



# International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General  
28 October 2014

Original: English

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## Committee on Enforced Disappearances

### Report on follow-up to concluding observations of the Committee on Enforced Disappearances (7th session, 15-26 September 2014)

#### Report of the Rapporteurs for follow-up to concluding observations

#### I. Introduction

1. At its seventh session, the Committee discussed the modalities for processing information received under its follow-up procedure pursuant to rule 54 of its rules of procedure. The Committee has decided that, in accordance with rule 54, paragraph 3, of its rules of procedure, the Rapporteurs on follow-up to concluding observations will prepare a report with their assessments of the information provided by the States parties in relation to those recommendations in the concluding observations that have been selected for the follow-up procedure. The report of the Rapporteurs will be submitted for the consideration of the Committee once a year and, on the basis of the report, the Committee will assess the information received concerning each of the selected recommendations. The Committee's assessment will be communicated to each State party through a letter by the Rapporteurs. Where appropriate, the Committee will request the State party concerned to provide additional information within a specific deadline, in accordance with article 29, paragraph 4, of the Convention.

2. The present report is submitted in accordance with rule 54, paragraph 3, of the Committee's rules of procedure, which reads: "The follow-up Rapporteur(s) shall assess the information provided by the State party in consultation with the country Rapporteurs, if any, and report at every session to the Committee on her/his activities".

3. The present report reflects the information received by the Committee between its sixth and seventh sessions, concerning its concluding observations on France (CED/C/FRA/CO/1/Add.1) and Uruguay (CED/C/URY/CO/1/Add.1), and the evaluations and decisions it adopted during its seventh session.



4. To carry out its assessment of the information provided by the States parties concerned, the Committee uses the criteria described below:

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*Assessment of replies*

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**A. Reply/action satisfactory**

- Reply largely satisfactory

**B. Reply/action partially satisfactory**

- Substantive action taken, but additional information required
- Initial action taken, but additional information and measures required

**C. Reply/action not satisfactory**

- Reply received but action taken does not implement the recommendation
- Reply received but not relevant to the recommendations
- No reply received concerning a specific matter in the recommendation

**D. No cooperation with the Committee**

- No reply received after reminder(s)

**E. The measures taken are contrary to the Committee's recommendations**

- The reply reveals that the measures taken are contrary to the Committee's recommendations
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## Fourth session (April 2013)

### II. France

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<b>Concluding observations:</b>	CED/C/FRA/CO/1, 19 April 2013
<b>Follow-up paragraphs:</b>	23, 31, 35
<b>Reply:</b>	Due 19 April 2014; received 18 April 2014 (CED/C/FRA/CO/1/Add.1)
<b>NGO information:</b>	TRIAL

**Paragraph 23: The Committee recommends that the State party should submit any cases of enforced disappearance to the competent authorities for the purpose of prosecution, in accordance with article 11 of the Convention, regardless of whether an extradition request against the suspect has been submitted beforehand.**

#### Summary of State party's reply

Act No. 2013-711, adopted on 5 August 2013, added article 689-13 to the Code of Criminal Procedure. The article establishes the quasi-universal jurisdiction of French courts over acts of enforced disappearance. The quasi-universal jurisdiction clause allows criminal proceedings to be brought for acts of enforced disappearance, regardless of whether a request for extradition has been submitted beforehand, in full compliance with article 11 of the Convention.

Act No. 2013-711 also amended article 113-8-1 of the Criminal Code by introducing new grounds for the refusal of an extradition request and removing the condition in the previous text of article 113-8-1 (2nd para.) requiring there to have been, for the French courts to exercise their jurisdiction, a prior official notification by the authorities in the country where the offence had been committed and which had requested the extradition.

The amendment of article 113-8-1 has no bearing on the implementation of the Convention, given the quasi-universal jurisdiction introduced by article 689-13 of the Code of Criminal Procedure, which is equally relevant for enforced disappearances committed either as "ordinary" crimes or as crimes against humanity. The amendment of article 113-8-1 should be viewed as completely separate from the amendments made to the Criminal Code and the Code of Criminal Procedure for the purposes of the implementation of the Convention.

Article 689-11 of the Code of Criminal Procedure was not introduced to implement obligations arising from the Convention. It is aimed at establishing French jurisdiction over crimes which come under the jurisdiction of the International Criminal Court, but for which there is no specific convention providing for quasi-universal jurisdiction.

#### NGO information

Despite the entry into force of Act No. 2013-711, French legislation and practice are not compliant with the international obligation to prosecute or extradite. In article 113-8-1, the obligation to prosecute is still conditional upon prior receipt of an extradition request and a previous reasoned refusal of the request by the French authorities.

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### Committee's evaluation

[A]: The Committee welcomes the introduction of article 689-13 of the Code of Criminal Procedure and the State party's assertion that, on the basis of the new provision, French courts are able to exercise their jurisdiction whether or not there has been an extradition request. The Committee would like to receive information from the State party, when submitting information in accordance with paragraph 43 of its previous concluding observations (CED/C/FRA/CO/1), on the implementation of the new provision in practice.

**Paragraph 31: The Committee recommends that the State party should establish the right of appeal before a sitting judge to ensure that coercive measures are lawful and to enable detainees to be present in court. The Committee also recommends that a sitting judge should rule on the extension of police custody beyond 24 hours and should limit that possibility. The Committee recommends that any person in pretrial or administrative detention should have the right to communicate with the outside world and that this right should not be restricted beyond 48 hours. The Committee recommends that the State party should repeal article L221-2 of the Code on the Entry and Residence of Aliens and the Right of Asylum in the version introduced by the law of 16 June 2011 as far as detention procedures in ad hoc holding areas are concerned.**

### Summary of State party's reply

A. Concerning the right to appeal before a sitting judge to validate the legality of coercive measures and to allow detainees to be present.

The Government of France takes note of the Committee's recommendation while observing that, without prejudice to its appropriateness, it would seem to go beyond the obligations contained in the international instruments to which France is a party and which are referred to in article 17, paragraph 2, of the Convention.

In particular, article 5.3 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, establishes systematic supervision of custodial measures by a judge enjoying guarantees of independence, but only after a certain period, which, according to its case law, should not exceed 4 days and 6 hours. In its draft general comment 35 (2014), on article 9: liberty and security of person, the Human Rights Committee holds that a person should be brought before an independent judge within a few days and that any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.

In France, under ordinary law, pretrial detention may not exceed 48 hours. Detention cannot be extended beyond 48 hours without the intervention of an independent sitting judge. In addition, the legality of the detention may be challenged under article 385 of the Code of Criminal Procedure. Derogation from the principle whereby a person in pretrial detention is brought before the Public Prosecutor for the extension of the detention is possible only under exceptional circumstances.

The rules governing pretrial detention are consistent with the relevant international instruments, including article 17, paragraph 2 (f), of the Convention.

France notes a decrease in the number of cases of police custody over recent years, from 39.4 per cent in 2008 to 31.2 per cent in 2013.

B. Concerning the right of communication.

All aliens placed in administrative detention have the right to communicate with the outside world pending arrangements for their departure. As soon as possible after his/her arrival at the detention centre, a person being detained is informed, *inter alia*, of his/her right to communicate with his/her consulate and with any person of his/her choice. That right may be exercised from the beginning of the detention and for the duration thereof.

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The right to communicate during pretrial detention, consists of three components:

**Communication:** A person who has been detained may communicate freely with his/her lawyer, either orally or in writing. Prohibition of communication does not apply to the exercise of the right of defence.

**Visits:** It is the responsibility of the judge in charge of the case file to issue visiting permits. After a period of one month following the beginning of detention, the judge may not refuse to issue a visiting permit for a detainee's relatives, other than by a reasoned decision in writing with reference to the requirements of the investigation. It is possible to appeal against such a decision.

**Access to telephones:** Detainees have the right to call their families and other persons with a view to preparing for life after detention. In all cases they must obtain authorization from the judicial authority concerned. Access to telephones may be refused, suspended or withdrawn for reasons related to the maintenance of public order and security, the prevention of crime and the requirements of the investigation, in application of article 39 of Law 2009-1436. The detainee may freely telephone his/her lawyer.

C. Concerning ad hoc holding areas.

The Act of 16 June 2011 supplements article 221-2 of the Code for the Entry and Residence of Foreigners and Asylum Seekers (CESEDA). The provision is aimed at adapting the legislation to exceptional situations and has never been applied.

The requirements for implementing the provision are strictly controlled and all aliens placed in holding areas will enjoy all the rights and guarantees afforded by the law. The legal requirements of the asylum law will also be met and asylum requests examined with due respect for the guarantees provided for by law. Among the guarantees for persons who may be placed in ad hoc holding areas, France highlights the ability to inform the Defender of Rights or the General Inspector of Places of Deprivation of Liberty.

### **NGO information**

Since April 2013, the regulations regarding pretrial detention have not been modified.

It is the role of the Prosecutor to decide on the lawfulness of the deprivation of liberty and authorize the extension of custody beyond 24 hours for serious crimes such as terrorism.

It is possible, but not compulsory, for a person in pretrial detention to be brought promptly before a public prosecutor entitled to rule on the legality of the detention and on the extension of custody.

Article 145-4 of the Code of Criminal Procedure still allows for the limitation of the right of any person in pretrial or administrative detention to communicate with the outside world up to 20 days, thereby exceeding the limit of 48 hours recommended by the Committee.

The regime regarding ad hoc holding areas as provided in article L221-2 of the Code for the Entry and Residence of Foreigners and Asylum Seekers was not abrogated or amended.

### **Committee's evaluation**

**[B]:** Concerning pretrial detention, the Committee, while recalling its recommendation, requests the State party, when submitting information in accordance with paragraph 43 of its previous concluding observations (CED/C/FRA/CO/1), to provide additional information on the right to appeal before a sitting judge to ensure that coercive measures are lawful and to enable detainees to be present in court.

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France

[C]: Concerning the right of communication, the Committee, while taking note of the information provided, in particular with regard to aliens in administrative detention, considers that its recommendation that any person in pretrial or administrative detention should have the right to communicate with the outside world, and that this right should not be restricted beyond a 48-hour period, has not been implemented since, according to the information received, article 145-4 of the Code of Criminal Procedure still provides for a limitation of the right of any person in pretrial or administrative detention to communicate with the outside world for up to a maximum of 20 days. The Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 43 of its previous concluding observations (CED/C/FRA/CO/1), to provide information on the measures taken to implement it.

[C]: Concerning ad hoc holding areas, the Committee, while taking note of the information provided by the State party, considers that its recommendation to repeal article L221-2 of the Code on the Entry and Residence of Aliens and the Right of Asylum in the version introduced by the law of 16 June 2011 has not been implemented. The Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 43 of its previous concluding observations (CED/C/FRA/CO/1), to provide information on the measures taken to implement it.

**Paragraph 35: The Committee recommends that the State party should take adequate legislative measures to adopt a definition of victim that complies with the definition set out in article 24, paragraph 1, of the Convention, recognizing a victim as any person who has suffered harm as the direct result of enforced disappearance, without requiring that such harm should also be personal. The Committee recommends that the State party should make explicit provision for the right of victims to know the truth regarding the circumstances of an enforced disappearance, in accordance with article 24, paragraph 2, of the Convention, without needing to be represented by a lawyer. The Committee also recommends that the State party should take measures to broaden forms of reparation, in particular restitution, rehabilitation, satisfaction and guarantees of non-repetition, in accordance with article 24, paragraph 5, of the Convention.**

#### **Summary of State party's reply**

Under the case law of French criminal jurisdictions, the concept of victim is applied very broadly, and includes all the next of kin of the direct victim, regardless of whether the latter is deceased. In addition, actions brought by such persons are deemed to be admissible, even where harm has not been proven but is simply alleged. Victims are thus considered to include grandparents, unmarried partners, aunts and great-aunts. The condition concerning personal harm is thus easily fulfilled so long as family or simply affective ties exist between the direct victim and the next of kin also claiming victim status.

The Government of France is puzzled at the suggestion that the authors of the Convention intended to define "victim" as any person who had suffered harm which although direct was nevertheless "impersonal".

Regarding the right of victims to know the truth concerning the circumstances of an enforced disappearance, under article 24, paragraph 2, of the Convention, States are bound to "take appropriate measures in this regard", but are left free to make their own arrangements regarding the exercise of that right. Under French law, victims have the right to initiate civil party proceedings. Under certain articles of the Code of Criminal Procedure, they will receive information on the case and have the right to obtain copies of all case file materials, request an investigations and appeal certain decisions, thereby allowing them to exercise their right to the truth. Furthermore, the bill enacting directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings, which is currently being examined by the French parliament,

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provides that civil parties may have direct access to the case file , without needing to be represented by a lawyer.

Concerning the broadening of the forms of reparation, restitution seems scarcely imaginable in cases of enforced disappearance, and victims may obtain the return of objects kept under seal as part of criminal proceedings

In addition to the financial compensation provided for under article 2 of the French Civil Code and article 706-3 et seq of the Code of Criminal Procedure, victims are also eligible to receive assistance from a victim support association, in accordance with article 41 of the Code of Criminal Procedure, in order to obtain advice and psychological support. Such associations receive funding from the State.

There have also been experiments with restorative justice in France. To date none has involved the perpetrators or victims of enforced disappearances; however, such experiments with restorative justice can only contribute to the achievement of the objectives of rehabilitation, satisfaction and guarantees of non-repetition, referred to in article 24, paragraph 5, of the Convention.

### **NGO information**

Since April 2013, there has been no amendment to the Criminal Procedure Code with respect to the definition and the rights of victims. Article 2 of the Criminal Procedure Code still holds that in order to be recognized as a victim, a person must demonstrate the existence of direct and personal harm as a consequence of the crime.

The right to have access to the files of the case and to be informed of the progress of the procedure is still not provided for in the case of a victim who is not represented by a lawyer and, more generally, the right to know the truth regarding the circumstances of the enforced disappearance are not explicitly provided for under French law as required by article 24, paragraph 2, of the Convention.

Article 2 of the Criminal Procedure Code provides only for financial compensation. The Code has not been amended with a view to broadening the scope of measures of reparation for victims of enforced disappearance in accordance of article 24, paragraph 5, of the Convention.

### **Committee's evaluation**

[C]: Concerning the definition of “victim”, while taking note of the information provided by the State party, in particular the jurisprudence of French Courts, the Committee considers that its recommendation to take adequate legislative measures to adopt a definition of “victim” consistent with the definition set out in article 24, paragraph 1, of the Convention has not been implemented. The Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 43 of its previous concluding observations (CED/C/FRA/CO/1), to provide information on the measures taken to implement it.

[B]: Concerning the right to know the truth, the Committee takes note of the information provided and, while recalling its recommendation, requests the State party, when submitting information in accordance with paragraph 43 of its previous concluding observations (CED/C/FRA/CO/1), additional information on the measures taken to implement it and, in particular, about the content of the bill enacting Directive 2012/13/EU, mentioned in paragraph 51 of its follow-up report (CED/C/FRA/CO/1/Add.1), in particular in relation to the persons who will be able to access the information contained in case files, as well as on its current status, including when it is expected to be approved and to enter into force.

[C]: Concerning reparations, the Committee considers that its recommendation to take measures to broaden forms of reparation, in particular restitution, rehabilitation, satisfaction and guarantees of non-repetition, in accordance with article 24, paragraph 5,

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of the Convention has not been implemented. B: The Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 43 of its previous concluding observations (CED/C/FRA/CO/1), to provide information on the measures taken to implement it.

**Action to be taken**

A letter should be sent to the State party reflecting the Committee's evaluation.

**Follow-up information on the implementation of all the recommendations to be submitted by:** 19 April 2019

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## Fourth session (April 2013)

### III. Uruguay

*Uruguay*

<b>Concluding observations:</b>	CED/C/URY/CO/1, 19 April 2013
<b>Follow-up paragraphs:</b>	14, 22, 36
<b>Reply:</b>	Due 19 April 2014; received 14 April 2014 (CED/C/URY/CO/1/Add.1)

**Paragraph 14:** The State party should ensure that enforced disappearances are investigated as such and that the perpetrators are punished for the offence irrespective of the time that has elapsed since the commencement of the criminal conduct. The State party should ensure that all State officials, including judges and prosecutors, receive appropriate and specific training on the Convention and the obligations incumbent on States that have ratified it. The Committee wishes to emphasize the continuous nature of the offence of enforced disappearance, in accordance with the principles of the Convention, to recall the strict terms laid down in the article governing the statute of limitations for this offence, and to emphasize its imprescriptible character in relation to crimes against humanity.

#### Summary of State party's reply

In April 2013, representatives of the Executive Branch met with the Ministers of the Supreme Court of Justice. During the meeting, the representatives of the Executive Branch informed the Supreme Court about the recommendations made by the Committee on Enforced Disappearances to Uruguay, highlighting those concerning the judiciary.

During the meeting, the representatives of the executive branch gave the authorities of the Supreme Court of Justice a report prepared by the commission responsible for monitoring implementation of the Inter-American Convention on Force Disappearance of Persons, criticizing the Court's decision to declare the law governing the statute of limitations unconstitutional on the grounds that that the statute of limitations does apply to offences committed during the military dictatorship in Uruguay, rather than considering those offences to be crimes against humanity, in which case the statute of limitations would not apply.

The then President of the Supreme Court of Justice stated that the Supreme Court had taken due note of the recommendations and would take them under advisement, without prejudice to the positions or opinions it had already adopted. He stressed that, by necessity, the judiciary acts independently in such matters.

#### Committee's evaluation

**[B]:** In relation to the investigation of enforced disappearances, while taking note of the information provided, the Committee recalls its recommendation and requests the State party, when submitting information in accordance with paragraph 42 of its previous concluding observations (CED/C/URY/CO/1), to provide additional information on the efforts undertaken to implement it, including:

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(a) The jurisprudence of Uruguayan courts, including the Supreme Court of Justice, in relation to enforced disappearances, in particular with regard to the statute of limitations for this offence, after the adoption of the concluding observations by the Committee;

(b) Whether there have been any judicial decisions punishing the perpetrators of enforced disappearances for the offence of enforced disappearance and not for other crimes such as homicide.

[C]: The Committee observes that no information was provided by the State party with regard to training for State officials. The Committee, while reiterating its recommendation, requests the State Party, when submitting information in accordance with paragraph 42 of its previous concluding observations (CED/C/URY/CO/1), to provide information on the measures taken to ensure that all State officials, including judges and prosecutors, receive appropriate and specific training on the Convention and the obligations incumbent on States that have ratified it.

**Paragraph 22: The Committee encourages the State party to adopt swiftly the proposed amendments to the Code of Criminal Procedure, to ensure that they are fully in line with its obligations under the Convention, and to allow the victims of enforced disappearance to participate fully in judicial proceedings relating to the investigation of such an offence. The Committee also urges the State party to ensure that article 13 of Act No. 18026 is applied in accordance with the definition of victim contained in article 24, paragraph 1, of the Convention. The Committee also invites the State party to consider establishing a specialized unit under the Public Prosecution Service or other competent body, with staff specifically trained to investigate cases of alleged enforced disappearance, to pursue investigations and coordinate criminal prosecution policy in this field.**

**Summary of State party's reply**

The plan to modify the Code of Criminal Procedure is currently being examined by the parliament.

The plan sets forth a new criminal procedure system, based on an oral and accusatory system with public hearings. The reform will also involve major changes to the Public Prosecutor's Office.

Even if the new Code of Criminal Procedure is adopted by the current Parliament before 2015, the Supreme Court envisages that its implementation and transition into the new system will take at least three years. It will therefore also be necessary to adopt a new budget law for the period 2015–2019.

**Committee's evaluation**

[B]: The Committee, while taking note of the information provided on the current status of the project to amend the Code of Criminal Procedure and of the implications of the implementation of a new code, including the planned time frame for its adoption, would appreciate receiving additional information on the measures taken to implement its recommendation. The Committee therefore requests the State party to indicate, when submitting information in accordance with paragraph 42 of its previous concluding observations (CED/C/URY/CO/1), what measures have been taken, and their results, to ensure that the new Code of Criminal Procedure is fully in line with the obligations arising from the Convention and allows victims of enforced disappearances to participate fully in judicial proceedings relating to the investigation of such an offence. In the event that the new Code has been approved by the time of submission of the above information, the Committee would like to receive detailed information about the provisions relating to the implementation of its recommendation.

*Uruguay*

**[C]:** The Committee observes that no information has been provided on measures taken to implement its recommendation regarding the definition of “victim”. The Committee therefore reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 42 of its previous concluding observations (CED/C/URY/CO/1), to indicate whether any measures have been taken to ensure that article 13 of Act No. 18026 is applied in accordance with the definition of “victim” contained in article 24, paragraph 1, of the Convention, such as training of relevant stakeholders, and whether there have been any judicial decisions or decisions of any other nature in this respect.

**[B]:** The Committee welcomes the information provided in paragraph 26 of the State party’s follow-up report according to which, as part of the overhaul of the Public Prosecution Service in line with the implementation of the new Code of Criminal Procedure, the State Party is expected to establish units that will specialize in enforced disappearances. The Committee requests the State party, when submitting information in accordance with paragraph 42 of its previous concluding observations (CED/C/URY/CO/1), to provide further information on the specialized units, including their mandates, date of establishment, and the training on investigations into enforced disappearances to be provided to their staff.

**Paragraph 36: The Committee recommends that, in accordance with article 25, paragraph 4, of the Convention, specific procedures should be established for the review and, where appropriate, the annulment of adoptions or placements that originated in an enforced disappearance, as well as procedures which take into account the best interests of the child and, in particular, recognize the child’s right to be heard if he/she is capable of forming his or her own views.**

#### **Summary of State party’s reply**

Under Act No. 17894 of September 2005, persons whose disappearance in Uruguay was confirmed by the Peace Commission established in August 2000 were declared “missing due to enforced disappearance”, making it possible to start proceedings to settle the estate of a missing person, in accordance with article 1037 of the Civil Code.

As part of the overhaul of the Public Prosecution Service in line with the implementation of the new Code of Criminal Procedure, the State Party is expected to establish special enforced disappearances units in the Public Prosecution Service. This will involve the introduction of specific procedures and specialized units for such cases, with all that that implies, especially with regard to cases of adoption which may be related to cases of enforced disappearance.

#### **Committee’s evaluation**

**[B]:** The Committee, while taking note of the information provided, considers that more information is necessary to enable it to properly assess the implementation of its recommendation. The Committee, recalling its recommendation, therefore requests the State party, when submitting information in accordance with paragraph 42 of its previous concluding observations (CED/C/URY/CO/1), to:

(a) Provide information about the potential impact of the introduction of the specific procedures and specialized units to be established under the Public Prosecutor’s Office, in terms of the review or annulment of adoptions or placements originating from enforced disappearances;

(b) Indicate what measures have been taken under civil law to establish specific legal procedures for the review and, where appropriate, the annulment, of adoptions or placements originating from enforced disappearances.

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**Action to be taken**

A letter should be sent to the State party reflecting the Committee's evaluation.

**Follow-up information on the implementation of all the recommendations to be submitted by:** 19 April 2019

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