection of human rights is thus closely linked to the French legal and political framework, the principal elements of which are political democracy, separation of powers, independence of the judiciary and control of administrative action.

A. The Institutional Framework

13. In 1875, the Third Republic established once and for all a system of representative democracy, the principles of which were enshrined and developed in the Constitution of 4 October 1958. France is an indivisible, secular, democratic and social republic. The language of the Republic is French (art. 2 of the Constitution). National sovereignty is vested in the people which exercises it through their representatives; the people may also be consulted by referendum (art. 3).

14. The Constitution guarantees the democratic exercise of sovereignty by prohibiting its exclusive use by a group or an individual (art. 3). The people elect their representatives by means of universal, equal and secret suffrage (art. 3). The Constitution recognizes the existence of political parties and associations (art. 4), which are the pillars of a pluralistic democracy.

15. Under Title XIV of the Constitution (art. 89), the power to propose constitutional amendments is vested concurrently in the President of the Republic, who proposes such amendments at the request of the Prime Minister, and in the members of Parliament. Parliament adopts the draft amendment, which is then approved by the people in a referendum. The draft amendment may also be adopted definitively by the Parliament, meeting as a full assembly. The power of amendment is not, however, unlimited:

(a) article 89, paragraph 4, prohibits any amendment which "violates the integrity of the territory";

(b) article 89, paragraph 5, formally prohibits any amendment which would result in an alteration of the republican form of government.

---

*/ These tables and graphs, as submitted by the French Government in French, may be consulted at the United Nations Centre for Human Rights.

16. Several of the institutions established under the Constitution of 1958 are generally considered to characterize a parliamentary system. However, because it includes election by universal suffrage of the President of the Republic and a flexible separation of powers, the French system is often considered to be mixed or semi-presidential.

1. The executive power

(a) The Head of State

17. The President of the Republic, the Head of State, is elected by direct universal suffrage for a term of seven years. By virtue of article 5 of the Constitution, the President is responsible for "ensuring, through his arbitration, the proper functioning of the government and the continuity of the State". The President appoints the Prime Minister and, on his advice, the other members of the government (art. 8); he presides over the Cabinet (Conseil des ministres) (art. 9) and has the power to dissolve the National Assembly (art. 12). The Head of State is responsible for safeguarding national independence and territorial integrity and for ensuring respect for community accords and treaties. Under article 5 of the Constitution, the President is vested with direct authority over national defence matters: he is head of the armed forces by virtue of article 15 of the Constitution. The President also has the power to make appointments to civil or military posts (art. 13). Treaties are negotiated on behalf of the President of the Republic, and it is he who ratifies them, with parliamentary authorization when necessary (art. 52). Lastly, under article 16, the Head of State may be granted extended powers under special circumstances.

(b) The Government

18. The government (the Prime Minister and his ministers) is the second organ of executive power; it is appointed by the President of the Republic and constitutes a collegiate body. The government is collectively answerable to Parliament in respect of its general policy. The government "determines and conducts the nation's policy" and to that end has at its disposal "the administration" in addition to the power to use "armed force" (art. 20). The Prime Minister guides the action of the government and, with the exception of the those powers granted to the President of the Republic, is vested with regulatory power (art. 21). Like members of Parliament, the Prime Minister may table legislation (art. 39).

2. The legislative power

19. Legislative power is vested in the Parliament, which is composed of the National Assembly and the Senate. The sharing of jurisdictions by the legislative power and the regulatory power is established under Articles 34 and 37 of the Constitution. Parliament has, in particular, an exclusive mandate to enact legislation relating to civic rights, citizens' fundamental guarantees of public freedoms, the determination of serious crimes and other major offenses and their applicable penalties, and criminal procedure.

(a) The National Assembly

20. The National Assembly is made up of 577 deputies; its full membership is renewed every five years by direct universal suffrage (uninominal majority vote in two ballots), except in the case of early elections where the Assembly has been dissolved. The power to propose and enact legislation is vested in the National Assembly, which may authorize the government to take measures, by way of ordinances, in domains normally reserved for parliamentary legislation. Such ordinances are adopted by the Cabinet, on the advice of the Council of State (Conseil d'Etat); they enter into force on the date of publication, but lose all force if the ratification bill is not laid before the Parliament by the date fixed in the enabling Act. The National Assembly reviews and adopts the budget and financial legislation; it exerts control over government actions by its power to invoke ministerial responsibility; and it has the power to authorize the ratification of certain treaties and to authorize a declaration of war. It takes part in the constitutional amendment process. Most of these powers are shared jointly by the Senate.

(b) The Senate

21. Members of the Senate are elected by indirect universal suffrage and represent the Republic's collectivites territoriales. As part of the Parliament, the Senate shares in the exercise of all the powers conferred on the Parliament by the Constitution. Senate members have the right to propose legislation. The Senate debates and adopts legislation; however, in the event of disagreement between the Senate and the National Assembly, a constitutional procedure may lead to the adoption of laws which have not been passed by the Senate. While playing a role in the parliamentary control of government action, the Senate is not entitled to take action by invoking the responsibility of the government.

3. The institutional balance

22. Institutional balance is ensured by the Constitution of 4 October 1958, which maintains the two traditional procedures by which the responsibility of the government can be invoked: the motion of censure and the question of confidence (Title V). The National Assembly invokes the responsibility of the government by way of a motion of censure. Adoption of the motion means that the Prime Minister must submit the government's resignation to the President of the Republic. In respect of the question of confidence, the government itself takes the initiative. It may call for a vote of confidence with regard to its overall political programme; in such a case, failure to obtain a majority means that the government must resign. It may also call for a vote of confidence with regard to the adoption of a text; the text is considered to be adopted unless a motion of censure, brought within the following 24 hours, is voted.

23. The second aspect of the flexible separation of the executive and legislative powers is the power to dissolve the National Assembly, as provided for under article 12. Such a power is vested in the President of the Republic, without obligation of countersignature. General elections are held at least 20 days and not more than 40 days after the dissolution of the General Assembly. The new Assembly meets automatically on the second Thursday after the election and cannot be dissolved during the year following its election.

B. Jurisdictional bodies

1. Control of the constitutionality of laws vested in the Constitutional Council

24. In addition to the powers vested in it with regard to the electoral process and the status of elected officials, the Constitutional Council (Conseil constitutionnel) rules on the constitutionality of legislative texts, treaties and parliamentary rules. The Council has nine members, each appointed for a non-renewable nine-year term, and it is renewed by thirds every three years. Three of its members are appointed by the President of the Republic, three by the Speaker of the National Assembly and three by the Speaker of the Senate. In addition to its nine members, former presidents of the Republic are by law lifetime members of the Council. The president of the Council is appointed by the President of the Republic and, in the case of a divided opinion, casts the deciding vote. The consideration of the Council is optional as regards defence of the regulatory domain and the constitutionality of ordinary Acts; such legislation may be submitted to the Council - before promulgation - by either the President of the Republic, the Prime Minister, the Speaker of the National Assembly, the Speaker of the Senate, 60 deputies or 60 senators. Institutional practice has in the meantime given rise to increasingly frequent parliamentary application to the Council, following the constitutional reform of 1974.

25. The "constitutional bloc" - the set of rules the protection of which is ensured by the Council and under which legislators are bound - is not limited to the founding text of the Fifth Republic; it also includes the Declaration of the Rights of Man and of Citizens of 1789, the preamble to the Constitution of 1946 and the fundamental principles recognized under the law of the Republic, determined by the Council in the course of its jurisprudence.

26. The Constitutional Council may also rule on the constitutionality of international treaties. If, after having been seized of the matter by the President of the Republic, the Prime Minister or the Speaker of one or the other of the parliamentary bodies, the Council determines that a clause contained in an international treaty is unconstitutional, that treaty can neither be ratified nor adopted until the Constitution is amended. Since the promulgation of constitutional Act No. 92-554 of 25 June 1992 (art. 2), the Council may act in such a case when it has been seized of the matter by 60 deputies or senators.

27. The decisions of the Constitutional Council have the force of res judicata. Article 62 of the Constitution provides that such decisions "do not admit of any appeal" and that they "are binding on the government and on all administrative and judicial authorities".

2. Independence of the judiciary

28. The independence of the judiciary is guaranteed under the Constitution, which treats the matter of judicial power under Title VIII. The President of the Republic ensures the independence of the judiciary (art. 64), which arises largely from the status of the judges. Under the Constitution, judges of the ordinary courts are irremovable - they may not be transferred from their post, even in the case of a promotion, without their agreement. Furthermore, application of disciplinary sanctions to judges is circumscribed by an

exceptionally wide range of guarantees. In performing their duties, judges naturally do not take orders from others, arriving at their decisions freely. The Judiciary Council (Conseil de la magistrature) proposes candidates for judges of the Court of Cassation and for the post of President of the Court of Appeal. It gives its opinion, according to conditions set down under organic law, on the proposals of the Minister of Justice relating to the nominations of the other judges of the ordinary courts. It is consulted on matters of pardon under conditions fixed by organic law. The Supreme Judiciary Council (Conseil supérieur de la magistrature) serves, under the presidency of the President of the Court of Cassation, as a disciplinary council for judges of the ordinary courts.

3. Control of administrative action

29. Control of administrative action safeguards the principle of legality, which is a basic pillar of administrative law and the condition sine qua non of a State of law. In France, the principle of the separation of the administrative and judiciary powers, which has constitutional value, is based on the Act of 16 and 24 August 1790. Consequently, administrative action is subject to review not by the ordinary courts but by the administrative courts; this dual jurisdiction follows from the summa divisio of French law (public law and private law) and corresponds to the French conception of the separation of powers.

30. The Act of 24 May 1872 gave final form to the system known as delegated justice, as distinct from justice administered by the Head of State, a system to which the Second Empire had returned: the administrative judge renders his judgements "in the name of the French people"; the Constitutional Council has, moreover, incorporated this rule into the "constitutional bloc" by recognizing it as a fundamental principle under the laws of the Republic. In addition to that basic reform, legislative, regulatory and jurisprudential developments since 1872 have followed the trend, originating in the early 19th century, towards strengthening the independence and quality of administrative justice (recruitment, status of the members of the administrative courts, organization and composition of litigation units, etc.).

III. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

A. Judicial, administrative and other authorities having jurisdiction in human rights matters

31. In the exercise of their functions, all French authorities, including the administrative authorities within their respective jurisdictions, are competent to apply the human rights principles and norms set forth in the international instruments ratified by France and such human rights principles and norms as are provided for under the Constitution and law of the French Republic. Various courts are responsible for ensuring respect for human rights: the Constitutional Council, the ordinary courts and the administrative courts.

1. The Constitutional Council

32. The Constitutional Council, within the framework of its review of the constitutionality of the law, examines texts submitted to it, including those relating to human rights, with regard to their constitutionality. It may take

corrective action where there is a direct breach of article 55 of the Constitution, which establishes the primacy of international treaties over national law, for example, in the case of a law the application of which is provided for notwithstanding the contrary stipulations of a treaty or a law under which judges would be bound to apply a statute which is in violation of a treaty. All international instruments to which France is a party, including those relating to human rights, naturally fall within this conceptual system.

2. The ordinary courts

33. Under article 66 of the Constitution, the judiciary is the guardian of individual liberties; it safeguards the principle according to which no one may be arbitrarily detained, under conditions determined by law.

(a) Civil courts

34. (i) District court (Tribunal d'instance): court having jurisdiction in civil actions involving small claims and in criminal cases involving minor offenses;

(ii) Court of Major Jurisdiction (Tribunal de grande instance): general court having jurisdiction in all cases with the exception of those reserved by law for a specialised court; the Court of Major Jurisdiction has civil as well as criminal jurisdiction in matters involving more serious offenses;

(iii) The Court of Appeal (Cour d'appel): court of second instance which hears appeals against decisions of the district courts as provided under the law (certain decisions are final and consequently are not subject to appeal) and against decisions of the Court of Major Jurisdiction;

(iv) Court of Assize (Cour d'assises): non-permanent court, with three professional judges and nine jurors chosen by lots, having jurisdiction in cases of serious crime;

(v) Court of Assize of Paris (Cour d'assises de Paris): court with seven judges, without a jury, and having jurisdiction in cases of serious crimes (and other related offenses) having to do with terrorism;

(vi) The juvenile court system includes the Juvenile Court judge (juge des enfants), a judge from the Court of Major Jurisdiction vested with the power to prepare and investigate cases and render judgements; the Juvenile Court (tribunal pour enfants), composed of a Juvenile Court judge and two assessors, chosen from among individuals aged over 30, specialised in the field of juvenile behaviour and competent in matters of serious crime and major offenses involving minors under 16 years of age; and the Assize Court for Juveniles (Cour d'assises des mineurs), composed of three judges and nine jurors, and having jurisdiction over serious crimes committed by minors between the ages of 16 and 18.

(b) Military courts

35. Military courts exercise jurisdiction over military matters in peacetime: under court of appeal, there is a court of major jurisdiction and a court of assize which are competent to hear cases involving major military offenses and serious military crimes, as provided for under the Code of Military Justice, as well as cases involving serious crimes and major offenses under ordinary law committed by military personnel in the exercise of their duties.

(c) The Court of Cassation (Cour de Cassation)

36. The Court of Cassation, the supreme court of the judicial hierarchy, ensures a precise and uniform application of the law by means of its review on points of law of decisions of last resort.

3. The administrative court system

37. The administrative court system consists of the administrative courts of first instance (tribunaux administratifs), the administrative courts of appeal (cours administratives d'appel) and the Council of State.

(a) The administrative courts

38. The administrative courts are courts having general jurisdiction at first instance in administrative disputes.

(b) The administrative courts of appeal

39. The administrative courts of appeal hear appeals from the administrative courts of first instance, except in cases of decisions on applications for judicial review; rule on disputes relating to municipal or cantonal elections; and consider applications for annulment of regulations. Decisions of the administrative courts of appeal may be appealed on points of law to the Council of State.

(c) The Council of State

40. The Council of State has original and final jurisdiction in certain matters, among them, applications for judicial review of decrees (and ordinances, prior to ratification) and of major ministerial decisions (regulatory decisions as well as individual decisions taken after obligatory consultation with the Council of State); individual claims involving the rights of civil servants, officials or military personnel appointed by the President of the Republic; and applications for judicial review of administrative decisions taken by collegiate bodies with national jurisdiction. The Council of State hears appeals on points of law against decisions handed down by the administrative courts of appeal and the specialized administrative courts; it hears full appeals from the administrative courts of first instance which may not be appealed to the administrative courts of appeal, including decisions on applications for judicial review of regulations.

B. Remedies available to individuals claiming a violation of their rights and systems of compensation and rehabilitation for victims

1. Remedies

41. It falls essentially to the judiciary to monitor respect for human rights and to sanction any violations. There are, nevertheless, non-juridical procedures for the protection of rights and freedoms.

(a) Juridical remedies

42. Administrative courts have jurisdiction over administrative acts and actions. Any individual who has suffered an illegal infringement of one of his freedoms by a public servant may seek to annul such action by way of application to an administrative court judge for judicial review. The aggrieved party may also seek reparations for injuries or damages. Application to annul an administrative action is a procedure readily accessible to persons suffering as a result of administrative decisions. It is available, even in the absence of legislation, with respect to any administrative act and no one may waive in advance his right to this remedy. Any French person or foreign national is thus entitled to make application for judicial review of an administrative action, even if his interest in seeking to annul such action is based purely on moral grounds. Application for judicial review may be brought without a lawyer at all levels of the court. The petitioner must base his application on one of four charges: lack of jurisdiction, procedural irregularity, misuse of powers, or illegality. Any annulment granted by the administrative court is universally applicable and has effect from the date the measure in question was taken.

43. Ordinary court judges also have jurisdiction in respect of administrative acts and actions. Indeed, under article 66 of the Constitution the judiciary is the guardian of individual freedoms. Thus, any individual who has suffered injury as a result of an administrative act may bring an action for damages before the ordinary courts if that act involved the improper possession of immoveable property (expropriation) or infringed on a fundamental individual freedom (unlawful physical act). In addition, the ordinary courts, in their capacity as criminal courts, may be called upon to decide whether an administrative regulation under which someone is being prosecuted is valid (preliminary plea of illegality). If it cannot annul the regulation in question, the court may succeed in virtually blocking its application by refusing to penalize non-compliance with the regulation.

44. Criminal courts have jurisdiction in matters concerning any public official guilty of an infringement of freedom, as set forth under articles 114 to 122 of the Criminal Code. The ordinary (non-administrative) courts are also empowered to protect freedoms in matters involving private individuals. Ordinary court judges protect the entire range of individual freedoms - independence of the individual will, contractual freedom, right to privacy. They are vested with the power to award damages and interests, annul contracts, deem a clause null and void, or declare inadmissible any evidence obtained by an infringement on the freedom of the other party.

45. With regard to infringement of freedoms, the jurisdictions are thus shared: administrative court judges have jurisdiction with respect to administrative acts and actions; criminal court judges have exclusive jurisdiction with respect to criminal matters; and civil court judges have jurisdiction which involve involving infringement of freedom between private persons and which are not criminally sanctionable.

46. At the European level, a subsidiary mechanism for the protection of human rights is provided by the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by France on 3 May 1974. France recognized on 2 October 1981 the right of individual remedy as established under the Convention.

(b) Non-juridical remedies

47. As a general rule, discretionary remedies are available in respect of any dispute between a private person and the State. Even where right to a legal remedy exists, in certain cases the law may require that legal remedies must be preceded by administrative remedies (which must be undertaken within the specified period in order to maintain the right to the legal remedy). In order for the prior remedies obligation to be more effective in reducing the number of cases brought before the administrative courts, the Act of 31 December 1987, relating to reform of administrative litigation, provides under article 13 that the Council of State shall determine by decree the conditions under which such an obligation shall be instituted, in the case of both contractual disputes and disputes relating to non-contractual liability of public authorities.

48. A specific non-juridical mechanism for the protection of freedoms was established by the Act of 3 January 1973, as amended by the Act of 24 December 1976, which set up the office of Ombudsman (Médiateur) of the Republic. The Ombudsman is an independent authority, appointed by decree of the Cabinet to a non-renewable term of six years. Any individual may apply to the Ombudsman through a deputy or senator of his choice and or may apply to the departmental representative of the Ombudsman, who receives complaints concerning relations between private persons and the State administration, municipalities, public institutions or any other public service bodies. The Ombudsman seeks to settle disputes amicably and is vested with investigatory authority; administrative secrecy may not be invoked against him. His departmental representatives are authorized to act on his behalf in order to settle directly any local dispute brought before them. Consideration of a particular case may give rise to proposals for public service reform. An annual report is published.

49. The right of petition is available to everyone. Individuals reporting a violation of human rights or seeking an amendment of a law in force may apply directly to one of the supreme authorities of the State. The existence of other, more effective means of protecting rights, as mentioned previously, explains the infrequent and declining use of this remedy.

2. Systems of compensation and rehabilitation for victims

50. In addition to the principles and guarantees already cited, a number of specific mechanisms exist:

(a) Any action which gives rise to arrest or detention or which allows of or perpetuates a deprivation of freedom, and which does not meet the conditions provided for by law, not having been carried out in the prescribed manner and place, constitutes an infringement of freedom which may give rise to the granting, by the ordinary courts, of damages and interest, in application of article 117 of the Criminal Code;

(b) Where a retrial establishes the innocence of an individual convicted of a serious crime or major offence, that individual, under article 626 of the Code of Criminal Procedure, has the right to indemnities in proportion to any injuries arising from the conviction;

(c) In accordance with articles 149 and following of the Code of Criminal Procedure, indemnity may be granted to an individual held in pre-trial detention during proceedings which give rise to a discharge, release or final acquittal, where such detention has caused manifestly abnormal and particularly severe injury.

C. Protection of rights guaranteed under various international human rights instruments and derogations from such rights

1. Guaranteed rights

(a) Rights guaranteed under the Constitution

51. The preamble of the Constitution of 4 October 1958 reaffirms the French people's commitment to the Declaration of the Rights of Man and of Citizens of 1789, confirmed and complemented by the preamble of the Constitution of 1946. All of these texts have constitutional value. The Constitution also recognizes the equality of citizens and freedom of conscience (art. 2), the freedom to form political associations (art. 4) and individual security (art. 66).

(b) Rights guaranteed under the law

52. Legislation has developed and strengthened the protection of certain rights, in accordance with the international treaties ratified by France.

(i) Non-discrimination

53. France ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 28 July 1971. Act No. 72-546 of 1 July 1972, relating to the combat against racism, makes punishable incitement to discrimination; defamation of an individual based on his origin, or his membership or lack thereof in a particular ethnic, national, racial or religious group; and injurious behaviour directed against an individual for those same reasons.

54. Discriminatory behaviour on the part of businessmen or shopkeepers is punishable under article 416 of the Criminal Code. Article 416-1 of the same Code defines as subject to penalty the act of hindering the commercial activity being carried out by a natural person or members of a juridical person on the basis of their national origin, or their alleged or actual membership or lack thereof in a particular ethnic, racial or religious group.

55. Act No. 83-634 of 13 July 1983 concerning the rights and obligations of civil servants (Title I of the new civil service regulations) provides that "freedom of opinion is guaranteed to civil servants" and that "no distinction may be made between civil servants on the basis of their political, trade union, philosophical or religious opinions, sex or ethnic origin".

56. The purpose of articles 187-1 and 187-2 of the Criminal Code is to penalize discriminatory conduct on the part of public officials and, more generally speaking, any person vested with public authority or any citizen responsible for public service. Thus, under article 187-1 any official who knowingly refuses a right to which a person is entitled, on the basis of that person's membership or lack thereof in a particular racial or religious group,

is subject to correctional penalties. Under article 187-2, any official who hinders, for the same reasons, the economy activity under normal conditions of any natural or juridical person is also subject to correctional penalties.

57. The Act of 1 July 1901 relating to associations provides for the legal dissolution of any association the statutes or activities of which are in violation of the law. It follows that any association the statutes or activities of which are contrary to the Act of 1 July 1972 relating to the combat against racism is subject to dissolution.

58. Article 2-1 of the Code of Criminal Procedure provides that associations duly registered for at least five years before the date of the offence, and committed under their statutes to combat racism and assist victims of racial discrimination, may act as a civil party in respect of various offenses, committed on racist grounds, among them, simple or aggravated homicide, mortal blows, threats, or intentional bodily harm.

59. Act No. 90-615 of 13 July 1990 further strengthens the combat against racist, anti-semitic or xenophobic acts of all kinds. This text establishes indictments against certain forms of falsification of contemporary history. The act defines new supplementary penalties, which are optional, for major offenses of a racist character. It grants to associations against racism the right of reply both in the press and on radio and television whenever a person has been subjected to attacks against his honour or reputation on the basis of his origins, or his membership or lack thereof in a particular ethnic or national, racial or religious group.

60. France has ratified the Convention on the Elimination of All Forms of Discrimination against Women, which entered into force on 13 January 1984. The Constitution of 4 October 1958 incorporates into its preamble, which is recognized as having constitutional value, the preamble of the earlier Constitution of 27 October 1946 which affirms that "...the French people proclaim once again that all human beings, without distinction as to race, religion, or religious belief, possess individual and inviolable rights" and, in particular, that "the law guarantees for women, in all domains, equal rights with men". The Act of 11 July 1975, as supplemented by the Act of 25 July 1985, incorporates into the Criminal Code provisions making punishable discrimination against women by either a representative of the State or a private person. The Act of 13 July 1983 on the rights and obligations of civil servants provides that no distinction may be made between civil servants on the basis of their political, trade union, philosophical or religious opinions, sex or ethnic origin. In respect of the private sector, the Act of 13 July 1983 is devoted in full to the matter of professional equality.

(ii) Right to life

61. Act No. 81-908 of 9 October 1981 abolishes the death penalty. France also ratified, on 17 February 1986, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty.

(iii) Freedom from torture

62. France ratified on 18 February 1986 the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It ratified on 9 January 1989 the European Convention for the prevention of torture and inhuman or degrading treatment or punishment.

63. Article 72 of Act No. 85-1407 of 30 December 1985, which includes various provisions of criminal procedure and criminal law, introduced the norm of universal jurisdiction with respect to torture (competence of the national courts including in respect of acts committed outside of French territory, whether or not the author of the act is a French national), in accordance with the requirements of the United Nations Convention (art. 689/2 of the Code of Criminal Procedure).

64. Protection of private persons is guaranteed under articles 186 and 198 of the Criminal Code which makes punishable any act of violence committed without legitimate grounds by a "civil servant or a public official, an administrator, an agent or official of the government or the police, a judicial marshall, or a police commandant or deputy commandant" in the exercise of his duties or in connection with the exercise of his duties. Under French law, criminals who "employ torture or commit acts of barbarism" in carrying out their crimes are punishable by life imprisonment (art. 303 of the Criminal Code).

2. Régimes of derogation

65. Intended essentially for exceptional circumstances, such régimes (state of siege, state of emergency and measures provided for under article 16 of the Constitution) modify on a provisional basis the circumstances under which certain public freedoms may be exercised. These régimes basically involve a temporary transfer of power, circumscribed by numerous guarantees. They do not alter in any manner whatsoever the laws protecting fundamental human rights from which there can be no derogation under any circumstances, such as the rights referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights. French law defines in a very strict manner these three régimes of derogation.

(a) State of siege

66. The state of siege régime was established by the Act of 9 August 1849 and amended by the Act of 3 April 1878. A state of siege may be declared in case of imminent danger arising from a foreign war or armed insurrection. By virtue of article 36 of the Constitution, such a decision must be taken by the Cabinet and may be extended beyond 12 days only upon authorization of the Parliament. Institution of a state of siege mainly implies the transfer of police powers to the military.

(b) State of emergency

67. Governed by the Act of 3 April 1955, a state of emergency may be declared by the Cabinet in the event of imminent danger arising from serious disturbances of public order or from events which by virtue their nature and seriousness are deemed to be public catastrophes. Extension of a state of emergency beyond 12 days may be authorized only by law. This régime grants extended powers to the police, which are accompanied by specific guarantees. According to article 700 of the Code of Criminal Procedure, "Where a state of siege or state of emergency has been declared, a decree in Cabinet (...) may establish local military tribunals under conditions fixed by the Code of Military Justice for times of war and by specific provisions of the laws relating to the state of emergency and the state of siege".

(c) Article 16 of the Constitution of 4 October 1958

68. Article 16 provides that "where the institutions of the Republic, the independence of the nation, the integrity of its territory or the honouring of its international commitments are threatened in a serious and immediate manner and where the regular functioning of constitutional public authorities is interrupted, the President of the Republic may take measures as required by the circumstances, after official consultation with the Prime Minister, the Speakers of the Assemblies and the Constitutional Council. He so informs the nation by a message. Such measures must be inspired by the desire to ensure the constitutional public authorities, as promptly as possible, the means of exercising their functions. The Constitutional Council is consulted in this matter. The parliament meets automatically. The National Assembly may not be dissolved during the exercise of special powers".

69. Subject to certain conditions of substance or form, article 16 extends the powers of the President of the Republic. However, this does not imply an uncontrolled exercise of power: regulatory or individual decisions are administrative acts and thus fall within the purview of the administrative court judge by way of application for judicial review.

70. France has entered a reservation with respect to the application of article 4, paragraph 1, of the International Covenant on Civil and Political Rights governing states of exception since the formulation of the conditions under which a State may take measures derogating from its obligations under the Covenant are much broader than the provisions of article 16 and the laws governing the state of siege and the state of emergency. In order to avoid differing interpretations, the reservation entered by France states that "the circumstances enumerated under article 16 of the Constitution in respect of its implementation, in article 1 of the Act of 3 April 1878 and in the Act of 9 August 1849 in respect of the declaration of a state of siege, in article 1 of the Act of 3 April 1955 in respect of the declaration of a state of emergency, and which enable these instruments to be implemented, are to be understood as meeting the purpose of article 4 of the Covenant". The reservation also specifies the interpretation which may be given to measures taken by the President of the Republic in implementation of article 16. The words "to the extent strictly required by the exigencies of the situation" cannot limit the power of the President of the Republic to take "the measures required by the circumstances".

D. Incorporation and application of international human rights instruments under national law

71. By virtue of article 55 of the Constitution, duly ratified and published treaties take precedence over law. Article 55 enshrines the "monist" system according to which the terms of international conventions are incorporated directly into French law; such terms, then, do not have to be translated into national provisions in order to be applicable in France. As they are self-executing, the norms of international human rights instruments may be invoked before the national courts.

72. While on the basis of article 61 of the Constitution, the Constitutional Council does not recognize itself as competent to evaluate the compatibility of laws with international treaties, it is vested with the authority to rule on the constitutionality of laws and, in particular, on their conformity with

article 55 of the Constitution, which ensures the primacy of international treaties over national law (see above). The Constitutional Council has specified that the various State bodies are responsible for ensuring the implementation of international agreements within the framework of their respective jurisdictions.

73. Independent of the mechanism by which international law is integrated into national law, a convention, or one or several of its clauses, may not always be self-executing. In fact, the need to draft national implementing texts is clear in certain cases, for example, where a convention requests the State Party to choose the modalities of application of certain of the terms of the convention by expressly providing one or even several possibilities; or where a convention clearly calls for implementing texts.

74. Whatever the case, when an individual invokes the terms of a convention, it is up to the judge, in fine, to decide if such terms are directly applicable.

E. Information and publicity. National institutions or machinery responsible for ensuring respect for human rights

75. Human rights form a body of fundamental principles which govern institutions; such rights are equally rooted in the humanist tradition and the prevailing values of society. This tradition arises out of the history of the French people and is inextricably bound up with the nation's commitment to democracy and the rule of law: article 16 of the Declaration of the Rights of Man and of Citizens of 26 August 1789 proclaims, moreover, that "Every community in which a separation of powers and a security of rights is not provided for, wants a Constitution".

76. French is one of the official languages in which the international human rights instruments to which France is a party have been drafted (within the framework of the United Nations and of the Council of Europe), thus facilitating the dissemination of these conventions.

77. These instruments are published automatically in the Journal officiel of France, a requirement which must be met before their entry into force, as is the case with laws and regulations. In addition, in accordance with article 53 of the Constitution, ratification by France of these instruments is subject to parliamentary authorization, which provides a special opportunity for public debate and wide dissemination of the texts adopted, through the media and by means of institutional action such as reports of parliament.

78. Lastly, the role of the national institutions and machinery responsible for ensuring respect for human rights is noteworthy because their primary mission is to provide information to citizens and litigants; moreover, as an indispensable part of their activities, this information is a natural outgrowth of their principal functions, taking the form of public messages and the publication of reports and studies.

1. National Consultative Commission on Human Rights

(a) Background

79. On 17 March 1947, a decision taken at the initiative of P.H. Teitgen established the Consultative Commission for the codification of international law and the defence of the rights and duties of States and of human rights.

Presided over by Rene Cassin, the Commission was at the time composed of about ten lawyers, academicians and diplomats. This early Commission was in particular mandated to elaborate a draft universal declaration on human rights. Its secretariat was provided by the secretariat of international conferences of the Ministry of Foreign Affairs.

80. The Commission was transformed on 30 January 1984 into the National Consultative Commission on Human Rights. The presiding officer, Nicole Questiaux, former minister, and senior member of the Council of State, was mandated to advise the Minister for Foreign Affairs with regard to France's efforts to promote human rights throughout the world and, in particular, within international organizations.

81. On 21 November 1986, the Commission's international human rights mandate was extended to the domestic front, when the Commission was integrated into the State Secretariat for Human Rights, under the office of the Prime Minister. The Commission was appointed for a term of two years and had 40 members: representatives of major associations, of parliament and of the ministries concerned, and other individuals competent in the field of human rights. Up to February 1989, the presiding officer was Jean Pierre-Bloch, former minister.

82. On 31 January 1989, the National Consultative Commission on Human Rights was attached directly to the office of the Prime Minister. The Commission is vested with the power to refer to itself all issues falling within its jurisdiction. It is composed of 70 members and since 1989 has been presided over by Paul Boucher, former president of the Bar of Lyons, and senior member of the Council of State.

(b) Role and powers

83. The National Consultative Commission on Human Rights advises the office of the Prime Minister, of which it is part, and the government and the parliament with respect to all human rights questions, domestic and international. The Commission holds as a basic principle that lack of awareness or neglect of human rights or refusal to respect them can only be altered definitively through the continuous linking of institutional action - on the part of the legislative, executive or judicial powers - with practical social action in the field. Working at the juncture between State and society, the Commission is specifically designed to promote this essential coordination, using means which are flexible enough to respect the militant freedom of its members but sufficiently precise to enable it to advise the government in a timely and appropriate fashion. It thus has a dual mission of monitoring and of proposing.

84. In 1992, the Commission's membership included representatives of the 12 ministries concerned (Interior, Justice, Foreign Affairs, Education, Social Affairs, etc.); representatives of 28 national non-governmental organizations active in the fields of human rights, combat against racism, and humanitarian law; and representatives of six trade unions; 23 individuals chosen by virtue of their competence, among them representatives of the four main religious groups and French experts involved in international human rights organizations; and two representatives of Parliament. Its composition reflects a democratic appreciation of the many currents of thought in French society, beyond political differences.

85. The Commission is free to decide which international and national issues it will examine, without selectivity, and by means of a process of self-referral. The Prime Minister may bring before the Commission any matter of his choosing. The Commission's broad scope has enabled it to express its opinion on bills and administrative provisions and to submit proposals on such issues as poverty, the right of asylum, social reintegration of drug addicts, AIDS screening, bioethics, reform of the Code of Criminal Procedure, human rights education, wiretapping, and police files.

86. The Commission publishes an annual report on the combat against racism and xenophobia. At the international level, it keeps abreast of the work being carried out by the Commission on Human Rights, United Nations committees, the Conference on Security and Cooperation in Europe, and the Council of Europe. It has advised the French Government on, inter alia, the draft proposal for the creation of an international criminal court, the use of chemical weapons, the right to humanitarian assistance, the European Court of Human Rights and the European Commission of Human Rights, the collection and protection of personal data, and human rights violations in various countries. All advice provided to the Government is made public. The National Consultative Commission on Human Rights completes the institutional machinery which ensures respect for human rights.

2. Independent administrative authorities

87. The independent administrative authorities represent specific mechanisms for ensuring fundamental rights in the areas falling within their particular jurisdiction. Particularly noteworthy among them are the National Commission on Electronic Data Processing and Freedoms (Commission nationale de l'informatique et des libertés)(CNIL) and the Supreme Audiovisual Council (Conseil supérieur de l'Audiovisual) (CSA). Also worthy of mention are the Commission on Access to Administrative Documents (Commission d'accés au documents administratifs), the Survey Commission (Commission des sondages) and the National Commission on Wiretapping (Commission nationale des interceptions de sécurité).

(a) The National Commission on Electronic Data Processing and Freedoms

88. The National Commission on Electronic Data Processing and Freedoms was established by the Act of 6 January 1978 to ensure the protection of personal data in an era of growing computerization. This Act applies to computerized data and to non-automated files from the public and private sectors. All data processing is subject to rules fixed by law and monitored by the Commission. The Commission is an independent administrative authority and is composed of 17 members (senior civil servants, judges, and legislators) chosen by their peers or appointed by the Government and the Parliament for five years; members of the Commission are independent of any other authority. The Commission is vested with broad powers: any electronic data processing of personal data, whether by the government, the administration, the State, local communities, public institutions, or private-law body corporate managing a public service, must be authorized by the Commission. An unfavourable decision may be set aside only by decree of the Council of State.

89. Private sector establishments are required to make a declaration, after which the data processing operations are scrutinized to ensure their conformity with the law. For the most widely used types of data processing,

both in the public and private sectors, the Commission adopts, by virtue of its regulatory powers, simplified standards. The Commission may receive complaints, petitions and claims. On its own initiative, the Commission may apply wide powers of control and verification by carrying out on-site inspections of data processing procedures. Where necessary, it may refer matters to the court. The Commission is bound to inform and counsel individuals on their rights and obligations and must itself keep abreast of the effects of computerization on private life, the exercise of freedoms and the functioning of democratic institutions. It may propose ways of adapting the machinery for the protection of freedoms to the development of computerized procedures and techniques. The Commission publishes an annual report.

(b) The Supreme Audiovisual Council

90. The Supreme Audiovisual Council is the successor to the High Authority for Audiovisual Communication (Haute Autorité de la communication audiovisuelle), established in 1982, and the National Commission on Communication and Freedoms (Commission nationale de la communication et des libertés), set up in 1986. The Supreme Audiovisual Council is an independent authority which guarantees the freedom of audiovisual communication. Article 1 of the Act of 30 September 1986, as amended relative to the freedom of communication, provides that the "exercise of this freedom may be limited only to the extent required, on the one hand, by the respect for the dignity of the individual, for the freedom and property of others and for the pluralistic nature of the expression of thoughts and opinions and, on the other hand, by the safeguarding of the public order, the needs of national defence, the needs of the public service, technical constraints intrinsic to the means of communication and the need to develop a national industry of national production".

91. In accordance with article 1 of the Act of 17 January 1989 amending the Act of 30 September 1986 relating to freedom of communication, the Council ensures "equality of treatment (of users); it guarantees the independence and impartiality of public radio and television; it seeks to promote free competition; it ensures the quality and diversity of programmes, the development of national audiovisual creation and production and the defence and illustration of the French language and culture (...)". The Council ensures respect for free expression of the diverse trends of thought and opinion in programmes developed by the national programming bodies, including broadcasts with political content. It ensures the protection of the child and the adolescent in broadcasts by the audiovisual communication services.

92. The Council has nine members, appointed by decree of the President of the Republic; three members are named by the President, three by the Speaker of the National Assembly and three by the Speaker of the Senate. Members are appointed for a non-revocable and non-renewable term of six years. One-third of the Council is renewed every two years.

93. The granting of frequency usage authorizations for any new radio or television service using earth or satellite hertz frequency bands is subject to the conclusion of an agreement between the Council, acting on behalf of the State, and the person requesting the authorization. The Council is vested with the power to make referrals to the administrative or judicial authorities having jurisdiction in matters concerning restrictive competitive practices and trusts. Those authorities may request advice from the Council.

94. Beyond its general overseeing role, the Council has consultative and regulatory powers. Its consultative powers arise from its broad mandate in the field of communication; it is thus associated at various levels with the elaboration of legislation and may put forth proposals. It exercises its regulatory powers in areas including: (a) granting of authorizations to use frequency bands or frequencies the allocation or assignment of which have been entrusted to the Council and taking the necessary measures to ensure proper signal reception; and (b) basic technical specifications governing cable networks.

3. Legal assistance

95. The system of legal assistance, which was substantially modified in 1991, plays a fundamental role in ensuring the effectiveness of human rights guarantees. The Act of 10 July 1991 established a unique system of legal assistance which consists of two parts: legal aid and legal rights assistance.

(a) Legal aid

96. The system of legal aid offers broad coverage of the costs of proceedings: it is applicable to any civil, administrative, criminal or disciplinary action and may be applied in administrative or judicial proceedings, in applications to or in defence before any court; it extends to procedures and acts of execution in respect ofjudicial decisions obtained with such legal aid.

97. Legal aid is available to all natural persons of French nationality, nationals of the Member States of the European Community, aliens residing usually and regularly in France and, in special cases, non-profit corporations with headquarters in France which lack adequate resources. The residency requirement may be waived under certain circumstances, including where the foreign applicant is a minor, a witness assisted by counsel, or a defendant; has been detained, accused, or convicted; is the civil party seeking damages; is subject to measures such as expulsion or return to the border; or has been refused a residence permit.

98. The task of verifying that the legal conditions have been met is carried out by special bodies: the legal aid offices in each Court of Major Jurisdiction and attached to the Court of Cassation, the Council of State, the Jurisdiction Disputes Court (Tribunal des conflits) and the Refugee Assistance Commission (Commission des recours de réfugiés).

(b) Legal rights assistance

99. In creating the system of legal rights assistance, legislators wished to develop and coordinate local efforts initiated by judges, lawyers, and social and trade union organizations, such as the maisons de justice set up in 1990 for the purpose of assisting and providing information to parties to a dispute. Legal rights assistance includes:

a) Advice on rights and obligations relating to the fundamental rights and basic living conditions of the beneficiary (individual freedoms, public freedoms, family relations, victims of minor offenses, etc.);

(b) Assistance during administrative proceedings - advice and assistance for persons appearing before administrative committees, such as in rent disputes heard by the departmental rent conciliation commission, or for persons involved in administrative procedures.

The legal rights assistance system operates under the auspices of the Departmental Council of Legal Aid (Conseil départemental de l'aide juridique), which is made up of representatives of the State, the departments (départements) and the different branches of the auxiliary officers of justice. It is intended to function autonomously within each department under agreements established within the framework of general social action.

List of annexes*

The annexes consist of a number of tables and graphs depicting the principal characteristics in the fields of demography (age pyramid, birth and death rate trends, replacement rates, marital indicators), social action (access to the baccalauréat, literacy), and economy (regional concentrations, gross domestic product (GDP), gross national product (GNP), inflation rates)

---

*/ The annexes, as submitted by the French Government in French, may be consulted at the United Nations Centre for Human Rights.