



International covenant
on civil and
political rights

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HUMAN RIGHTS COMMITTEE
Seventy-fifth session
8-26 July 2002

VIEWS

Communication No. 932/2000

Submitted by: Ms. Marie-Hélène Gillot et al. (represented by
Ms. Marie-Hélène Gillot)

Alleged victim: The authors

State party: France

Date of communication: 25 June 1999 (initial submission)

Prior decisions: Special Rapporteur's rule 91 decision, transmitted to the State
party on 19 June 2000 (not issued as a document)

Date of adoption of Views: 15 July 2002

On 15 July 2002 the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 932/2000. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

**VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER
ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL
PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Seventy-fifth session

concerning

Communication No. 932/2000*

Submitted by: Ms. Marie-Hélène Gillot et al. (represented by
Marie-Hélène Gillot)

Alleged victim: The authors

State party: France

Date of communication: 25 June 1999 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 15 July 2002

Having concluded its consideration of communication No. 932/2000 submitted by Ms. Marie-Hélène Gillot et al. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4 of the Optional Protocol

1. There are 21 authors, all French citizens, resident in New Caledonia, a French overseas community: Mr. Jean Antonin, Mr. François Aubert, Mr. Alain Bouyssou, Mrs. Jocelyne Schmidt (née Buret), Mrs. Sophie Demaret (née Buston), Mrs. Michèle Philizot (née Garland), Ms. Marie-Hélène Gillot, Mr. Franck Guasch, Mrs. Francine Keravec

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

(née Guillot), Mr. Albert Keravec, Ms. Audrey Keravec, Ms. Carole Keravec, Mrs. Sandrine Aubert (née Keravec), Mr. Christophe Massias, Mr. Jean-Louis Massias, Mrs. Martine Massias (née Paris), Mr. Jean Philizot, Mr. Paul Pichon, Mrs. Monique Bouyssou (née Quero-Valleyo), Mr. Thierry Schmidt, Mrs. Sandrine Sapey (née Tastet). The authors claim to be victims of violations by France of articles 2 (1), 12 (1), 25 and 26 of the International Covenant on Civil and Political Rights. The authors are represented by Ms. Marie-Hélène Gillot, who is herself an author.

The facts as submitted by the authors

2.1 On 5 May 1998, two political organizations in New Caledonia, the Front de Libération Nationale Kanak Socialiste (FLNKS) and the Rassemblement pour la Calédonie dans la République (RPCR), together with the Government of France, signed the so-called Noumea Accord. The Accord, which forms part of a process of self-determination, established the framework for the institutional development of New Caledonia¹ over the next 20 years.

2.2 Implementation of the Noumea Accord led to a constitutional amendment in that it involved derogations from certain constitutional principles, such as the principle of equality of political rights (restricted electorate in local ballots). Thus, by a joint vote of the French Parliament and Senate, and approval of a draft constitutional amendment by the Congress, the Constitution Act of New Caledonia (No. 98-610) of 20 July 1998 inserted a title XIII reading “Transitional provisions concerning New Caledonia” in the Constitution. The title comprises the following articles 76 and 77:

Article 76 of the Constitution provides that:

“The people of New Caledonia shall, before 13 December 1998, express their views on the provisions of the accord signed at Noumea on 5 May 1998 and published on 27 May 1998 in the Journal Officiel of the French Republic. Those persons fulfilling the requirements established in article 2 of Act No. 88-1028 of 9 November 1988 shall be eligible to vote. The measures required for the conduct of the voting shall be taken by decree of the Council of State, after consideration by the Council of Ministers.”

Article 77 provides that:

“Following approval of the Accord in the referendum provided for in article 76, the Organic Law, adopted following consultation with the deliberative assembly of New Caledonia, shall establish, to ensure the development of New Caledonia with due respect for the guidelines provided for in the Accord and in accordance with the procedures necessary for its implementation: [...] - regulations on citizenship, the electoral system [...] - the conditions and time frame for a decision by the people concerned in New Caledonia on accession to full sovereignty.”

2.3 An initial referendum was held on 8 November 1998. The Noumea Accord was approved by 72 per cent of those voting, and it was established that one or more referendums would be held thereafter. The authors were not eligible to participate in that ballot.

2.4 The authors contest the way in which the electorates for these various referendums, as established under the Noumea Accord and implemented by the French Government, were determined.

2.5 For the first referendum on 8 November 1998, Decree No. 98-733 of 20 August 1998 on organization of a referendum of the people of New Caledonia, as provided for by article 76 of the Constitution, determined the electorate with reference to article 2 of Act No. 88-1028 of 9 November 1988 (also determined in article 6.3 of the Noumea Accord), namely: "Persons registered on the electoral rolls for the territory on that date and resident in New Caledonia since 6 November 1988 shall be eligible to vote."

2.6 For future referendums, the electorate was determined by the French Parliament in article 218 of the Organic Law of New Caledonia (No. 99-209) of 19 March 1999 (reflecting article 2.2 of the Noumea Accord²), pursuant to which:

"Persons registered on the electoral roll on the date of the referendum and fulfilling one of the following conditions shall be eligible to vote:

(a) They must have been eligible to participate in the referendum of 8 November 1998;

(b) They were not registered on the electoral roll for the referendum of 8 November 1998, but fulfilled the residence requirement for that referendum;

(c) They were not registered on the electoral roll for the 8 November 1998 referendum owing to non-fulfilment of the residence requirement, but must be able to prove that their absence was due to family, professional or medical reasons;

(d) They must enjoy customary civil status or, having been born in New Caledonia, they must have their main moral and material interests in the territory;

(e) Having one parent born in New Caledonia, they must have their main moral and material interests in the territory;

(f) They must be able to prove 20 years' continuous residence in New Caledonia on the date of the referendum or by 31 December 2014 at the latest;

(g) Having been born before 1 January 1989, they must have been resident in New Caledonia from 1988 to 1998;

(h) Having been born on or after 1 January 1989, they must have reached voting age on the date of the referendum and have one parent who fulfilled the conditions for participation in the referendum of 8 November 1998.

Periods spent outside New Caledonia for the performance of national service, for study or training, or for family, professional or medical reasons shall, in the case of persons previously domiciled in the territory, be included in the periods taken into consideration in order to determine domicile.”

2.7 The authors, who did not fulfil the above criteria, state that they were excluded from the referendum of 8 November 1998 and that they will also be excluded from referendums planned from 2014 onwards.

2.8 The authors state that, in challenging these violations, they have exhausted all domestic remedies.

2.9 On 7 October 1998, the authors filed a joint petition before the Council of State for rescission of Decree No. 98-733 of 20 August 1998, and thus of the referendum of 8 November 1998 comprising the restricted electorate authorized for that purpose. In a decision of 30 October 1998 the Council of State rejected the petition. It stated in particular that the precedence accorded to international commitments under article 55 of the Constitution does not apply, in the domestic sphere, to constitutional provisions and that, in the case in point, the provisions of articles 2, 25 and 26 of the International Covenant on Civil and Political Rights, cited by the authors, could not take precedence over the provisions of the Act of 9 November 1988 (determining the electorate in relation to Decree No. 98-733 of 20 August 1998 on the referendum of 8 November 1998), which had constitutional status.

2.10 Each author in fact applied to the Noumea administrative commission to be included in the electoral rolls, and thus authorized to participate in the referendum of 8 November 1998. The Noumea court of first instance, seized of the matter by each author in connection with the commission’s refusal to authorize registration, confirmed that decision.³ The court of cassation, having been seized of the case, in a decision of 17 February 1999 rejected the appeals by each author on the ground that they did not meet the conditions established for the referendum of 8 November 1998 as set forth in article 76 of the Constitution.

2.11 The authors further consider that any appeal against the future but certain violation of their right to vote in referendums from 2014 onwards is futile and foredoomed. They point out that the Organic Law (No. 99-209) of 19 March 1999 was declared constitutional by the Constitutional Council in its decision No. 99-410 DC of 15 March 1999, notwithstanding the derogations from constitutional rules and principles; that the Constitutional Council cannot be seized by a private individual; and that no administrative or ordinary court holds itself competent to rescind or set aside a provision of organizational legislation even if, as claimed by the authors, it is in fact unconstitutional. They maintain that the precedent established by the decision of the Council of State of 30 October 1998 (see above) forecloses any review by an administrative judge of the compatibility of a law based explicitly in the Constitution with a treaty. The authors claim that this theory of the constitutional shield is also accepted by the Court of Cassation, which would mean the failure of any future application to an electoral judge. Lastly, the authors conclude that any appeal against denial of their right to vote in the referendums from 2014 onwards is irretrievably foredoomed, and might even be subject to a fine for improper appeal, or an order to meet expenses not included in the costs.

The complaint

3.1 In the first place, the authors consider that denial of their right to vote in the referendums of 1998 and from 2014 onwards is unlawful, as it violates an acquired and indivisible right, in contravention of article 25 of the International Covenant on Civil and Political Rights. In addition to being French citizens, they state that they are holders of voters' registration cards and are registered on the New Caledonia electoral roll. They explain that at the time of the referendum of 8 November 1998 they had been resident in New Caledonia for periods of between three years and four months and nine years and one month, and that two authors, Mr. and Mrs. Schmidt, were born in New Caledonia. They assert that their permanent residence is in New Caledonia, where they wish to remain, since the territory constitutes the centre of their family and professional lives.

3.2 In the second place, the authors maintain that denial of their right to vote constitutes discrimination against them which is neither justified nor reasonable nor objective. They contest the criteria established to determine the electorates for the referendums of 1998 and 2014 or thereafter on the grounds of the derogations from French electoral provisions⁴ and the consequent violations of the International Covenant on Civil and Political Rights; in that regard they draw attention to the following discriminatory elements.

3.3 The authors first draw attention to discrimination affecting only French citizens in New Caledonia precisely because of their residence in the territory. They assert that the criteria regarding length of residence established for the referendums represent departures from the electoral code applicable to all French citizens, irrespective of place of residence. They claim that this results in (a) penalization of those who have opted to reside in New Caledonia, and (b) discriminatory treatment between French citizens in terms of the right to vote.

3.4 Secondly, the authors claim that there is discrimination between French citizens resident in New Caledonia according to the nature of the ballot in question. They call into question the existence of a dual electorate, one encompassing all residents for national elections, and the second restricted to a certain number of residents for local ballots.

3.5 Thirdly, the authors complain of discrimination on the basis of the ethnic origin or national extraction of French citizens resident in New Caledonia. They maintain that the French authorities have established an ad hoc electorate for local ballots, so as to favour Kanaks⁵ and Caldoches,⁶ presented as being of Caledonian stock, whose political representatives signed the Noumea Accord. According to the authors, the Accord was concluded to the detriment of other French citizens resident in New Caledonia⁷ who originate in metropolitan France (including the authors), as well as Polynesians, Wallisians, Futunians and Asians. These persons represent a significant proportion of the 7.67 per cent of Caledonian electors deprived of the right to vote.

3.6 Fourthly, the authors maintain that the establishment of a restricted electorate on the basis of birth⁸ amounts to discrimination between citizens who are nationals of a single State, namely France.

3.7 Fifthly, the authors view the criterion relating to the parental connection⁹ as discriminatory.

3.8 Sixthly, the authors claim that they are victims of discrimination owing to the transmission of the right to vote by descent,¹⁰ resulting from the criterion of parental link.

3.9 In the third place the authors maintain that the period of residence for authorization to vote in the referendum of 8 November 1998, namely 10 years, is excessive. They affirm that the Human Rights Committee found that a period of residence of seven years established under the Constitution of Barbados violated article 25 of the International Covenant on Civil and Political Rights.¹¹

3.10 The authors also consider the period of residence determining the right to vote in referendums from 2014 onwards, namely 20 years, to be excessive. They again assert that the French authorities are seeking to establish an electorate of Kanaks and Caldoches for whom, moreover, the right to vote is maintained even in the event of lengthy absences from New Caledonia. They state that a period of residence of three years was established for the referendums on self-determination in the French Somali Coast¹² in 1959, the territory of the Afars and the Issas in 1976, and New Caledonia in 1987. The intent, according to the authors, was to avoid granting the vote to civil servants from metropolitan France on assignments of limited duration, generally less than three years, and thus without any intention of integrating, and for whom voting would have raised conflicts of interest. However, the authors stress that they are not in the situation of civil servants from metropolitan France in New Caledonia temporarily, but rather that of French citizens who have chosen to settle in New Caledonia permanently. They further assert that the requirement of 20 years' residence in New Caledonia contravenes General Comment No. 25 of the Human Rights Committee, in particular paragraph 6 thereof.¹³

3.11 The authors claim violations by France of articles 2, 25 and 26 of the International Covenant on Civil and Political Rights. They seek the restoration by France of their full political rights. They call upon France to amend the provisions of the Organic Law (No. 99-209) of 19 March 1999 that contravene the Covenant, so as to allow their participation in referendums from 2014 onwards.

The State party's observations on admissibility

4.1 In its observations of 23 October 2000, the State party considers, first, that the authors' communication does not seem to fall under any heading of inadmissibility. Inasmuch as the authors establish their exclusion from the New Caledonian electorate for the referendum of 8 November 1998 pursuant to the Noumea Accord and also from referendums on the future status of the territory of New Caledonia to be held between 2014 and 2019, and having filed appeals as available before the national courts - which were definitively dismissed - against the acts under domestic law that they are challenging, in the view of the State party the authors must be regarded as being able to claim, rightly or wrongly, that they are victims of a violation of the Covenant and as having satisfied the obligation of exhaustion of domestic remedies.

4.2 The State party raises issues of substance that, in its opinion, have a bearing on the admissibility of the communication.

4.3 In this regard, the State party asserts that the complaint of a violation of article 12, paragraph 1, of the Covenant, which is referred to in the authors' arguments but not included in their final comments, must be rejected as manifestly incompatible with that provision. The State party maintains that the procedures for determining the electorate for the referendums on the future status of the territory of New Caledonia, while incontrovertibly affecting the right to vote of certain citizens, have no relevance to liberty of movement or choice of residence by persons lawfully present in French territory, of which New Caledonia forms part.

4.4 The State party also asserts that invoking the provisions of articles 2, paragraph 1, and 26 of the Covenant is superfluous.

4.5 According to the State party, article 2, paragraph 1, of the Covenant sets forth the principle of non-discrimination in enjoyment of the rights recognized by the Covenant. For this reason, it can be invoked only in combination with another right appearing in the same instrument. In the present case the State party deems it pointless to invoke it in connection with article 25 on the freedom to vote, which in any event makes specific reference to article 2 in relation to the prohibition of any discrimination in this regard. In the view of the State party, the act of invoking article 25 of the Covenant in itself necessarily entails monitoring by the Committee of respect for article 2, paragraph 1.

4.6 The State party asserts that article 26 of the Covenant establishes a general prohibition of all discrimination arising under the law which, in contrast to the principle enshrined in article 2, paragraph 1, may, in accordance with the Committee's previous decisions,¹⁴ be invoked independently. With regard to this general anti-discrimination clause, the State party is of the view that the reference to article 2, paragraph 1, made in article 25 of the Covenant constitutes *lex specialis*, establishing a level of protection which is at least equivalent, if not superior. The State party considers that invoking article 26 of the Covenant does not advance the authors' case any more than invoking article 25.

4.7 The State party thus concludes, without prejudice to the merits of the complaint of discrimination made by the authors, that its consideration from the standpoint of articles 2, paragraph 1, and 26 of the Covenant is pointless, inasmuch as the complaint can be just as validly assessed on the basis of the provisions of article 25 alone.

The authors' comments on the State party's observations concerning admissibility

5.1 In their comments of 20 February 2001, the authors note that the State party does not formally contest admissibility.

5.2 They reject the State party's objection in relation to article 12, paragraph 1, of the Covenant. They assert that liberty of movement within a State and the effective freedom of a national of that State to choose a residence, guaranteed by article 12 of the Covenant, exist only

to the extent that such movement or establishment of a new residence is not penalized by the annulment of another Covenant right, namely the right to vote, which by its very nature is linked to residence. The authors consider that the right to change residence, as permitted under article 12, would have no meaning if such a choice meant being denied all civil rights in the new place of residence - for a period of 10-20 years.

5.3 The authors also contest the argument of inadmissibility adduced by the State party with regard to the superfluous nature of invoking article 2, paragraph 1, and article 26 of the Covenant. They accordingly maintain their view that the domestic legislative provisions that they are challenging violate both article 2, paragraph 1, in conjunction with the provisions of articles 25 and 26, and article 26 of the Covenant.

Additional observations by the State party on admissibility

6.1 In its observations dated 22 February 2001, the State party made its preliminary observations on the authors' assertion that they had been victimized. The State party contends that the authors cannot claim to be the victims of a violation of the provisions of the Covenant - within the meaning of article 2 of the Optional Protocol and rule 90 of the Committee's rules of procedure - as a result of the determination of the electorates in question unless that determination has had or will have the effect of excluding them from the referendums in question.

6.2 The State party notes, on the basis of the facts supplied by the authors, that most of the authors did not, at the time of the referendum of 8 November 1998, meet the 10-year residence requirement (two of them, however, Mr. and Mrs. Schmidt, claimed that they had resided in New Caledonia since birth. The State party affirms that it accordingly sees no reason for their exclusion from the referendum, unless the period of residence was interrupted, a point which they do not clarify). The State party concludes that the majority of the authors therefore have a demonstrated personal interest in contesting the conditions under which the November 1998 referendum was held.

6.3 On the other hand the State party considers that the information provided by the 21 authors indicates that by 31 December 2014 only Mrs. Sophie Demaret will be excluded from future referendums as a result of application of the 20-year residence requirement. According to the State party, the other 20 authors will have, on the assumption that they remain as they say they intend to do, in the territory of New Caledonia, a period of residence greater than 20 years and will thus be able to participate in the various referendums. The State party concludes that 20 of the 21 authors do not have a demonstrated personal interest in contesting the procedures for the organization of future referendums, and thus cannot claim to be victims of a violation of the Covenant. Consequently, that part of their communication is inadmissible.

6.4 The State party recalls its objection to (a) the complaint of a violation of article 12, paragraph 1, of the Covenant, in that it is manifestly incompatible with the provision cited, and (b) the invoking of article 2, paragraph 1, and article 26 of the Covenant in that they are superfluous.

The authors' comments on the State party's further observations concerning admissibility

7.1 In their comments of 9 May 2001, the authors reject the State party's objection in relation to the 20 authors concerning the part of the petition relating to future ballots. They consider that the State party has not argued the case for inadmissibility concerning them in its submission of 23 October 2000, and that its objection dated 22 February 2001 is tardy. They further submit that the 20 authors would be unable to participate in referendums after 2014 if, in conformity with their right under article 12 of the Covenant, they were to temporarily leave New Caledonia for a period which would prevent them from fulfilling the condition of 20 years' continuous residence. They point out that the two authors born in New Caledonia, Mr. and Mrs. Schmidt, were not allowed to vote in the referendum of 8 November 1998 since they had lived outside the territory between 1988 and 1998 and the condition of 10 years' continuous residence had no longer been fulfilled.

7.2 The authors also maintain the part of their communication relating to articles 2, paragraph 1, 12, paragraph 1, and 26 of the Covenant, and therefore contest the State party's argument that the communication is inadmissible.

The State party's observations on the merits

8.1 In its observations of 22 February 2001, the State party develops its argument on the merits of the part of the communication which it considers admissible, namely, the complaint of a violation of article 25 of the Covenant.

8.2 It recalls that, according to the broad interpretation of article 25 by the Human Rights Committee in its General Comment No. 25 of 12 July 1996, that article, inter alia, establishes the right of citizens to vote at elections and referendums (cf. para. 10 of the General Comment). However, the Committee admits that this right may be subject to restrictions, provided they are based on reasonable criteria (*idem*). It further states that discriminatory criteria such as those prohibited in article 2, paragraph 1, of the Covenant may not serve as a basis for such restrictions (cf. para. 6).

8.3 The State party explains that the referendums which are the subject of the present dispute concern the institutional development of New Caledonia and the possibility that the territory may accede to independence. They form part of a process of self-determination by the people of this territory, even if they do not all have the direct purpose of determining the question of the territory's accession to full sovereignty. In the State party's view, the considerations which led to the adoption of article 53 of the Constitution, which provides that "no cession ... of territory is valid without the consent of the population concerned", are therefore valid for such referendums (whether or not this article is applicable to them). The State party considers that it is therefore in the nature of these referendums that they should be limited to eliciting the opinion of not the whole of the national population, but the persons "concerned" with the future of a limited territory who prove that they possess certain specific characteristics.

8.4 The State party pursues its argument by confirming that the electorate determined, in conformity with the options chosen by the negotiators of the Noumea Accords, for the referendums in dispute is in fact a “restricted” electorate, which differs from the “ordinary” electorate, corresponding to persons included on the electoral rolls.

8.5 The State party also confirms that to the condition of inclusion on the electoral rolls was added, for the first referendum held in November 1998, a condition of 10 years’ residence as at the date of the ballot, and for future referendums it is required of the electors either that they were permitted to participate in the first referendum or that they are able to prove specific links with the territory of New Caledonia (birth, family ties, etc.) or, failing that, that they will have been living in the territory for 20 years on the date of the referendum in question.

8.6 In the view of the State party, the authors do not seem to question the principle of the limitation of the electorate to the population concerned. However, the State party recalls that, in support of their complaint of a violation of article 25 of the Covenant, they adduce the following arguments: violation of the right to vote; discrimination between French citizens resident in New Caledonia and other citizens; discrimination between the Caledonian residents themselves according to the nature of the ballots; discrimination according to ethnic origin or extraction; discrimination according to place of birth; discrimination according to family ties; discrimination on the ground of transmission of the right to vote by descent; excessive period of residence in order to be authorized to participate in the first referendum; excessive period also for authorization to participate in future referendums; withdrawal of the right to vote from the authors.

8.7 By way of introduction, the State party points out that, insofar as article 25 of the Covenant provides that the right to participate in a vote may be subject to reasonable limitations, the authors’ argument that they enjoy an absolute right to take part in the referendums in question must be rejected.

8.8 The State party considers that the debate is therefore limited to the question of the compatibility of the restrictions imposed on the electorate with the provisions of article 25 of the Covenant. On this point, in the opinion of the State party, the authors’ closely-argued case seems to be built on two main contentions: the criteria used to determine the electorate are discriminatory; and the periods set for length of residence are excessive.

8.9 The State party observes that the contested legislative instrument merely incorporates the choices freely made by the representative local political organizations which negotiated the Noumea Accords. In its view, therefore, the legislature, by incorporating these choices - which it was by no means required to do - manifested its concern to take account of the opinion of the representatives of the local populations concerning the procedures for implementation of a process aiming at their self-determination. The State party considers that this approach was such as to guarantee the free choice of their political status, which article 25 of the Covenant precisely aims to protect (cf. above-mentioned General Comment of the Committee, para. 2).

8.10 Nevertheless, the State party does not dispute that those choices must be made in conformity with the provisions of article 25 of the Covenant. In this respect, it considers that these provisions have been fully observed in this case.

8.11 The State party explains, first, that the complaint on the ground of the discriminatory character of the criteria used to determine the electorate is unfounded.

8.12 In its opinion, there is in fact an objective difference in situation with regard to the referendums in dispute between the persons authorized to vote and those not authorized to vote.

8.13 In this connection, the State party recalls that the restrictions imposed on the electorate are dictated by the very purpose of the referendums. It maintains that this is all the more true since, as the authors themselves emphasize, their names are included on the “ordinary” electoral rolls and they enjoy without restriction the right to vote in ballots other than those relating to the territory of New Caledonia. In the State party’s opinion, it is thus incorrect to say that they have been deprived of their right to vote. This right to vote has been restricted, with the result that the authors have not been or will not be (in the case of just one of their number) consulted on questions in which they are not regarded as being “concerned”.

8.14 The State party asserts that it is natural to consider that persons “concerned” in votes held in the context of a self-determination process are those who prove that they have particular ties to the territory whose fate is in question, ties which legitimize their participation in the vote.

8.15 The State party observes that, in the present case, the contested system enables these ties to be assessed in the light of several alternative, non-cumulative, elements: length of residence in the territory; possession of customary civil status; existence of moral and material interests in the territory, combined with the birth of the person concerned or his parents in the territory; for persons of full age born after the 1998 referendum, the fact that their parents were permitted to participate in that referendum.

8.16 The State party affirms that these are objective criteria, which have no connection with ethnic origin or political choices and which incontrovertibly establish the strength of the ties of the persons concerned with the territory of New Caledonia. In the State party’s opinion, there is no doubt that persons fulfilling at least one of the conditions established are more concerned in the territory’s future than those who fulfil none of the conditions.

8.17 The State party concludes that the determination used for the electorates thus has the effect of treating differently persons in objectively different situations as regards their links with the territory. For this reason, in its view, the determination cannot be deemed discriminatory.

8.18 The State party adds that, even admitting, solely for the sake of argument, that the determination of the electorates amounts to positive discrimination, this would not be contrary to article 25 of the Covenant.

8.19 In this connection, the State party recalls that, in its General Comment No. 18, the Committee observes: “... in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the

population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant”.

8.20 Conversely, in the State party’s view, article 1, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination prohibits such action when, on the pretext of positive discrimination, it would “lead to the maintenance of separate rights for different racial groups”.

8.21 In connection with these provisions, the State party says it is apparent that if the purpose of the organizational procedures for the referendum in question was to favour one community (e.g. the Kanak community) by allowing only that community to participate in the vote or by granting its members preferential representation or treatment through a specific college, that discriminatory treatment would certainly not be regarded as an admissible restriction under article 25 of the Covenant.

8.22 The State party emphasizes, however, that, as Louis Joinet, the Senior Advocate-General,¹⁵ has noted in his arguments, when the Court of Cassation came to consider the discrimination complaint in question, the criteria used for the composition of the electorate are based not on a distinction between Caldoches and Melanesians, but on the distinction made between national residents in the light of the length of their domicile on the island and their demonstrated links with it, whether their origin be Melanesian, European, Wallisian, etc.

8.23 The State party explains that these criteria do indeed favour long-standing residents over more recent arrivals. In its opinion, if for this reason, and despite the arguments adduced above, that could be regarded as an act of positive discrimination, it would not in principle be contrary to the provisions of the Covenant, as pointed out by the Committee in its above-mentioned General Comment No. 18. It could be censured only if it had the effect of maintaining different rights for separate racial groups, which, because of the criteria adopted, is not the case in the present situation.

8.24 The State party affirms, secondly, that the complaint that the restriction imposed on the electorate on the basis of length of residence in New Caledonia is unreasonable is likewise unfounded.

8.25 The State party refers to the authors’ argument that the 10-year and 20-year residence requirements set for participation in past and future referendums are contrary to article 25 of the Covenant, in that these limits are too high and lead to the exclusion of a substantial part of the electorate.

8.26 The State party points out that the authors cite in support of that argument a decision of the Committee that a period of seven years’ residence set by the Constitution of Barbados for the right to stand for election to the House of Assembly was unreasonable. The State party affirms that, in fact, that was not a position adopted by the Committee, but a single opinion expressed by one of its 18 members at a meeting,¹⁶ which was never adopted by the Committee itself. At no

time, therefore, has the Committee reached a decision of the kind mentioned by the authors. The State party adds that the Committee did not in fact raise this question on the occasion of the submission of the second periodic report of Barbados in 1988.¹⁷

8.27. In addition, the State party points out that, in its General Comment on article 25 of the Covenant,¹⁸ the Committee cites no case based on a period of residence considered to be unreasonable.

8.28. Furthermore, the State party considers that, in the present case, if participation in the referendum of November 1998 was subject to a 10-year period of residence and if participation in future referendums will require 20 years' residence, in cases where the persons concerned do not meet any of the other conditions established, these conditions cannot be regarded as unreasonable.

8.29. The State party says it is true that the periods of residence thus established exceed the three-year limit set for a number of earlier referendums (e.g. the Act of 22 December 1966 concerning the referendum relating to the French Somali Coast; the Act of 28 December 1976 concerning the referendum relating to the territory of the Afars and the Issas).

8.30. However, in the opinion of the State party, there are no grounds for thinking that these minimum periods, which meet the need to limit referendums to people having genuine local roots, were unreasonable in the light of article 25 of the Covenant.

8.31. The State party argues that, firstly, these length of residence requirements meet the concern, expressed by the representatives of the local population during the negotiation of the Noumea Accords, to ensure that the referendums will reflect the will of the population "concerned" and that their results cannot be undermined by a massive vote by people who have recently arrived in the territory and have no proven, strong ties to it. The State party considers that this concern is perfectly legitimate in the case of referendums held in the context of a self-determination process.

8.32. The State party considers, secondly, that these conditions excluded only a small proportion of the resident population (about 7.5 per cent) from the first referendum and, unless there is a major demographic change, this will also be the case with future referendums, for which the length of residence criterion will not in fact be the only criterion establishing the right to vote.

8.33. Lastly, in the opinion of the State party, no decision of the Committee provides grounds in the present case for regarding these requirements, which do not appear unreasonable either in their justification or in their practical consequences, as being contrary to the provisions of article 25 of the Covenant.

8.34. For all these reasons, the State party considers that the complaint of violation of article 25 of the Covenant cannot but be dismissed.

Comments by the authors on the State party's observations concerning the merits of the communication

9.1 In their comments of 9 May 2001, the authors again allege a violation by France of article 12, paragraph 1, of the Covenant, on the basis of their previous argument and with reference to paragraphs 2, 5 and 8 of the Committee's General Comment No. 27 (67) on freedom of movement.¹⁹

9.2 They reassert that they maintain the part of their communication relating to a violation of article 2, paragraph 1, of the Covenant.

9.3 They reassert their position that the Committee should consider the violation of article 26 of the Covenant, irrespective of all other provisions, or in relation to article 25.

9.4 They refute the State party's argument that there has been no violation of article 25 of the Covenant.

9.5 They again assert, first, their absolute right, as citizens fulfilling all the objective conditions for elector status (in particular, those relating to age of majority, non-deprivation of civil rights following a conviction under ordinary law, or major disability) enabling them to vote in all political ballots held at their place of residence for electoral purposes.

9.6 The authors recall that they consider themselves to be among the population "concerned" by the November 1998 and future referendums on the status of New Caledonia. They cite their personal interest and their sufficiently strong ties to the territory. They further state that French citizens resident in New Caledonia have been exclusively concerned in their daily lives by the "Caledonian Act" since the adoption of the Organic Law (No. 99-209) of 19 March 1999.

9.7 They further submit that the principle of "positive discrimination" cannot be applied in electoral matters and cannot be inferred from the Committee's General Comment No. 18.

9.8 They explain, incidentally, that the Committee establishes a prerequisite for the adoption of measures of positive discrimination, namely, their temporary character and the fact that the general situation of certain population groups prevents or impairs the enjoyment of human rights.

9.9 In the authors' opinion, the 20-year continuous residence requirement for participation in future ballots represents not a limitation in time, but a permanent situation of de jure exclusion of the authors from future Caledonian nationality.

9.10 The authors further raise the question how the exercise of their right to vote and that of people in their situation prevents or impairs the enjoyment of the human rights of other Caledonian communities. They again state that the provisions governing participation in the referendums of 1998 and 2014 or thereafter have been devised by the French authorities as a form of electoral favouritism allowed for purely political reasons. In their opinion, these authorities conceived, through the Noumea Accord, the falsely objective criterion of a lengthening of the period of residence in order to establish indirect and insidious discrimination.

9.11 They consider that the State party has not offered a serious answer to their criticism relating to the excessive period of continuous residence as a condition for voting in the 1998 and future ballots.

9.12 For their part, the authors adduce the following arguments. They note, first, that the two main communities in New Caledonia comprise (a) inhabitants of Melanesian origin (44 per cent of the population), and (b) inhabitants of Caldoche origin (30 per cent of the population). They maintain that (a) the supporters of independence have always been in a minority, and (b) since the result of the self-determination referendum of 1987, which massively rejected independence, any other similar ballot would, in the current context, lead to the rejection of independence, albeit with risks of disorder. The authors explain that, in these circumstances, the FLNKS (representing the Kanaks) sought from the RPCR (representing the Caldoches), which found this to its advantage, an “understanding” aimed at forbidding as far as possible the non-Kanak, non-Caldoche inhabitants²⁰ from interfering in the political debate and the future of the territory, and also at winning, in the ballot to be held in 2014 or thereafter, the votes of additional Kanak electors on the assumption that there will be a greater demographic increase in the Melanesian community.

9.13 In response to the State party’s argument that the length of residence requirements meet the concern of the representatives of the local population in the context of the negotiation of the Noumea Accord to ensure that the referendums will reflect the will of the population “concerned”, the authors state that this concern on the part of the local political parties does not constitute a ground for exemption, and still less an objective and legitimate justification within the meaning of the Covenant.

9.14 They also reject the State party’s submission that the 7.5 per cent of Caledonian residents excluded from the referendums constitute a small proportion of the population. They point out that the actual figure is 7.67 per cent of the electors included on the electoral rolls on 8 November 1998, the date of the latest referendum.

9.15 Lastly, the authors again conclude that there has been a violation by France of article 25 of the Covenant.

Issues and proceedings before the Committee relating to admissibility

10.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

10.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

10.3 Regarding the authors’ status as victims within the meaning of article 1 of the Optional Protocol, the Committee has noted that the State party recognized their personal interest in contesting the method of organization of the November 1998 referendum.

10.4 On the question of future referendums after the cut-off date of 31 December 2014, the Committee has examined the State party's argument that only Mrs. Sophie Demaret will be excluded since she will not have met the 20-year residence requirement. In the State party's view, however, the 20 other authors will, assuming that they remain in New Caledonia as they say they intend to do, be able to prove that they have lived in New Caledonia for over 20 years, which will enable them to participate in future referendums. According to the State party, therefore, these 20 authors do not have a proven personal interest in acting and, accordingly, may not claim the status of victims; hence this part of the communication is inadmissible. The Committee has also taken note of the authors' argument, inter alia, that, apart from Mrs. Demaret, they will be unable to participate in future referendums if, in conformity with their right under article 12 of the Covenant, they were to temporarily leave New Caledonia for a period which would prevent them from meeting the 20-year continuous residence requirement.

10.5 After considering the arguments adduced and other information in the communication, the Committee notes that 20 of the 21 authors have (a) stressed their desire to remain in New Caledonia, which constitutes their permanent place of residence and the centre of their family and working lives, and (b) mentioned on a purely hypothetical basis a number of eventualities, namely, temporary departure from New Caledonia and a period of absence which, according to the individual situation of each author, would at some point result in exclusion from future referendums. The Committee considers that the latter arguments as raised by the authors, which are in fact at variance with their main argument concerning their present and future permanent residence in New Caledonia, do not go beyond the bounds of eventualities and theoretical possibilities.²¹ Consequently, only Mrs. Demaret, through having failed to accumulate 20 years' residence in New Caledonia, will be able to claim victim status vis-à-vis the planned referendums, within the meaning of article 1 of the Optional Protocol.

10.6 As regards the complaints of violations of article 12, paragraph 1, of the Covenant, the Committee has taken note of the State party's arguments concerning the incompatibility ratione materiae of these allegations with the provisions of the Covenant. The Committee considers that the facts submitted by the authors and previously considered are not sufficiently substantiated for purposes of admissibility under article 2 of the Optional Protocol (para. 5.2).

10.7 Concerning the allegations of violations of articles 25 and 26 of the Covenant, the Committee declares this part of the communication admissible in that it seems to raise issues in respect of the articles invoked and believes that the complaint should be considered on its merits, in conformity with article 5, paragraph 2, of the Optional Protocol.

Examination of the merits

11.1 The Human Rights Committee has examined the present communication in the light of all the written information communicated by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

11.2 The Committee has to determine whether the restrictions imposed on the electorate for the purposes of the local referendums of 8 November 1998 and in 2014 or thereafter constitute a violation of articles 25 and 26 of the Covenant, as the authors maintain.

12.1 The authors maintain, first, that they have an absolute, acquired and indivisible right to vote in all political ballots organized in their place of residence.

12.2 On this point the Committee recalls its decisions in relation to article 25 of the Covenant, namely that the right to vote is not an absolute right and that restrictions may be imposed on it provided they are not discriminatory or unreasonable.²²

13.1 The authors maintain, secondly, that the criteria used to determine the electorates in local ballots represent a departure from French rules on electoral matters (the right to vote can be made dependent only on the criterion of inclusion on an electoral roll, either of the commune of domicile, irrespective of the period of residence, or of the commune of actual residence for at least 6 months) and thereby impose on them discriminatory restrictions which are contrary to the International Covenant on Civil and Political Rights.

13.2 In order to determine the discriminatory or non-discriminatory character of the criteria in dispute, in conformity with its above-mentioned decisions, the Committee considers that the evaluation of any restrictions must be effected on a case-by-case basis, having regard in particular to the purpose of such restrictions and the principle of proportionality.

13.3 In the present case, the Committee has taken note of the fact that the local ballots were conducted in the context of a process of self-determination of the population of New Caledonia. In this connection, it has taken into consideration the State party's argument that these referendums - for which the procedures were fixed by the Noumea Accord and established according to the type of ballot by a vote of Congress²³ or Parliament²⁴ - must, by virtue of their purpose, provide means of determining the opinion of, not the whole of the national population, but the persons "concerned" by the future of New Caledonia.

13.4 Although the Committee does not have the competence under the Optional Protocol to consider a communication alleging violation of the right to self-determination protected in article 1 of the Covenant, it may interpret article 1, when this is relevant, in determining whether rights protected in parts II and III of the Covenant have been violated. The Committee is of the view, therefore, that, in this case, it may take article 1 into account in interpretation of article 25 of the Covenant.

13.5 In relation to the authors' complaints, the Committee observes, as the State party indeed confirms, that the criteria governing the right to vote in the referendums have the effect of establishing a restricted electorate and hence a differentiation between (a) persons deprived of the right to vote, including the author(s) in the ballot in question, and (b) persons permitted to exercise this right, owing to their sufficiently strong links with the territory whose institutional development is at issue. The question which the Committee must decide, therefore, is whether this differentiation is compatible with article 25 of the Covenant. The Committee recalls that not all differentiation constitutes discrimination if it is based on objective and reasonable criteria and the purpose sought is legitimate under the Covenant.

13.6 The Committee has, first of all, to consider whether the criteria used to determine the restricted electorates are objective.

13.7 The Committee observes that, in conformity with the issue in each ballot, apart from the requirement of inclusion on the electoral rolls, the criteria used are: (a) for the 1998 referendum relating to the continuation or non-continuation of the process of self-determination, the condition of length of residence in New Caledonia; and (b) for the purpose of future referendums directly relating to the option of independence, additional conditions relating to possession of customary civil status, the presence in the territory of moral and material interests, combined with birth of the person concerned or his parents in the territory. It accordingly follows, as the date for a decision on self-determination approaches, that the criteria are more numerous and take into account the specific factors attesting to the strength of the links to the territory. To the length of residence condition (as opposed to the cut-off points for length of residence) for determining a general link with the territory are added more specific links.

13.8 The Committee considers that the above-mentioned criteria are based on objective elements for differentiating between residents as regards their relationship with New Caledonia, namely the different forms of ties to the territory, whether specific or general - in conformity with the purpose and nature of each ballot. The question of the discriminatory or non-discriminatory effects of these criteria nevertheless arises.

13.9 With regard to the authors' complaint of discrimination in the 1998 referendum on the basis of their ethnic origin or national extraction, the Committee takes note of their argument that residents of New Caledonia from metropolitan France (including the authors), Polynesians, Wallisians, Futunians, West Indians and Reunion Islanders accounted for a significant proportion of the 7.67 per cent of Caledonian voters excluded from that referendum.²⁵

13.10 In the light of the foregoing, the Committee considers that the criterion used for the 1998 referendum establishes a differentiation between residents as regards their relationship to the territory, on the basis of the length of "residence" requirement (as distinct from the question of cut-off points for length of residence), whatever their ethnic origin or national extraction. The Committee also considers that the authors' arguments lack details concerning the numbers of the above-mentioned groups - whether or not they represent a majority - within the 7.67 per cent of voters deprived of their right to vote.

13.11 The Committee therefore considers that the criterion used for the 1998 referendum did not have the purpose or effect of establishing different rights for different ethnic groups or groups distinguished by their national extraction.

13.12 Concerning the authors' complaints of discrimination on the basis of birth, family ties and the transmission of the right to vote by descent (the latter violation deriving, according to the authors, from the criteria on family ties), and hence resulting from the criteria established for referendums from 2014 onwards, the Committee considers, first, that residents meeting these criteria are in a situation that is objectively different from that of the authors whose link to the territory is based on length of residence. Secondly, the Committee notes (a) that length of residence is taken into account in the criteria established for future ballots, and (b) that these criteria may be used alternatively. Hence the identification of voters from among the French

residents of New Caledonia is based not solely on particular ties to the territory (such as birth and family ties) but also, in their absence, on length of residence. Consequently, every specific or general link to the territory - identified by means of the criteria on ties to New Caledonia - was applied to French residents.

13.13 Finally, the Committee considers that in the present case the criteria for the determination of restricted electorates make it possible to treat differently persons in objectively different situations as regards their ties to New Caledonia.

13.14 The Committee also has to examine whether the differentiation resulting from the above-mentioned criteria is reasonable and whether the purpose sought is lawful vis-à-vis the Covenant.

13.15 The Committee has taken note of the authors' argument that such criteria, although established by the Constitutional Act of 20 July 1998 and the Organic Law of 19 March 1999, not only represented a departure from national electoral rules, but were also unlawful vis-à-vis the Covenant.

13.16 The Committee recalls that, in the present case, article 25 of the Covenant must be considered in conjunction with article 1. It therefore considers that the criteria established are reasonable to the extent that they are applied strictly and solely to ballots held in the framework of a self-determination process. Such criteria, therefore, can be justified only in relation to article 1 of the Covenant, which the State party does. Without expressing a view on the definition of the concept of "peoples" as referred to in article 1, the Committee considers that, in the present case, it would not be unreasonable to limit participation in local referendums to persons "concerned" by the future of New Caledonia who have proven, sufficiently strong ties to that territory. The Committee notes, in particular, the conclusions of the Senior Advocate-General of the Court of Cassation, to the effect that in every self-determination process limitations of the electorate are legitimized by the need to ensure a sufficient definition of identity. The Committee also takes into consideration the fact that the Noumea Accord and the Organic Law of 19 March 1999 recognize a New Caledonian citizenship (not excluding French citizenship but linked to it), reflecting the common destiny chosen and providing the basis for the restrictions on the electorate, in particular for the purpose of the final referendum.

13.17 Furthermore, in the Committee's view, the restrictions on the electorate resulting from the criteria used for the referendum of 1998 and referendums from 2014 onwards respect the criterion of proportionality to the extent that they are strictly limited ratione loci to local ballots on self-determination and therefore have no consequences for participation in general elections, whether legislative, presidential, European or municipal, or other referendums.

13.18 Consequently, the Committee considers that the criteria for the determination of the electorates for the referendums of 1998 and 2014 or thereafter are not discriminatory, but are based on objective grounds for differentiation that are reasonable and compatible with the provisions of the Covenant.

14.1 Lastly, the authors argue that the cut-off points set for the length of residence requirement, 10 and 20 years respectively for the referendums in question, are excessive and affect their right to vote.

14.2 The Committee considers that it is not in a position to determine the length of residence requirements. It may, however, express its view on whether or not these requirements are excessive. In the present case, the Committee has to decide whether the requirements have the purpose or effect of restricting in a disproportionate manner, given the nature and purpose of the referendums in question, the participation of the “concerned” population of New Caledonia.

14.3 In addition to the State party’s position that the criteria used for the determination of the electorates favour long-term residents over recent arrivals owing to actual differences in concern with regard to New Caledonia, the Committee notes, in particular, that the cut-off points for length of residence are designed, according to the State party, to ensure that the referendums reflect the will of the population “concerned” and that their results cannot be undermined by a massive vote by people who have recently arrived in the territory and have no proven, strong ties to it.

14.4 The Committee notes that the 21 authors were excluded from the 1998 referendum because they did not meet the 10 years’ continuous residence requirement. It also notes that one author will not be able to participate in the next referendum because of the 20 years’ continuous residence requirement, whereas the other 20 authors do, as things stand, have the right to vote in that referendum - 18 authors on the basis of the residence criterion and 2 others on the strength of having been born in New Caledonia, their ethnic origin and national extraction being of no consequence in this respect.

14.5 The Committee considers, first, that the cut-off points adopted do not have a disproportionate effect, given the nature and purpose of the referendums in question, on the authors’ situation, particularly since their non-participation in the first referendum manifestly has no consequences for nearly all of them as regards the final referendum.

14.6 The Committee further considers that each cut-off point should provide a means of evaluating the strength of the link to the territory, in order that those residents able to prove a sufficiently strong tie are able to participate in each referendum. The Committee considers that, in the present case, the difference in the cut-off points for each ballot is linked to the issue being decided in each vote: the 20-year cut-off point - rather than 10 years as for the first ballot - is justified by the time frame for self-determination, it being made clear that other ties are also taken into account for the final referendum.

14.7 Noting that the length of residence criterion is not discriminatory, the Committee considers that, in the present case, the cut-off points set for the referendum of 1998 and referendums from 2014 onwards are not excessive inasmuch as they are in keeping with the nature and purpose of these ballots, namely a self-determination process involving the participation of persons able to prove sufficiently strong ties to the territory whose future is being

decided. This being the case, these cut-off points do not appear to be disproportionate with respect to a decolonization process involving the participation of residents who, over and above their ethnic origin or political affiliation, have helped, and continue to help, build New Caledonia through their sufficiently strong ties to the territory.

15. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of any article of the Covenant.

[Done in English, French and Spanish, the French text being the original version. Subsequently to be translated also into Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

¹ New Caledonia (South-west Pacific island group; area: 19,058 km²; population: 197,000; capital: Noumea), colonized by France in 1853, has undergone several changes in institutions. Initially administered by a governor, it became an overseas territory under the 1946 French Constitution. Until 1988 the territory was in a legal impasse between the granting of a decree of autonomy and restoration of State trusteeship. From 1984 onwards the situation was characterized by violence between pro- and anti-independence factions. Mediation by the French authorities through a "dialogue mission" to restore civil order led in 1988 to a local political agreement and a set of conclusions, pursuant to which "the future of New Caledonia can be determined only through a vote on self-determination (...). The provisions of this accord shall be subject to approval by the people of France in a referendum". The negotiators were seeking to avoid a repetition of the experiment attempted with the previous local referendum on self-determination in 1987. That had led to confrontation between the two parties over the "cut-off question" whether to accede to independence or remain part of the French Republic, followed by a resumption of violence, resulting in loss of life, with political failure as the outcome. Further to the Matignon Accords of 26 June 1988 resulting from the dialogue mission, the question of self-determination was put to a referendum on the basis of universal suffrage by the French Government on 6 November 1988. The outcome was the Referendum Act (No. 88-1028) of 9 November 1988, embodying statutory provisions in preparation for New Caledonia's self-determination. The Act, which was approved by 57 per cent of the votes cast, established December 1998 as the date for holding a referendum in New Caledonia. Coexistence between the two communities led, in 1998, to a second phase, namely the Noumea Accord. Pursuant to the Accord there was a decision, by mutual agreement, to again extend the time frame and to pursue the process in the context of a new agreement. The Accord recognizes the "shadow of colonization" and makes provision for the establishment of a new legal entity under the French Constitution. It also provides for significant transfers of State authority to the territory of New Caledonia. In a phased, irreversible process, New Caledonia will ultimately enjoy general competence in all spheres, with the exception of the system of justice, public order, defence, finance and, to a large extent, foreign affairs. After the transition period, these other prerogatives of the State could be transferred to New Caledonia following approval by the people concerned. The Accord also recognizes New Caledonian citizenship: "The concept of citizenship establishes the basis for the restrictions on the electorate for elections to the

institutions of the country and the final referendum.” It further provides that “New Caledonian citizens” are to take a decision, within a 15- to 20-year time frame, on accession to independence; if they do not choose independence, autonomy will be maintained.

² Article 2.2 of the Noumea Accord: “The electorate for the referendums on the political organization of New Caledonia to be held once the period of application of this Accord has ended (sect. 5) shall consist only of: voters registered on the electoral rolls on the dates of the referendums provided for under section 5 who were eligible to participate in the referendum provided for in article 2 of the Referendum Act, or who fulfilled the conditions for participating in that referendum; those who are able to prove that any interruptions in their continuous residence in New Caledonia were attributable to professional or family reasons; those who have customary status or were born in New Caledonia and whose property and personal ties are mainly in New Caledonia; and those who, although they were not born in New Caledonia, have one parent born there and whose property and personal ties are mainly in New Caledonia. Young people who have reached voting age and are registered on the electoral rolls and who, if they were born before 1988, resided in New Caledonia from 1988 to 1998, or, if they were born after 1988, have one parent who fulfilled or could have fulfilled the conditions for voting in the referendum held at the end of 1998, shall also be eligible to vote in these referendums. Persons who, in 2013, are able to prove that they have resided continuously in New Caledonia for 20 years may also vote in these referendums.”

³ Rulings dated 19 October 1998 on the petition by Mr. Jean Etienne Antonin; 23 October 1998 on the petitions by Mr. Alain Bouyssou, Mrs. Jocelyne Schmidt (née Buret), Mrs. Sophie Demaret (née Buston), Mrs. Michèle Philizot (née Garland), Mr. Jean Philizot, Mrs. Monique Bouyssou (née Quero-Valleyo), Mr. Thierry Schmidt; 26 October 1998 on the petitions by Mr. François Aubert, Ms. Marie-Hélène Gillot, Mr. Franck Guasch, Mrs. Francine Keravec (née Guillot), Mr. Albert Keravec, Ms. Audrey Keravec, Ms. Carole Keravec, Mrs. Sandrine Aubert (née Keravec), Mr. Christophe Massias, Mr. Jean-Louis Massias, Mrs. Martine Massias (née Paris), Mr. Paul Pichon and Mrs. Sandrine Sapey (née Tastet).

⁴ Under the French Electoral Code, article L.11, exercise of the right to vote requires registration on an electoral roll, either in the commune of domicile, irrespective of the length of residence, or in the commune of actual residence once six months have elapsed.

⁵ Kanaks: Melanesian community present in New Caledonia for approximately 4,000 years.

⁶ Caldoches: persons of European descent present in New Caledonia since colonization in 1853.

⁷ According to incomplete information supplied by the authors, of the 197,000 inhabitants of New Caledonia, 34 per cent are of European origin (including the Caldoches), 3 per cent of Polynesian origin, 9 per cent Wallisian and 4 per cent Asian.

⁸ Organic Law (No. 99-209), art. 218, (d) and (e), of 19 March 1999.

⁹ Organic Law (No. 99-209), art. 218 (e) and (h) of 19 March 1999.

¹⁰ Organic Law (No. 99-209), art. 218, (e) and (h) of 19 March 1999.

¹¹ The authors give the following reference: Human Rights Committee Yearbook, 1981-1982, vol. 1, CCPR/3. In fact, as emphasized below (paras. 8.26 and 8.27) by the State party, this was not a position adopted by the Human Rights Committee, but an individual opinion expressed by one of its members at a meeting to consider the report of Barbados. At the time, the Committee did not adopt concluding observations.

¹² The French Somali Coast colonized by France in 1898, changed its name to the French Territory of the Afars and the Issas in 1967, and on 27 June 1977 attained independence as the Republic of Djibouti.

¹³ Human Rights Committee General Comment No. 25, para. 6: “[...] Where a mode of direct participation by citizens is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, paragraph 1, and no unreasonable restrictions should be imposed.”

¹⁴ Views of the Human Rights Committee, Ibrahima Gueye, 3 April 1989.

¹⁵ Senior Advocate-General of the Court of Cassation: The prosecution department of the Court of Cassation is composed of judges with the title “advocates-general”. They are called upon, in a personal capacity, to give an opinion, in complete independence and impartiality, on the circumstances of the case and the applicable rules of law, and their opinion on the solutions required, as their conscience dictates, in the case submitted for jurisdiction. The Senior Advocate-General, who heads the department, has the specific responsibility of setting forth his argument before all the divisions of the Court when they assemble in plenary session because of the scope of the question of principle on which the Court is called upon to rule.

¹⁶ Yearbook of the Human Rights Committee, 1981-1982, vol. I, CCPR/3, 256th meeting, 24 March 1981, p. 71, para. 9.

¹⁷ CCPR/C/SR.823, 825 and 826.

¹⁸ CCPR/C/12/Rev.1/Add.7, 12 July 1996.

¹⁹ General Comment No. 27 (67): para. 2 “The permissible limitations which may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement”; para. 5 “The right to move freely relates to the whole territory of a State, including all parts of federal States”; para. 8 “Freedom to leave the territory of a State may not be made dependent on ... the period of time the individual chooses to stay outside the country”.

²⁰ That is to say, 26 per cent of the population of New Caledonia: 4 per cent of European origin, 9 per cent of Wallisian and Futunian origin, 3 per cent of Polynesian origin, 4 per cent of

Asian origin and 6 per cent of other origins. According to the Senior Advocate-General of the Court of Cassation, in 1996 the breakdown of the population of New Caledonia was as follows: 33 per cent Europeans, 44 per cent Melanesians, 22 per cent others.

²¹ Communication No. 35/1978, Shirin Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius (para. 9.2).

²² Communications No. 500/1992, J. Debreczeny v. Netherlands; No. 44/1979, Alba Pietraroia on behalf of Rosario Pietraroia Zapala v. Uruguay; General Comment No. 18 relating to article 25 (fifty-seventh session, 1996), paras. 4, 10, 11 and 14.

²³ Constitutional Act (No. 98-610) of 20 July 1998, whose article 76 determined conditions for participation in the 1998 ballot. Congress is constituted by the meeting of the National Assembly and the Senate for the purposes of amending the Constitution, in accordance with article 89 of the Constitution of 4 October 1958.

²⁴ Organic Law (No. 99-209) of 19 March 1999, whose article 218 determines conditions for participation in ballots as from 2014.

²⁵ The authors stated, however, that they were unable to provide details of the number of such residents within the 7.67 per cent of voters excluded.
