



**International Convention for the  
Protection of all Persons from  
Enforced Disappearance**

Distr. General  
7 February 2013  
English  
Original: French

---

**Committee on Enforced Disappearances**

**Consideration of reports of States parties under  
article 29 of the Convention**

**Reports of States parties under article 29, paragraph 1,  
of the Convention due in 2012**

**France\***

[21 December 2012]

---

\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	3
II. Framework under which enforced disappearances are prohibited .....	6–21	3
A. Adaptation of domestic law .....	6–12	3
B. Cases of enforced or involuntary disappearance in France and implementation of provisions for the prevention and prosecution of that crime.....	13	5
C. Promotion of the Convention.....	14–21	5
III. Implementation of the provisions of the Convention .....	22–218	6
Article 1. Non-derogable prohibition of enforced disappearance .....	22–31	6
Article 2. Definition of enforced disappearance.....	32–36	7
Article 3. Investigation.....	37–40	8
Article 4. Creation of the offence.....	41	9
Article 5. Crime against humanity .....	42–45	9
Article 6. Criminal liability provisions.....	46–51	9
Article 7. Appropriate penalties .....	52–53	10
Article 8. Statute of limitations .....	54–57	11
Article 9. Competence.....	58–60	11
Article 10. Remand in custody .....	61–67	12
Article 11. Obligation to extradite or prosecute .....	68–74	13
Article 12. Complaints and investigation .....	75–84	14
Article 13. Extradition.....	85–90	16
Article 14. Mutual legal assistance.....	91–93	17
Article 15. International cooperation.....	94	17
Article 16. Non-refoulement .....	95–101	17
Article 17. Prohibition of secret detention .....	102–157	18
Article 18. Information on persons deprived of liberty .....	158–162	27
Article 19. Protection of personal data.....	163–169	27
Article 20. Restrictions on the right to information.....	170–171	28
Article 21. Release .....	172–175	29
Article 22. Sanctions for obstruction and failures related to the duty to provide information.....	176–177	29
Article 23. Training.....	178–183	30
Article 24. Rights of victims .....	184–187	30
Article 25. Children.....	188–198	31

## I. Introduction

1. The International Convention for the Protection of all Persons from Enforced Disappearance (hereafter “the Convention”) was adopted by the United Nations General Assembly on 20 December 2006, opened for signature in Paris on 6 February 2007 and ratified by France on 23 September 2008. It entered into force on 23 December 2010, 30 days after the deposit of the twentieth instrument of ratification or accession and was published under Decree No. 2011-150 of 3 February 2011, contained in the French *Journal officiel* of 6 February 2011.

2. France attached to its signature a declaration formulated on 9 December 2008 to the effect that it recognizes, in accordance with articles 31 and 32 of the Convention, the competence of the Committee on Enforced Disappearance to receive and consider communications from or on behalf of individuals or from a State party, claiming that France has not fulfilled its obligations under the Convention.

3. This report is submitted to the Committee on Enforced Disappearance (hereafter “the Committee”), established under article 26 of the Convention, in accordance with article 29, paragraph 1, stipulating that States parties shall report on the measures taken to give effect to their obligations under the Convention, within two years after its entry into force for the State party concerned.

4. The form and content of the report comply with the guidelines adopted by the Committee at its second session (26–30 March 2012).<sup>1</sup> Moreover, the report will be supplemented and accompanied by a “common core document”, currently being drafted, respecting the harmonized guidelines on reporting to treaty bodies under the international human rights instruments.<sup>2</sup>

5. Lastly, it has been duly noted that, after considering the report, the Committee may issue comments and observations to be communicated to the State party in accordance with article 29, paragraph 3, and request it to provide additional information according to article 29, paragraph 4.

## II. Framework under which enforced disappearances are prohibited

### A. Adaptation of domestic law

6. As is explained below, French law remains largely unaffected by the ratification and entry into force of the Convention, most of whose provisions are already reflected in the country's legislation.

7. That normative framework is comprehensive and includes a number of international instruments, to which France is party and which by virtue of their subject directly contribute to the prevention of enforced disappearances. Those instruments include in particular the following:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950, whose judicial oversight body, the

---

<sup>1</sup> CED/C/2.

<sup>2</sup> HRI/GEN/2/Rev.6.

European Court of Human Rights, has declared itself competent to hear cases of enforced disappearance on the grounds of article 2 (on the right to life) of ECHR;<sup>3</sup>

- International Covenant on Civil and Political Rights of 16 December 1966;
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, establishing the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), entitled to unlimited access to places of detention and having to date carried out 11 visits in France;
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the Optional Protocol thereto of 18 December 2002, under which the General Inspectorate of Places of Deprivation of Liberty (CGLPL) has been set up as the national mechanism for the prevention of torture;
- Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, insofar as these Conventions empower the International Committee of the Red Cross (ICRC) to visit prisoners of war;
- Rome Statute of 17 July 1998 on the creation of the International Criminal Court (ICC), article 7 of which characterizes enforced disappearances, when committed as part of a widespread or systematic attack directed against any civilian population and with knowledge of the attack, as a crime against humanity.

8. In fact, the only provisions of the Convention which require amendments to French criminal law are those concerning:

- Definition of enforced disappearance as a separate offence (articles 2, 4 and 6, paragraph b (i)) of the Convention);
- Specification of the criminal penalties by which the crime in question shall be punishable (article 7, paragraph 1, of the Convention);
- Specification of a term of limitation for criminal proceedings in accordance with the prescriptions of article 8, paragraph 1, of the Convention;
- Establishment of the quasi-universal competence of French courts through the addition of the Convention to the list of instruments referred to in article 689-1 of the Criminal Code (article 9, paragraph 2, of the Convention);
- Adoption of the principle of “extraditing or prosecuting” (*aut dedere, aut iudicare*) (article 11 of the Convention).

9. A bill on the alignment of French criminal law with obligations under the Convention has been drawn up in order to adapt domestic legislation to the Convention. The initial version of the draft was transmitted in early 2011 for comment to the National Consultative Commission on Human Rights (CNCDH), which submitted its observations in a note dated 1 March 2011.

10. The bill was brought before the Senate on 11 January 2012 under No. 250 and has not yet been placed on the agenda of that body.

11. Regretting that it has not yet been possible to introduce that legislative reform and resolved to make every effort to ensure that the bill is adopted in good time, the French Government undertakes to notify the Committee as soon as the act is promulgated and

---

<sup>3</sup> Grand Chamber judgement of 18 September 2009 in the case of *Varnava and Others v. Turkey*.

hopes that an exchange of views on the scope and content of the amendments thus adopted will ensue in accordance with article 29, paragraphs 3 and 4, of the Convention.

12. In the meantime, this report presents the provisions of the bill as it currently stands, it being understood that amendments may be made to the act in the course of parliamentary debate.

## **B. Cases of enforced or involuntary disappearance in France and implementation of provisions for the prevention and prosecution of that crime**

13. To the Government's knowledge, no criminal proceedings for enforced disappearance within the meaning of the Convention have been instituted in France.

## **C. Promotion of the Convention**

14. France has been fully engaged, for many years, in combating enforced disappearances.

15. France initiated resolution 33/173, the first on disappeared persons, adopted by the General Assembly of the United Nations on 20 December 1978; and chaired the negotiations related to the Declaration on the Protection of all Persons from Enforced Disappearance of 18 December 1992, adopted by the General Assembly of the United Nations through resolution 47/133.

16. The first binding instrument on the issue was drawn up in 1998 by a French expert, Louis Joinet. Moreover, by chairing a working group set up by the United Nations Commission on Human Rights to prepare a draft convention for the protection of all persons from enforced disappearance, France played a leading role in the preparation of an instrument meeting the need for justice expressed by the associations of victims and, at the same time, satisfying the international community as a whole.

17. In accordance with the relevant General Assembly resolution and as a sign of recognition of the key role played by France during more than 25 years with regard to this issue, the signing ceremony for the Convention was exceptionally held in Paris.

18. France ratified the Convention on 23 September 2008. It also recognized the competence of the Committee to receive and consider the communications referred to in articles 31 and 32 thereof.

19. France actively promotes universalization of the Convention and, through an informal group of States ("Group of Friends of the Convention") and the European Union, has carried out a number of campaigns, aiming to increase the number of signatories among the Member States of the United Nations and urging the States that have signed the Convention to ratify it.

20. France advocates strengthening the relevant international mechanisms by calling upon the States parties to the Convention to recognize the competence of the Committee and cooperate with it; and by supporting the activities of the Human Rights Council Working Group on Enforced or Involuntary Disappearances and of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, appointed by that Council. With Argentina's pertinent, explicit and unwavering support, France has initiated various resolutions, which have been presented to and adopted by the General

Assembly of the United Nations<sup>4</sup> and the Human Rights Council<sup>5</sup> with a view to promoting the fight against enforced disappearances.

21. Having reaffirmed its commitment to combating enforced disappearances as recently as 24 September 2012 during the high-level meeting on the rule of law, France supports, organizes and regularly participates in events related to that issue, and backs relevant action by civil society, particularly the International Coalition against Enforced Disappearances.

### **III. Implementation of the provisions of the Convention**

#### **Article 1**

#### **Non-derogable prohibition of enforced disappearance**

22. No legislative or regulatory provision adopted by France authorizes any enforced disappearance.

23. Enforced disappearance constitutes a manifestly unlawful act which admits of no excuse, as laid down in article 122-4, second paragraph, of the Criminal Code, according to which “a person shall not be criminally liable for performing any act ordered by a legitimate authority unless the act is manifestly unlawful.”

24. In addition, article 28 of the Act of 13 July 1983 relieves any civil servant of his or her obligation to carry out instructions of a superior official “in the event that the order given is manifestly unlawful and may seriously undermine a public interest”; and article L.4122-1 of the Defence Code provides that “military personnel must obey the orders of their superior officers and are responsible for executing the missions entrusted to them. However, they may not be ordered to perform and may not perform acts that are contrary to the law, the customs of war or international conventions”.

25. Accordingly, any civil servant or member of the military has the right and obligation not to obey any order to commit or in any manner participate in the crime of enforced disappearance, such an order being manifestly unlawful.

26. Generally speaking, where in exercising its powers the administration performs an act that seriously and manifestly infringes a fundamental freedom, the case may be brought before an administrative court through the procedure of an urgent application for the protection of such a freedom (*référé liberté*). According to that procedure, the urgent applications judge may, within 48 hours, order any measure required to safeguard a freedom, including a stay of execution of the unlawful measure or an injunction against the administration. In addition to such legality reviews, acts of the administration that seriously infringe a fundamental freedom and are clearly not warranted by any of the administration's prerogatives constitute manifestly unlawful action subject to the jurisdiction of ordinary courts in their capacity as custodians of individual freedoms.

27. Moreover, no state of emergency or exceptional circumstances may justify committing enforced disappearance.

28. Under Act No. 55-385 of 3 April 1955, a state of emergency may be declared solely in the case of imminent danger caused by grave violations of public order or in case of events having, in view of their nature and gravity, the character of a public disaster. Declared by decree adopted by the Cabinet, the state of emergency confers on the civil authorities, in the geographical area to which it applies, emergency law-enforcement

---

<sup>4</sup> Resolutions 65/209, 64/167, 63/186 and 61/177 adopted by the General Assembly in recent years.

<sup>5</sup> Human Rights Council 21/4, 10/10 and 7/12.

powers to regulate the movement and stay of persons, close public spaces and requisition weapons. The decree establishing a state of emergency may strengthen the powers of the police to carry out searches and monitor the means of information. However, that exceptional procedure in no way permits recourse to enforced disappearances as defined in article 2 of the Convention. In fact, the decree in question and any measures taken by virtue thereof may be reviewed by the administrative courts. In addition, the state of emergency may be extended beyond 12 days only by an Act determining its definitive duration.

29. A state of emergency has been declared only five times: three times in the former French departments of Algeria (in 1955, 1958 and 1961), once in New Caledonia (in 1984) and once in the Paris region (in 2005).

30. The provisions on the state of siege and on emergency powers of the President of the Republic in the event of a serious threat to the Nation's independence may under no circumstances be interpreted as authorizing State authorities to resort to enforced disappearances.<sup>6</sup> These two sets of provisions, the first never implemented since the Second World War and the second used only once, more than 50 years ago, relate to the eventuality envisaged in article 15, paragraph 1, of ECHR and are brought to the Committee's attention solely for the sake of completeness of information but any recourse to them is highly unlikely.

31. Lastly, in other cases, no exceptional circumstance may be used as an excuse by the State or its agents for committing enforced disappearances. According to the legal doctrine of exceptional circumstances, which was developed by the administrative courts in specific wartime situations and was applied mostly to cases arising in the wake of the two world wars, abrupt, serious, unforeseen and persistent occurrences may be regarded as legitimate grounds for measures affecting the powers of authorities, compliance with procedures and the contents of legislation. Yet such measures are deemed to be legitimate only if the actor is unable to comply with the legal rules in force, and if the act considered is undertaken in the general interest given the needs of the moment. In view of such implementation criteria, the doctrine of exceptional circumstances may under no circumstances serve to justify enforced disappearances within the meaning of article 1 of the Convention.

## **Article 2**

### **Definition of enforced disappearance**

32. Draft Act No. 250 on various criminal law and criminal procedure provisions reflecting France's international commitments adds a new chapter 1 *bis*, "Offences against persons which involve enforced disappearance", to Criminal Code book II, "Offences against persons".

33. Enforced disappearance is defined at the beginning of the new chapter, in the form of a new article 221-12, worded as follows:

---

<sup>6</sup> A state of siege, provided for in article 36 of the Constitution and in the Acts of 9 August 1949 and 3 April 1878, may be declared only in case of imminent danger arising from a foreign war or armed insurrection. In the twentieth century, it has been used only twice, during the First World War and, more briefly, in 1939. The "emergency powers" are those envisaged in article 16 of the Constitution in case the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are resolutions under serious and immediate threat, or the proper functioning of the constitutional public authorities is interrupted. Any measures taken by virtue of such powers must be guided by the will to restore the constitutional order and must be communicated to the Constitutional Council which, after a period of 30 days, may decide whether such powers are to be maintained. Article 16 was implemented only once, in 1961.

- Article 221-12. – An enforced disappearance consists in the arrest, detention, abduction or any other form of deprivation of liberty of a person, in conditions precluding protection under the law, by one or more agents of the State or by a person or group acting with the authorization, support or acquiescence of State authorities, where such misconduct is followed by the person's disappearance, a refusal to acknowledge such deprivation of liberty, or concealment of the fate reserved to that person or his or her whereabouts;
- Enforced disappearance shall be punished with rigorous imprisonment for life;
- The first two paragraphs of article 132-23 relating to the safety period shall apply to the crime specified in this article.

34. Apart from certain stylistic variations without legal effect, the above definition is strictly identical to the one contained in article 2 of the Convention.

35. Under the same bill, “enforced disappearance”, as defined above, shall be added to article 212-1 of the Criminal Code as one the acts constituting crimes against humanity if carried out as part of an organized campaign against a section of the civilian population in the framework of a generalized or systematic attack. The definition in question will replace the one currently provided in paragraph 9 of that article, which reflects article 7 of the Rome Statute and is worded as follows: “arrest, detention or abduction of persons, followed by a refusal to acknowledge such deprivation of liberty or by concealment of the fate reserved to that person or his or her whereabouts, with the intention of placing him or her outside the protection of the law over a prolonged period”.

36. The bill thus unifies the definition of the crime of enforced disappearance, whether committed as a stand-alone offence or as a crime against humanity, and enshrines the meaning formulated in the Convention in broader terms than in the Rome Statute.

### **Article 3 Investigation**

37. If committed by persons or groups of persons acting without the authorization, support or acquiescence of the State, the offences referred to in article 2 do not constitute “enforced disappearance” but are criminalized under French law as terrorist acts within the meaning of article 421-1 of the Criminal Code or as kidnapping and unlawful detention provided for and punished under article 224-1 of the Criminal Code.

38. Under article 421-1 of the Criminal Code, “the following offences shall constitute acts of terrorism if committed intentionally as part of an individual or collective undertaking the purpose of which is seriously to disturb public order through intimidation or terror: (1) wilful attacks on life, wilful attacks on the physical integrity of persons, abduction and unlawful detention, and the hijacking of aircraft, vessels or any other means of transport, defined in book II of this Code ...”.

39. Unless they involve terrorist acts, such offences constitute abduction and unlawful detention under ordinary law and are provided for and punishable under Criminal Code article 224-1 as follows: “Save in the cases provided for by law, the arrest, abduction, detention or imprisonment of a person without an order from an established authority shall incur 20 years' rigorous imprisonment.”

40. As any criminal offence, the above acts are subject to investigative measures provided for in the Code of Criminal Procedure.



## **Article 4**

### **Creation of the offence**

41. As mentioned in the observations relating to article 2, a new article 221-12 in draft Act No. 250 characterizes enforced disappearance as a specific offence to be prosecuted as a crime punishable with rigorous imprisonment for life.

## **Article 5**

### **Crime against humanity**

42. Act No. 2010-930 of 9 August 2010 on the adaptation of criminal law to the institution of the International Criminal Court introduced a provision characterizing enforced disappearances as a crime against humanity if perpetrated, in time of peace or war, as part of a concerted plan.

43. As currently worded, article 212-1, paragraph 9, of the Criminal Code provides that “any one of the following acts, if carried out as part of a concerted plan against a section of the civilian population in the framework of a generalized or systematic attack, shall constitute a crime against humanity, punishable with rigorous imprisonment for life: ... (9) arrest, detention or abduction of persons, followed by a refusal to acknowledge such deprivation of liberty or by concealment of the fate reserved to that person or his or her whereabouts ...”.

44. When draft Act No. 250 is adopted, the above article 212-1, paragraph 9, which reflects article 7 of the Rome Statute, will be replaced with a description of the crime of enforced disappearance as defined in the new article 221-12 of the Criminal Code.

45. Lastly, characterizing enforced disappearance as a crime against humanity implies that:

- Perpetrators shall incur the additional penalties stipulated in articles 213-1, 213-2 and 213-3 for all crimes against humanity;
- The related criminal proceedings and sentences shall not be subject to limitation, in accordance with article 213-5 of the Criminal Code.

## **Article 6**

### **Criminal liability provisions**

46. Article 121-4 of the Criminal Code characterizes the attempt to commit (as distinguished from the commission of) any criminal offence as a crime. Under articles 121-6 and 121-7, complicity in an offence automatically incurs the same penalty as the commission. According to French law, the accomplice to an offence is punishable as a perpetrator.

47. Moreover, the definition of an accomplice is quite broad, encompassing any person who knowingly, by aiding and abetting, facilitates the preparation or commission of an offence or who, by means of a gift, promise, threat, order or abuse of authority or power, incites the commission of an offence or gives instructions to commit it.

48. No specific provision is therefore required in the case of the crime of enforced disappearance.

49. Regarding criminal liability of superior officials, draft Act No. 250 adds to the Criminal Code a new article 221-13, worded as follows: “Without prejudice to the

provisions of article 121-7, any superior official who has known or deliberately neglected to take account of information indicating clearly that his or her subordinates were committing or would commit a crime of enforced disappearance and who has failed to take all necessary and reasonable measures within his or her power to prevent or punish its commission or to report it to the competent authorities for purposes of investigation and prosecution although that crime was related to activities occurring under his or her actual responsibility or supervision shall be regarded as an accomplice to the crime of enforced disappearance under article 221-12, committed by subordinates placed under his or her actual authority and supervision.”

50. That formulation is identical to the wording of Criminal Code article 213-4-1, which stipulates in the same terms the complicity of the superior official in all crimes against humanity.

51. Lastly, as to the impossibility of invoking any order to justify a crime of enforced disappearance, reference is made to the provisions of article 122-4 of the Criminal Code, article 28 of the Act of 13 July 1983 on the rights and obligations of civil servants and article L.4122-1 of the Defence Code, which are cited above, in the observations related to article 1 of the Convention.

## **Article 7**

### **Appropriate penalties**

52. In addition to the penalty of rigorous imprisonment for life stipulated in article 221-12 to be added to the Criminal Code, draft Act No. 250 provides that the perpetrators of enforced disappearance shall be liable to additional penalties as follows, under articles 221-14 to 221-17, also to be added to the Criminal Code:

- Article 221-14. – Individuals guilty of the crime specified in article 221-12 shall also incur the following penalties:
  - (1) Forfeiture of civic, civil and family rights, in the manner determined in article 131-26;
  - (2) Disqualification, in the manner determined in article 131-27, from exercising public functions, any professional or social activity, in the course of or in connection with which the offence was committed, or any commercial or industrial occupation; and from directing, administrating, managing or supervising in any capacity, directly or indirectly, for their own account or on behalf of others, any commercial or industrial enterprise or any trading company, whereby such disqualifications may be imposed consecutively;
  - (3) Prohibition to enter a particular area, in the manner determined in article 131-31;
  - (4) Prohibition to possess or carry, for a period no longer than five years, any weapon for which an authorization is required;
  - (5) Confiscation of one or more weapons owned by or available to them;
  - (6) Confiscation as prescribed in article 131-21;
- Article 221-15. – Individuals guilty of the crime specified in article 221-12 shall also be subject to socio-judicial monitoring in the manner determined in articles 131-36-1–131-36-13;

- Article 221-16. – Any alien guilty of the crime specified in article 221-12 may be banished from the French territory definitively or for a period of up to 10 years under the conditions laid down in article 131;
- Article 221-17. – Legal entities declared criminally liable, under the conditions laid down in article 121-2, for the crime specified in article 221-12 shall incur, in addition to the fine imposed as prescribed in article 131-38, the penalties referred to in article 131-39.

53. However, the bill establishes no mitigating or aggravating circumstances. Actually, under article 7, paragraph 2, of the Convention, such a provision is optional. Moreover, there would be little scope for aggravating circumstances, since the maximum quantum on the national scale of penalties is already provided for. Lastly, the judge may always take extenuating circumstances into consideration even if the law does not contain any specific provision to that effect.

## **Article 8**

### **Statute of limitations**

54. Draft Act No. 250 provides for adding to the Criminal Code a new article 221-18, worded as follows: “Prosecution for the crime [of enforced disappearance] defined in article 221-12 and the penalties imposed lapse by limitation after 30 years”, while the limitation period in criminal matters under ordinary law is 10 years. In addition, where it constitutes a crime against humanity, enforced disappearance is not subject to limitation.

55. Furthermore, according to criminal case law, the limitation period for a continuing crime (or continuing offence) commences only at the termination of the crime (or offence), namely on the day on which its “*actus reus* and its effects” ended (Cass. crim. (Criminal Division of the Court of Cassation), 19 February 1957: *Bull. crim.* 1957, No. 166).

56. Consequently, no legislative provision seems necessary in order to give full effect to article 8, paragraph 1 (b), of the Convention.

57. Lastly, regarding the right of victims of enforced disappearance to effective remedy throughout the limitation period, French law entitles them, in addition to lodging an ordinary complaint with the public prosecutor, to have recourse to the particularly effective procedure of lodging a complaint in combination with bringing criminal indemnification proceedings and thereby ensuring the referral of the case to an investigating judge.

## **Article 9**

### **Competence**

58. French law establishes the competence of national courts to hear crimes of enforced disappearance under the three types of circumstances listed in article 9, paragraph 1, namely:

- Where the offence is committed in the national territory, on board a ship or aircraft registered in France, or even, under certain conditions, on board an aircraft or ship registered in another State in accordance with the provisions of article 113-11 of the Criminal Code: “Subject to the provisions of article 113-9, French criminal law shall be applicable to indictable offences committed on board or against aircraft not registered in France: (1) where the perpetrator or victim is a French national; (2) where the aircraft lands in France after the commission of the felony or misdemeanour; (3) where the aircraft was leased without crew to an individual or a

legal entity whose main place of business, or failing this, whose permanent residence is in French territory (...);

- Where the presumed perpetrator is a French national, in accordance with Criminal Code article 113-6, first and third paragraphs, under which: “French criminal law shall be applicable to any crime committed by a French national outside the territory of the French Republic. (...) The present article shall apply even if the offender acquired French nationality after the commission of the offence of which he or she is accused”;
- Where the victim is a French national, in accordance with Criminal Code article 113-7, under which: “French criminal law shall be applicable to any indictable offence punishable by imprisonment and committed by a French or foreign national outside the national territory, if the victim was a French national at the time of the offence”.

59. In connection with the quasi-universal competence stipulated in article 9, paragraph 2, of the Convention, draft Act No. 250 classifies enforced disappearance as one of the offences with regard to which article 689-1 of the Code of Criminal Procedure provides as follows: “In accordance with the international Conventions referred to in the following articles, any person who is in France and has committed outside the national territory an offence listed in those articles may be prosecuted and tried in a French court. The provisions of this article shall apply to attempts to commit such offences, provided the attempt is punishable.”

60. This addition will take the form of a new article 689-13, worded as follows: “Article 689-13. – For the application of the International Convention for the Protection of all Persons from Enforced Disappearance, adopted in New York on 20 December 2006, any person guilty of or accomplice to a crime defined in article 212-1 (9) or article 221-12 of the Criminal Code, when such offence constitutes enforced disappearance within the meaning of article 2 of the said Convention, may be prosecuted and tried under the conditions provided for in article 689-1.”

## **Article 10**

### **Remand in custody**

61. In France, a person indicted for one or more criminal acts may be remanded in custody within the framework of national, surrender or extradition proceedings, in accordance with the legislation in force, pursuant to a decision of the competent judicial authority.

62. In criminal cases, remand in custody may be ordered only within the framework of a judicial investigation, and the inquiry must be led by an investigating judge.

63. In the event of remand in custody ordered within the framework of a procedure of surrender (in view of a European arrest warrant or a request for surrender to an international court) or extradition, it is not up to the French authorities to conduct any preliminary inquiry or investigations.

64. Anyone remanded in custody is entitled to consular protection guaranteed by article 36 of the Vienna Convention on Consular Relations of 24 April 1963, under conditions recalled and clarified by a circular of the Minister of Justice, dated 18 September 2007.

65. Lastly, according to French law, court supervision and compulsory residence under electronic surveillance (ARSE) may be used as alternatives to remand in custody.

66. Article 138 of the Code of Criminal Procedure defines court supervision as a coercive measure authorizing the imposition of one or more obligations on a person awaiting trial if he or she is accused of an offence punishable by imprisonment. The possibilities of ARSE were added to article 142-5 of the Code of Criminal Procedure under the Act of 24 November 2009.

67. If necessary, these provisions may be used to “ensure the presence” of a person suspected of enforced disappearance within the meaning of article 10, paragraph 1, of the Convention.

## **Article 11**

### **Obligation to extradite or prosecute**

68. Under article 11, paragraph 1, of the Convention, enforced disappearances shall be subject to the principle of “extraditing or prosecuting”.

69. As mentioned above, draft Act No. 250 provides for the addition of enforced disappearance to the list of the crimes in respect of which French courts enjoy quasi-universal competence, which allows them, by virtue of article 689-1 of the Code of Criminal Procedure, to prosecute and try any person who is in France and has committed outside the national territory certain offences prohibited by an international treaty.

70. In addition to those cases, specific provisions establishing the principle of “extraditing or prosecuting” were introduced into the Criminal Code under Act No. 2004-204 of 9 March 2004 on adapting justice to crime trends.

71. In order to make it possible to try persons whose extradition has been refused, article 113-8-1 added to the Criminal Code under the above Act provides as follows:

- Without prejudice to the application of articles 113-6–113-8, French Criminal law shall be applicable to, inter alia, any indictable offence carrying at least five years' imprisonment and committed outside the national territory by an alien whose extradition to the requesting State has been refused by the French authorities either because the offence for which the extradition has been requested is subject to a penalty or preventive measure contrary to French public policy, or because the person in question has been tried in the aforesaid State by a court which does not respect basic guarantees of due process and protection of the rights of the defence, or because the act in question constitutes a political offence;
- Prosecution for the offences set out in the first paragraph may only be initiated at the request of the public prosecutor. It must be preceded by an official complaint, transmitted by the Minister of Justice, from the authorities of the country where the offence has been committed and which has requested the extradition.

72. Discussions are in progress with a view to amending the above article so as to align it fully with the new provisions of the Convention, by taking into account that:

- First, since extradition may be refused on grounds other than those referred to in article 113-8-1 (in particular, age, the state of health of the person prosecuted, or a risk of violating articles 2, 3 or 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)), it may be preferable to delete any reference to grounds for refusing extradition;
- Second, requiring a prior official complaint by the authorities of the country where the act was committed as a precondition for prosecution may paralyze the proceedings, especially in case of crimes, such as enforced disappearances, which

are committed under the State's authority or with its acquiescence and for which therefore the official complaint required may never be filed.

73. Without prejudice to any forthcoming amendments to article 113-8-1, let it be stressed that any prosecution under that article is based on ordinary law and is not subject to any special provision or exception, in line with article 11, paragraph 2.

74. Lastly, any person prosecuted for an indictable offence is guaranteed equitable treatment at all stages of the proceedings; and any person tried in France is entitled to a fair trial before a competent, independent and impartial court of law established according to the law. It is incumbent upon the national courts and the European Court of Human Rights to ensure strict respect for that right in line with article 6, paragraph 1, of ECHR, whose content is similar to that of article 12, paragraph 3, of the Convention.

## **Article 12**

### **Complaints and investigation**

75. French law guarantees any person's right to file a complaint with the police department, which is obliged to receive the complaint and transmit it to the competent service. Article 15-3 of the Code of Criminal Procedure provides as follows: "The police shall be obliged to receive complaints by victims of violations of criminal law and transmit them, if necessary, to the police service or unit competent for the area concerned. / An official record shall be drawn up for any such report of an offence and a receipt shall be immediately issued to the victim. Upon request, the victim shall be immediately provided with a copy of the record."

76. Moreover, under criminal law, any person may, without any restriction or condition, lodge a complaint in combination with bringing criminal indemnification proceedings and thereby ensure the referral of the case to an independent investigating judge, in accordance with article 85 of the Code of Criminal Procedure, under which: "Any person claiming to have suffered harm from an indictable offence may, in filing a complaint, bring criminal indemnification proceedings before the competent centre of investigating judges in accordance with articles 52, 52-1 and 706-42".

77. In addition to these provisions of the Code of Criminal Procedure, which extend the scope of prosecution in line with article 12, paragraph 1, practical rules and instructions aim to ensure that the victims receive the required attention. Thus, the Act of 29 August 2002 on internal security guidelines and planning recalls that "receiving, informing and assisting victims constitute a priority for the internal security services"; specifies the conditions under which the police and the gendarmerie must fulfil their obligation to receive a complaint from any victim of a violation of criminal law, regardless of where the offence was committed or where the victim is domiciled; and affirms the victim's right to file a complaint with the police station or gendarmerie unit of his or her choice. This right is reaffirmed in the public information and victim assistance charter displayed in all police and gendarmerie offices and stating, in article 6, that "any report of disappearance of a person shall receive special attention and be handled immediately".

78. In every departmental public security directorate, a departmental "victim assistance" coordinator is responsible for developing relations with relevant associations, improve reception conditions and centralize useful information. Moreover, appropriate action is undertaken through 125 social facilitator posts attached to police stations and gendarmerie units throughout the territory, while psychologists occupying 37 posts in police stations attend the victims and perpetrators of acts of violence (data for 2010).

79. Victims are effectively provided with shelter and assistance through 150 duty offices set up by victim assistance associations in law-enforcement premises under agreements concluded with the major voluntary action networks, including the National Institute for Victim Support and Mediation (INAVEM). In addition to their main mission of assisting victims, association representatives participate in the initial and continuous training of police and gendarmerie officers in receiving and helping victims of offences. In all cases, after filing a complaint, every victim of a criminal offence is provided with the contact details of a victim assistance association; and an electronic mailbox dedicated to victim assistance is available in every police station.

80. Under the following articles of the Code of Criminal Procedure, measures are in place for witness protection, as necessary:

- Article 706-57: “Persons not suspected on any plausible grounds of having committed or attempted to commit an offence and who can contribute useful evidence to the proceedings may, by authorization of the examining magistrate or public prosecutor, declare their registered address to be that of the police station or gendarmerie.”
- Article 706-58: “In proceedings involving an indictable offence punished by at least three years' imprisonment, where the hearing of a person described in article 706-57 is liable to put his or her life or health or that of his or her family members or close relatives in serious danger, the liberties and detention judge, to whom the case is referred through a reasoned application of the public prosecutor or the investigating judge, may authorise, by reasoned decision, that person's statements to be recorded without his or her identity appearing in the case file for the proceedings. Subject to the provisions of the second paragraph of article 706-60, that decision may not be appealed. The liberty and custody judge may decide to examine the witness personally.
- The liberty and custody judge's decision, making no mention of the person's identity, is attached to the official witness-examination record, in which the signature of the person concerned is omitted. His or her identity and address are entered in another official record signed by that person and placed in a file, separate from the file of the proceedings, containing also the application referred to in the preceding paragraph. The identity and address of the person are entered in a numbered initialled register, established to that end in the district court.”

81. Insofar as it allows prosecutors and police officers to launch an investigation on the basis of any element they deem sufficient, even if no complaint has been filed, French criminal procedure fully complies with the provisions of article 12, paragraph 1, of the Convention.

82. Moreover, the judicial authorities are vested with broad investigative powers (exercised by the prosecutors or the investigating judge), particularly regarding access to places where it is plausible that a victim of enforced disappearance may be held.

83. According to a recent decision of the Constitutional Council, an Act creating places to be treated as classified may not deprive the judicial authorities of access thereto as part of their investigative powers. According to the Council, “by authorizing the classification of certain places as restricted for reasons of national defence and stipulating temporary declassification of such places as a prerequisite for allowing a member of the national legal service to access them for the purpose of search, the legislator reconciled [the protection of

fundamental national interests, including national defence secrets, with the constitutionally affirmed goal of locating offenders] in an unbalanced manner”.<sup>7</sup>

84. Lastly, the provisions for preventing and suppressing any obstruction to justice under articles 434-1 *et seq.* of the Criminal Code, including in particular the following two, fully comply with the prescriptions of article 12, paragraph 4:

- Article 434-4: “Where the purpose is to prevent the discovery of the truth, a penalty of three years' imprisonment and a fine of €45,000 shall apply to: (1) modifying the scene of an indictable offence by the alteration, falsification or obliteration of clues or evidence, or by bringing, moving or removing any item; (2) destroying, purloining, concealing or altering a private or public document or an item that may facilitate the discovery of an offence, the search for evidence or the conviction of offenders. Where the acts provided for under this article are committed by a person who, in view of his or her official duties, has an obligation to contribute to the discovery of the truth, the penalty shall be increased to five years' imprisonment and a fine of €75,000”;
- Article 434-5: “Any threat or other intimidation directed against any person with a view to persuading the victim of an indictable offence not to file a complaint or to retract shall be punished with three years' imprisonment and a fine of €45,000”.

### **Article 13 Extradition**

85. Under article 55 of the Constitution, the provisions of article 13, paragraph 1, of the Convention regarding extradition are directly applicable under domestic law and rank higher than legislative provisions, as the State Council and the Court of Cassation have consistently affirmed when hearing appeals against extradition decrees. Article 696 of the Code of Criminal Procedure clearly underscores the subsidiary character of legislative provisions on extradition, as follows: “In the absence of an international treaty providing otherwise, the conditions, procedure and effects of extradition shall be determined by the provisions of this chapter. These provisions shall also apply to points not regulated by international conventions”.

86. In accordance with article 13, paragraph 3, of the Convention, France shall take steps to include the offence of enforced disappearance as an extraditable offence in any future extradition treaty. Moreover, in line with article 13, paragraph 4, France has already proceeded with extraditions in the absence of an extradition treaty, on the basis of a commitment to reciprocity.

87. Furthermore, articles 696 and 696-3 of the Code of Criminal Procedure already authorize the extradition of a person wanted for offences involving enforced disappearance, provided such offences are punishable under criminal law in the requesting State. Thus, under article 696-3 of the Code of Criminal Procedure, “the offences which may result in requesting or granting extradition are: (1) all offences punishable under the criminal law of the requesting State; (2) offences punished with correctional penalties by the law of the requesting State, where the maximum prison sentence incurred under that law is at least two years, or, in the case of a convicted person, where the sentence imposed by a court of the requesting State is at least two months' imprisonment ...”.

88. These provisions must be read bearing in mind that, since the provisions of the Convention rank higher than the legislative provisions of article 696-3 which apply only “in

---

<sup>7</sup> Constitutional Council, Decision No. 2011-192 QPC of 10 November 2011, paragraph 37.



the absence of an international treaty providing otherwise”, extradition would be possible even on the unlikely assumption that extradition of a suspect for enforced disappearance might be requested by a State whose law punishes such acts with a correctional penalty of less than two years' imprisonment.

89. Lastly, conformity with article 13, paragraph 5, is ensured because the investigating chambers and the State Council, which are responsible for, respectively, authorizing and reviewing the legality of extradition, try to ascertain whether “the request has been made for the purpose of prosecuting or punishing a person on account of his or her gender, race, religion, nationality, ethnic origin, political opinions or membership in a particular social group” or whether “compliance with the request would cause harm to that person on any of those grounds”.

90. For the sake of completeness of information, let it be noted that the French authorities have so far received no extradition request in connection with the offence of enforced disappearance.

#### **Article 14** **Mutual legal assistance**

91. Normally governed by bilateral or multilateral treaties, mutual legal assistance is also possible even in the absence of such an instrument, on the basis of domestic law, provided solely that the foreign authority is ready to reciprocate in comparable cases.

92. Conversely, the provisions of the Code of Criminal Procedure allow members of the national legal service of France, in the absence of a treaty, to address requests to foreign judicial authorities and propose reciprocity.

93. Although ready to cooperate in that area, the French authorities have not yet received any request for mutual assistance in relation to offences involving enforced disappearance.

#### **Article 15** **International cooperation**

94. To this date, the French authorities have received no request for assistance in helping victims of enforced disappearance or in locating or ensuring the release of such persons, nor have the French authorities addressed similar requests to a foreign country.

#### **Article 16** **Non-refoulement**

95. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as interpreted by the European Court of Human Rights in its judgement of 7 July 1989 in the case of *Soering v. the United Kingdom* and, subsequently, by the national courts, prohibits in an absolute manner the deportation of aliens exposed to risks of torture or inhuman or degrading treatment in their country of origin, regardless of the legal basis or form of such deportation (removal, expulsion, extradition or surrender).

96. In accordance with the Court's rulings, protection under article 3 applies when there are “serious and verified grounds for holding that the person concerned would be exposed

to a real risk” of abuse and if it is shown that he or she is personally and specifically exposed to such risks.

97. Such protection is required regardless of the seriousness of the accusations. Thus, in its judgement of 28 February 2008 in the case of *Saadi v. Italy*, the Court firmly rejected the possibility of weighing the gravity of the threat represented by the alien concerned against the risks of abuse that he would incur if he went back. The Court noted that article 3 affirms a fundamental value of democratic societies; is, contrary to most of the normative provisions of ECHR, subject to no restriction; and admits of no derogation under article 15 of ECHR, even in the event of a public emergency threatening the life of the nation.

98. French law reflects these established precedents in article L.513-2 of the Code on the Entry and Residence of Aliens and the Right of Asylum (CESEDA), which provides that “no alien may be deported to a country if he or she proves that, in that country, his or her life or freedom would be in danger or he or she would be at risk of treatment contrary to article 3 of [ECHR]”.

99. Accordingly, the French authorities do not deport aliens who claim exposure to risks if they were to return, without first examining the situation of such persons on a case-by-case basis. In so doing, they consider the overall conditions prevailing in the country concerned according to all available relevant information; and, in detail, the applicant's personal circumstances (inter alia, his or her past activities and relations with the authorities of the country of origin), based on the information supplied by the applicant in the framework of a request for asylum or of *inter partes* proceedings prior to deportation.

100. These basic guarantees are enhanced by safeguards through on quasi-judicial proceedings. In particular, administrative decisions determining the country of destination may be appealed before the administrative courts, which review their compliance with human rights protection instruments and may, through the procedure of an urgent application, order the suspension of the administrative action challenged.

101. Although no court has yet been called upon to decide on the issue, the Government firmly holds that the risk of enforced disappearance of a person in the event of deportation to any country entails inhuman or degrading treatment within the meaning of article 3.

## **Article 17**

### **Prohibition of secret detention**

102. In France, no one may be deprived of liberty otherwise than through a lawful decision and by an authority empowered by the law, in accordance with the provisions of article 5 of ECHR.

103. No provision in French law authorizes secret detention.

104. Depending on the grounds for the relevant decision and on whether it is taken by a judicial or administrative authority, deprivation of liberty is governed by different sets of rules. They are outlined here in light of the provisions of article 17 of the Convention, before a description of the common mechanisms ensuring the legality of deprivation of liberty proceedings regardless of which rules apply.

### **Deprivation of liberty on the basis of judicial decisions**

105. Under article 34 of the French Constitution, the law shall determine the rules concerning, inter alia, the definition of indictable offences, the penalties applicable to them and the relevant criminal procedures. Under article 66 of the Constitution, “no one shall be

arbitrarily detained. The judicial authority, guardian of the freedom of the individual, shall ensure compliance with this principle in the conditions laid down by the law”.

106. Pursuant to these constitutional prescriptions, the law designates the authorities competent to order deprivation of liberty and provides in particular that:

- Placement in police custody shall be ordered by a police officer under the supervision of a member of the national legal service (a prosecutor or examining magistrate);
- Remand in custody shall be ordered by the liberties and detention judge or the investigating chamber;
- Criminal and correctional penalties shall be ordered by the courts of law and enforced by the prosecuting authorities;
- Court supervision shall be ordered by the judge responsible for the execution of sentences.

107. Article 62-2 of the Code of Criminal Procedure defines police custody as “a constraining measure decided by a police officer under the supervision of a judicial authority and aiming to keep available to investigators a person whom there are plausible grounds to suspect of having committed or attempted to commit an indictable offence punishable with imprisonment”. A full account of the rules and guarantees applicable to that measure fall outside the scope of this report.<sup>8</sup> However, under the fourth and fifth paragraphs of article 63-1, a person placed in police custody shall be immediately informed by a senior police officer, or by another member of the police under the supervision of the former, “that he or she is entitled to having a close relative and his or her employer notified, in accordance with article 63-2”. Such notification strictly consists in the specification of the constraining measure and the name of the police department or unit where that person is held. Moreover, he or she must be allowed to designate a counsel, and the family, when one of its members has thus been notified, may request a medical examination. The right to such notification is distinct from the right of the person in custody to one 30-minute interview with the counsel every 24 hours and to counsel assistance during interrogations and face-to-face questioning under article 63-4 of the Code of Criminal Procedure. Under articles 64 and 65 of the same Code, information related to the custody, including release of the person concerned, is recorded in official interrogation reports and in a special register kept to that purpose in any police or gendarmerie premises used for custodial purposes.

108. In the case of remand in custody, freedom of communication is the rule and restrictions to it the exception. Under article 145-4 of the Code of Criminal Procedure, only the investigating judge may ban the detainee from communicating for a period of 10 days, renewable once. Under no circumstances does that ban extend to an indictee's counsel. On principle, any person remanded in custody may be visited at the place of detention with the authorization of the investigating judge. One month after the date of remand in custody, the investigating judge may not refuse to grant a visiting permit to a member of the detainee's family, save by written and specifically reasoned decision related to the requirements of the investigation, subject to review by the president of the investigating chamber who, in the event of a challenge, must resolve the matter by a written and reasoned decision.

109. Such freedom of communication and visit also applies, under still broader terms, to detainees serving a prison sentence pursuant to an irrevocable court decision.

---

<sup>8</sup> For the sake of completeness and to any useful purpose, the Committee is referred to circular NOR JUSD1113979C of 23 May 2011 on the implementation of the provisions related to police custody under Act No. 2011-392 of 14 April 2011 on police custody, annexed hereto.

110. All relevant instances are subject to the provisions of articles D.148 and D.149 of the Code of Criminal Procedure, worded as follows:

- Article D.148: “Every prison shall keep a prison register. / The head of the establishment or, under his or her authority, the official in charge of the registry shall maintain that register and ensure the legality of the detention of the prisoners and the release of those due to be released. / The register shall consist of loose leafs bearing the initial and current register number and classified in a file. / It must be presented for inspection and initialling to the various judicial authorities during each of their visits and to the administrative authorities carrying out a general inspection of the establishment.”;
- Article D.149: “When any person is escorted to a prison by an agent enforcing a judgement or conviction and sentence, a committal, an arrest warrant, a warrant to bring a suspect or indictee before the judicial authorities and then have the suspect remanded in custody or a committal note in due form, a memorandum of imprisonment shall be entered in the register referred to in article D. 148. In that memorandum, the head of the establishment shall note the surrender of that person and record the type, date and issuing authority of the committal order. The memorandum shall be signed by the head of the establishment and the escort officer in charge. / Where subjection to the penalty is voluntary, the head of the establishment shall record in the prison register the sentence or judgement, whose copy has been transmitted by the prosecutor-general or the public prosecutor. / In all cases, a notice of imprisonment shall be provided by the head of the establishment to the prosecutor-general or the public prosecutor, as the case may be ...”.

#### **Administrative detention of illegal aliens**

111. Measures of deprivation of liberty for aliens having entered or staying illegally in the territory consist in placement in a waiting area and placement in administrative detention. These measures apply to distinct situations and are precisely defined by the law and codified in articles L.221-1, L.551-1 *et seq.* of the Code on the Entry and Residence of Aliens and the Right of Asylum (CESEDA). Such placements constitute deprivation of liberty limited in time and subject to the principle, stated in article L.554-1 of CESEDA, that an alien may be held in a waiting area or in detention only for an interval strictly necessary to his or her departure.

112. Placement in a waiting area applies to aliens who have been refused entry into the territory or who have applied for asylum at the border. Aliens who have arrived in France by rail, sea or air and who are either not allowed to enter French territory or are seeking entry on the grounds of asylum may be held in a waiting area located at a railway station open to international traffic, in a port or near the place of disembarkation, or in an airport for an interval strictly necessary to organize their departure or, if they have requested an asylum, to check whether their application is manifestly unfounded.

113. Such placement is ordered for a maximum period of four days by a written and justified decision of the officer in charge of the police or customs border control unit or an official designated by that officer. Extension of such placement beyond four days may be ordered only by the liberties and detention judge and may in no case exceed 20 days.

114. A waiting area, delimited by the departmental prefect and, in Paris, the Metropolitan Police Commissioner, extends from the points of embarkation and disembarkation to those of identity and security checks.

115. Where an application for asylum filed by an alien held in a waiting area is rejected as being manifestly unfounded, a petition for judicial review of the relevant decision may

be filed with the administrative judge. Such a petition has full suspensive effect insofar as its submission prevents the implementation of any deportation measure.

116. Placement in administrative detention applies to aliens subject to deportation if their immediate departure from the French territory is impossible. They are then placed by the administrative authority in non-penal facilities for five days. The measure concerns only aliens in one of a number of situations which are strictly and specifically defined by the law and may be categorized as follows:

- Where an alien must be surrendered to the competent authorities of a member State of the European Union, removed pursuant to a judicial banishment from the territory or removed ex officio pursuant to a prohibition of return;
- Where an alien is the subject of an expulsion order, a non-admission physical description, an enforceable deportation decision, a removal order issued less than three years earlier or a requirement, issued less than a year earlier, to leave French territory if the departure deadline has expired or no such time limit has been granted;
- Where an alien subject to a decision for placement in detention has failed to comply with a deportation measure within seven days after an earlier placement in detention or, having thus complied, has returned to France while that measure was still enforceable.

117. Placement in detention decisions, valid for five days, are taken by the prefect, once an alien has been stopped for questioning. They must be in writing and reasoned and take effect upon notification to the person concerned. The public prosecutor is informed immediately. Extension beyond five days may be ordered only by the liberties and detention judge, up to a maximum period of 45 days.

118. In principle, aliens placed in detention are held in national administrative detention centres whose list is established by decree of the Minister for Justice and published in the *Journal officiel*. Solely under special circumstances and if immediate placement in a centre is not possible, aliens may be placed in administrative detention premises set up by decision of the prefect, for a period that, save in exceptional cases, must not exceed 48 hours. If necessary, the administrative authority may have the alien transferred from one holding facility to another, informing the liberties and detention judge and the public prosecutor of the transfer.

119. The material reception conditions for persons held in detention centres are laid down in a decree dated 30 May 2005. The decree provides for freely accessible telephones. Every holding facility includes an area open under all circumstances, enabling counsels to confer privately with the detained aliens. Consular staff have access to the detention centre by appointment and may, on request and for reasons of privacy, confer without presence of custodial personnel. Although no statutory provisions specify access and visiting conditions for journalists, they may request to meet a detainee in private, according to the rules of access applicable under ordinary law. Areas are available for daily presence of physicians and nurses. The authorities ensure ongoing renovation of the premises in question and the construction of new facilities, in accordance with the above standards. Analogous provisions apply to waiting areas.

120. In every holding facility, daily life is organized in a manner compatible with the dignity and security of detainees according to internal regulations standardized by a decree of 2 May 2006. Under article 20 of that regulation, "detained aliens may be visited by any person at their discretion ...". Instructions dated 1 December 2009 specify a minimum visit duration of 30 minutes, subject to service requirements.

121. The delegate or representatives of the Office of the United Nations High Commissioner for Refugees may visit waiting areas and detention centres under conditions

ensuring effective access to asylum-seekers. However, such access is subject to individual authorizations issued by the minister responsible for asylum questions.

122. Lastly, there are provisions for ensuring that aliens in a detention centre receive care, information, moral and psychological support and assistance in organizing their departure. For the conduct of the relevant activities, the State calls upon the French Immigration and Integration Office (OFII) and upon associations active in the defence of the rights of aliens. Through tender procedures, five associations (the Ecumenical Assistance Group (CIMADE), *France terre d'asile*, the Order of Malta, the Social Services Agency for Assistance to Emigrants and the Immigrant Social Services Agency (ASSFAM) and *Forum réfugiés*) have been tasked with such activities on terms specified in agreements concluded between them and the State.

123. In addition to the above associations, humanitarian bodies may access the holding facilities, subject solely to an authorization issued by a decision of the minister responsible for immigration questions, which is reviewed every year.

### **Deprivation of liberty through placement in a psychiatric hospital**

124. In the event of legal irresponsibility by reason of mental disorder, involuntary placement in one of the psychiatric institutions referred to in article L.3222-1 of the Public Health Code may be ordered solely by the judicial authorities (article 706-135 of the Code of Criminal Procedure), the prefect as State representative (article L.3213-1 of the Public Health Code), and the directors of psychiatric health establishments (article L.3212-1 of the Public Health Code).

125. Regarding placement by order of the judicial authorities, article 706-135 of the Code of Criminal Procedure provides as follows: "In handing down a decision or judgment declaring legal irresponsibility by reason of mental disorder, the investigating chamber or trial court may order, by a reasoned ruling, placement of a person under psychiatric care, in the form of in-patient hospitalization in an establishment mentioned in article L.3222-1 of the Public Health Code, provided that a psychiatric evaluation contained in the case file attests that the mental disorders of that person require care and endanger the security of others or constitute a serious threat to public policy. This decision shall be immediately notified to the departmental State representative or, in Paris, the Metropolitan Police Commissioner. Such hospitalization shall be governed by the same rules as placement under psychiatric care ordered pursuant to article L.3213-1 of the said Code."

126. In addition to the above placement by order of the judicial authorities, two other procedures coexist: committal at the request of a third party and committal by the State representative.

127. In the case of committal at the request of a third party under article L.3212-1 of the Public Health Code, the director of a psychiatric institution may decide such an admission on the basis of a request to that effect by a member of the patient's family or by a person able to substantiate the existence of relations with the patient preceding the request for care and qualifying that requesting person to act on behalf of the patient, to the exclusion of health personnel working in the establishment to which the patient would be admitted.

128. However, a person suffering from mental disorders may receive psychiatric care by decision of the director of a psychiatric institution only if the mental disorders preclude the patient's consent and the patient's mental state necessitates immediate care combined with constant medical surveillance warranting in-patient hospitalization or with regular medical surveillance.

129. Both of the above prerequisites must be met and their fulfilment attested by two detailed medical certificates drawn up less than 15 days earlier. The first such certificate

must be drawn up by a physician not working in the receiving establishment; indicate the patient's mental state, the characteristics of the disease and his or her need for care; and be corroborated by a certificate issued by a second physician, who may work in the above establishment. The physicians must not be related by blood or marriage, to the fourth degree inclusive, either to each other or to the director of the establishment who decides the admission, the person requesting the care or the patient.

130. In the case of committal by decision of the State representative under article L3213-1 of the Public Health Code, the prefect may, based on a detailed medical certificate drawn up by a psychiatrist working in the receiving establishment, issue an order placing a person whose mental disorders require attention and endanger the security of others or constitute a serious threat to public policy under psychiatric care. Such prefectural orders must be reasoned and state precisely the circumstances necessitating admission to the establishment.

131. In all cases, regardless of the grounds for hospitalization, exercise of the individual freedoms of any person affected by mental disorders who is involuntarily receiving or committed in order to receive psychiatric care is subject only to restrictions necessitated by and adapted and proportionate to that person's mental state and the required treatment. Under all circumstances, the dignity of the person must be respected and his or her reintegration sought. The patient's opinion on the methods of treatment must be elicited and taken into consideration to the full extent possible.

132. Before any decision ordering the continuation of involuntary psychiatric treatment or specifying the form of placement under care of a patient, he or she, to the extent permitted by the patient's condition, is apprised of the decision envisaged and enabled to express his or her observations, by any means and in a manner befitting that condition.

133. Moreover, the law provides that any person subjected to involuntary psychiatric care shall be informed, as soon as possible and in a manner adopted to his or her state, of the placement decision; the grounds for it; his or her legal situation and rights; and the remedies and guarantees to which he or she is entitled, including systematic inspection of all in-patient hospitalization measures by the liberties and detention judge no later than 15 days after the relevant decision.

134. In any event, according to the law, any person subject to involuntary hospitalization is entitled to: (1) communicate with the State representative, the president of the court of major jurisdiction, the public prosecutor, the mayor of the municipality or their representatives; (2) address the departmental commission for psychiatric care, responsible for examining the situation of the patients concerned, and, if hospitalized, the Commission for User Relations and Care Quality, a body represented in all health care establishments; (3) consult a physician or counsel of his or her choice; (4) report to the Comptroller-General for Places of Deprivation of Liberty any facts or situations that may lie within that officer's competence; (5) send or receive mail; (6) read the regulations of the establishment and receive any pertinent explanations; (7) exercise his or her right to vote; and (8) engage in religious or philosophical activities of his or her choice.

135. Under article L.3211-3 of the Public Health Code, the above rights, except items (5), (7) and (8), may be exercised, upon request, by relatives or any persons acting on behalf of the patient.

136. Moreover, any involuntary hospitalization is subject to the jurisdiction of the liberties and detention judge, available for so-called "optional" remedies and required by law to check at regular intervals whether deprivation of liberty is necessary and correctly applied.

137. An optional remedy procedure, provided for in article L.3211-12 of the Public Health Code, makes it possible to petition at any time the liberties and detention judge, within whose district the receiving psychiatric establishment is located, to order the immediate termination of the psychiatric care imposed. The said judge may be petitioned not only by the patient, but also by persons with parental authority or the guardian, if the patient is a minor; any custodian or supervisor of the patient; his or her spouse, cohabitee or partner under a civil solidarity pact; the person having requested the care; a relative or a person who may act on behalf of the person treated; or the public prosecutor.

138. Furthermore, the liberties and detention judge may at any time act *ex officio*. To that end, any interested person may bring to his or her attention information deemed pertinent regarding the situation of a person subjected to a measure of the type in question.

139. The above possibility of an optional remedy is in any case backed up by the systematic inspection stipulated in article L.3211-12-1 of the Public Health Code, under which in-patient hospitalization may not continue if not authorized by the liberties and detention judge within 15 days after the relevant decision, and again within a six-month time limit.

140. Under the law, any establishment authorized to provide involuntary psychiatric care must keep a register, into which must be entered or copied, within 24 hours, the last name, given names, occupation, age and home address of persons subject to care according to the relevant chapter of the Code; the dates of admission for psychiatric care; the last name, given names, occupation and home address of the persons having requested the care; the dates of provision of statutory information to the patients; the particulars of any guardianship, supervision or judicial-protection decisions; any medical opinions, certificates and statements; the date and operative provisions of decisions of the liberties and detention judge; any terminations of psychiatric care measures; and any deaths.

141. The above register is submitted to the officials who visit the establishment (the departmental State representative or his or her deputy, the president of the court of major jurisdiction or his or her substitute, the public prosecutor in whose district the establishment is located and the mayor of the municipality or his or her deputy). Upon conclusion of the visit, these officials enter their initials, their signature and, if appropriate, their observations.

**Deprivation of liberty within the framework of a conflict (cases of enemy military combatants, military captives, foreign civilians, mercenaries, snipers and spies)**

142. The Ministry of Defence incorporates the obligations arising under international instruments, first and foremost the Geneva Conventions and their additional protocols, into the directives issued to French forces engaged in operations abroad.

143. A detailed report to higher echelons is drawn up on any capture or detention by French forces during a military operation. Procedural instructions regarding the treatment of detained persons clearly specify the information to be transmitted to non-national bodies, particularly the International Committee of the Red Cross (ICRC). In the event of an international armed conflict, a national office of information on prisoners of war is activated, specifically in order to provide ICRC with information on the persons captured.

144. Where possible, legal advisers are attached to the military authorities in order to draw the command's attention to any act or procedure inconsistent with international and national law.

145. For technical or security reasons, it may be impossible, in the course of an operation abroad, to transmit immediately information regarding a detained person (held for instance on a vessel or by an isolated unit). Current procedural instructions, however, generally



require making every effort to reduce the interval between capture and the transmission of information to a minimum.

### **Guarantees common to all forms of deprivation of liberty**

146. In addition to internal inspection procedures specific to the Ministries of Justice, the Interior, Health and Defence, places of deprivation of liberty are subject to a number of external monitoring procedures provided for by French and various international instruments.

147. Under article 719 of the Code of Criminal Procedure, authorization to visit places of deprivation of liberty is granted, first and foremost, to members of parliament, senators and European Parliament members elected in France. They are authorized to visit “police custody premises, detention centres, waiting areas and prisons” at any time.

148. Moreover, as guardian of the freedom of the individual, the judicial authority monitors and inspects places of deprivation of liberty. To fulfil that mission, members of the national legal service have certain obligations, specified in the Code of Criminal Procedure as follows:

- As a general provision, article 727 stipulates that “prisons shall be visited by the judge responsible for the execution of sentences, the investigating judge, the president of the investigating chamber as provided in article 222, the public prosecutor and the prosecutor-general”;
- Under article D. 178, the public prosecutor must visit each prison once every three months or more frequently if necessary, particularly in order to hear any complaints from prisoners, while the prosecutor-general must visit each establishment falling within the jurisdiction of the Court of Appeals at least once a year;
- Under article D. 176, the judge responsible for the execution of sentences must visit the prisons at least once a month to inspect the conditions in which the inmates serve their sentences and to transmit any observations to the competent authorities for action;
- Under article 222, the president of the investigating chamber visits the remand prisons falling within the jurisdiction of the Court of Appeals whenever he or she deems it necessary and at least once every three months, and inspects the situation of indictees remanded in custody therein;
- Under article D. 177, the examining magistrate may also visit remand prisons and see the prisoners as frequently as he or she deems appropriate. The same applies to the children's judge, who must moreover visit remand prisons at least once a year to inspect detention conditions for minors.

149. Analogous provisions apply to waiting areas and administrative detention facilities (CESEDA, article L.553-3) and to psychiatric establishments (Public Health Code, article L.322-4).

150. In addition to the above monitoring mission of the judicial authority, a number of national and international organizations are empowered to participate in the protection of fundamental rights, particularly in the context of deprivation of liberty.

151. The Human Rights Defender is an independent constitutional authority with a particularly extensive mandate subsuming the functions formerly reserved to the Ombudsman of the Republic, the Children's Ombudsman, the President of the High Authority to Combat Discrimination and Promote Equality (HALDE) and the National Commission on Security Ethics (CNDS). In view of this last capacity, any person believing to have been a victim or witness of abusive or reprehensible behaviour on the part of law-

enforcement personnel in the broad sense (inter alia, police officers, gendarmes, prison administration officials, and private security employees) may refer the case to the Human Rights Defender.

152. An analogous role is played at the regional level by the European Commissioner for Human Rights, whose office was created by the Council of Europe in 1999 as a non-judicial, independent and impartial institution entrusted with promoting awareness of and respect for human rights in the Council's 47 member States. In fulfilling that mission, the Commissioner is entitled to visit establishments where human rights issues may arise (inter alia, prisons, psychiatric hospitals, shelters for domestic violence victims, refugee camps, and administrative detention centres). The member States visited undertake to facilitate the Commissioner's movements and contacts and to provide any information that the Commissioner may request.

153. With specific regarding to persons deprived of liberty, the Comptroller-General for Places of Deprivation of Liberty was established by the Act of 30 October 2007 as the French "national preventive mechanisms" (NPM) within the meaning of article 17 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Comptroller-General is entrusted with monitoring the conditions of detention and transfer of the said persons in order to ensure that their fundamental rights are respected. His or her staff may at any time visit any place of deprivation of liberty and meet in private with any person that they deem appropriate to hear. Any individual or legal entity (associations or NGOs inter alia) engaged in ensuring respect for fundamental rights may report to the Comptroller-General any event or situation involving a violation of the detainees' fundamental rights. After an inquiry, the Comptroller-General transmits his or her observations to the competent authority, which must reply within a given time limit. The Comptroller-General must apprise the public prosecutor of any criminal offences reported and may also refer matters to the competent disciplinary authority; and formulates opinions and recommendations and proposes amendments to the law or to regulations.

154. Equivalent powers and an identical mandate apply to two other mechanisms for the prevention of torture, namely the Subcommittee on Prevention of Torture (SPT), which has a universal scope, and, at Council of Europe level, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which since its creation has visited France 11 times.

#### **Remedy provided for in article 17, paragraph 2 (f)**

155. In addition to the remedies available to a person deprived of freedom pursuant to a lawful decision, article 17, paragraph 2 (f), provides that third parties with a legitimate interest may bring proceedings before a court if a victim of enforced disappearance is, by definition, placed outside the protection of the law and therefore unable to seek the remedies that it offers.

156. By assumption, the above remedy applies only to cases of unlawful deprivation of liberty. Hence, the purpose of the remedy is not to examine whether the deprivation of liberty in question is lawful — which it cannot be — but to have its unlawful character specifically established, ensure that all steps are taken to identify and arrest the perpetrators rapidly, and release the victim from their grip.

157. In those terms, the remedy in question is equivalent to the possibility offered by French domestic law to any person who possesses information leading to the suspicion that enforced disappearance has been committed to refer the case to the public prosecutor through a complaint or to an examining magistrate through a complaint combined with bringing criminal indemnification proceedings, so that a judicial inquiry is opened. In the

framework of such an inquiry, the judicial authority has broad powers, as described in the observations relating to article 12 of the Convention.

## **Article 18**

### **Information on persons deprived of liberty**

158. As indicated in the observations relating to article 17 of the Convention, any person placed in police custody is specifically informed of his or her right to have a close relation and his or her employer notified in accordance with article 63-2 of the Code of Criminal Procedure.

159. Moreover, any person remanded in custody may receive visits under certain conditions and, in any case, after one month the judge may not refuse granting at least one visiting permit save by a reasoned and appealable decision.

160. Further, where a person is held in a waiting area or placed in administrative detention or in a psychiatric establishment, his or her right to communication is subject to no restriction whatsoever.

161. Thus, French law guarantees in all circumstances the right of a detained person's close relations to information, subject to the wish of that person, whose right to privacy must be respected.

162. A similar reconciliation of the right to information with the right to privacy is provided for, regarding consular protection, in the Vienna Convention of 24 April 1963, article 36 of which premises informing the consular authorities upon the detainee's explicit request to that effect.

## **Article 19**

### **Protection of personal data**

163. The French authorities have taken a number of steps to guarantee the compatibility of the collection, storage and use of personal information used to locate disappeared persons with respect for human rights, fundamental freedoms and human dignity.

164. In searching for disappeared persons, the French authorities have access to the two files described below, whose use is strictly regulated.

165. The automated DNA database (*Fichier national automatisé des empreintes génétiques*, FNAEG) is specifically intended to facilitate identification and search for disappeared persons through their descendants' or ascendants' genetic profile. Placed under the responsibility of the Ministry of the Interior, this database is supervised by a judge, guardian of personal freedoms, assisted by a committee whose three members are designated by the Minister of Justice. That reference officer has permanent access to the file and the premises housing it, and may in particular order the deletion of illegal entries. The data are subject to modification or anticipated deletion (under article 706-54 of the Code of Criminal Procedure) ex officio or at the request of the person interested, provided their maintenance no longer seems necessary in view of the purpose of the file. In case of refusal, the person concerned may refer the matter to the liberties and detention judge, whose decision may be challenged before the president of the investigating chamber. The Constitutional Council has ruled that FNAEG is compatible with the rights and freedoms enshrined in the Constitution (Decision No. 2010-25 QPC of 16 September 2010).

166. The wanted persons file (*Fichier des personnes recherchées*, FPR) is a national-level set of records on all persons sought by judicial authorities, the police, the

gendarmerie, public services or the military authorities in the framework of their statutory powers. Personal information entered comprises the civil status, aliases, gender, nationality and description (possibly with a photograph) of such persons and the reasons for which they are sought. FPR is designed to facilitate searches undertaken by the police and the gendarmerie at the request of judicial, military or administrative authorities. The Ministry of the Interior is responsible for the file. Upon conclusion of the search or extinction of the grounds for an entry, the relevant information is immediately deleted. In the case of information related to State security, defence or public security, specific steps are taken to protect the right of access and rectification. Access is obtained through the National Commission for Information Technology and Civil Liberties (CNIL), which assigns the relevant inquiries and any necessary modifications to a judge. This procedure is aimed at ensuring that the purpose of such information processing is served without violating the rights of the persons concerned. A direct access procedure applies to entries regarding disappeared persons sought at the request of a member of their family: the person concerned must contact directly the processing administrator, namely the Ministry of the Interior.

167. The automated fingerprint database (*Fichier automatisé des empreintes digitales*, FAED) contains marks collected in the course of investigations or inquiries into any disappearance giving grounds for concern or suspicion, in accordance with articles 74-1 and 80-4 of the Code of Criminal Procedure. The information stays on file for 25 years at the most and may be deleted earlier if the processing administrator is informed of the death or discovery of the person concerned.

168. The above files are governed by the aforementioned Act of 6 January 1978, which precisely specifies the conditions of creation and use of such files so as to safeguard all fundamental rights and freedoms. Use of these files is exclusively reserved to duly authorized officials, who may draw on them solely for the needs of missions with which they have been entrusted. Information technology and civil liberties officials (CILs) have been designated in the Ministry of the Interior and the prefectures in order to ensure that staff under their authority complies with regulations in using the files. Data retrieval traceability makes it possible to identify the author, date, time and purpose of any query. Information may not be kept longer than the period necessary for the purpose for which it has been collected and processed. The data storage period is 40 years for disappeared persons in the case of FNAEG and, in the case of FPR, varies depending on the reason for the record.

169. CNIL, created under the Act of 6 January 1978, is specifically responsible for ensuring respect for fundamental rights and freedoms in using and maintaining personal data. As an independent administrative authority, it enjoys the legitimacy and powers required to protect the citizens by ensuring that they have actual access to processed information regarding them. CNIL monitors the security of information systems by ensuring that all necessary measures are taken to prevent the alteration or unauthorized communication of data; and may sanction violations of statutory provisions. In the event of serious and direct infringement of rights and freedoms, the president of CNIL may file an urgent application, requesting a judge to order appropriate protective measures.

## **Article 20**

### **Restrictions on the right to information**

170. Regarding the provisions of article 20, paragraph 1, reference is made to the foregoing observations relating to article 18 of the Convention.

171. In view of its scope and purpose, the remedy referred to in article 20, paragraph 2, of the Convention is, under French law, essentially similar to the remedy provided for in article 17, paragraph 2 (f). Accordingly, reference is made to the observations relating to that article.

## **Article 21**

### **Release**

172. With regard to detention in a prison, article D.149, fourth paragraph, of the Code of Criminal Procedure explicitly states that “the date of release of the detainee and, if appropriate, the decision or the text of the legislation justifying the release shall also be entered in the memorandum of imprisonment”, bearing in mind that, under article D.148 of the Code, every prison register must be presented for inspection and initialling to the various visiting judicial authorities and to the administrative authorities conducting a general inspection of the establishment.

173. In the case of police custody, the release of a person thus held must be entered into a special register, with regard to which article 65 of the Code of Criminal Procedure stipulates that “the entries and signatures provided for in article 64, first subparagraph, in respect of the dates and times of the commencement and end of police custody, the length of the period of questioning, and any rest periods between interrogations shall also be recorded in a special register kept to that purpose in any police or gendarmerie premises used for custodial purposes”.

174. In involuntary hospitalization cases, the departmental State representative may annul the psychiatric care order if such termination is requested by the interested party's doctor, and must do so if the termination is requested by two psychiatrists. The departmental State representative must within 24 hours notify any termination of involuntary psychiatric care to the public prosecutor attached to the court of major jurisdiction in whose district the establishment of placement is located, the public prosecutor attached to the court of major jurisdiction in whose district the patient customarily resides or sojourns, the mayor of the municipality where the establishment is located, the mayor of the municipality where the patient customarily resides or sojourns, the departmental commission for psychiatric care, the patient's family and, if necessary, the person entrusted with the patient's legal protection.

175. Where he or she orders termination of psychiatric care, the director of the establishment must within 24 hours notify such termination to the departmental State representative, the departmental commission for psychiatric care, the public prosecutors and the person having requested the care.

## **Article 22**

### **Sanctions for obstruction and failures related to the duty to provide information**

176. As indicated above in connection with the implementation of article 12 of the Convention, any attempt to obstruct the administration of justice is subject to criminal sanctions.

177. Moreover, failure to keep registers of deprivation of liberty as appropriate or refusal to provide due information on the situation of persons deprived of liberty may, depending on the grounds for such failure or refusal, call for criminal or disciplinary sanctions and entail the liability of any officials concerned and even of the State.

## **Article 23**

### **Training**

178. France has endeavoured to develop human rights training for law-enforcement personnel with a view to avoiding violations of the rights of persons arrested or detained.

179. This applies to all police and gendarmerie personnel, regardless of corps or rank. For instance, initial training for police constables addresses human rights in the framework of the subjects of code of ethics, civil liberties and fundamental rights. Practical exercises in receiving the public and checking identities emphasize appropriate police behaviour and attitude towards distinct categories of persons (victims, witnesses or offenders). Police lieutenants attend two training modules entitled respectively “Ethics, discernment, deontology and psychology” and “Civil liberties and fundamental rights”. Training for police superintendents includes the study of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and of fundamental human rights. Gendarmerie personnel as a whole receives training in the code of ethics, with the emphasis on defending and complying with human rights.

180. Heads of administrative detention centres participate in training specifically covering the regulations on the arrest of aliens in an irregular situation, the related judicial and administrative procedures, and respect for the fundamental rights of the persons detained.

181. The Comptroller-General for Places of Deprivation of Liberty contributes to vocational training in the fundamental rights of persons deprived of liberty through annual appearances at the schools for public servants (National Prison Administration School (ENAP), National College of Administration (ENA), Legal Service Training College (ENM), National Police Academy (ENSP) and Gendarmerie Nationale Officers College (EOGN)).

182. It is only natural that the provisions of the Convention should be part of the basic norms covered by training for civil servants. Such training is updated to cover any newly adopted provisions.

183. Various events organized from time to time contribute to disseminating the Convention as broadly as possible. They have included an international conference held in Paris in May 2012 on issues related to the universal and effective implementation of the Convention; a forum organized in Manila in May 2011 and entitled “Signing and ratification of the International Convention for the Protection of all Persons from Enforced Disappearance: an Imperative”; and the “Week on enforced disappearances”, organized in Paris in October 2010 and dedicated to advocacy, awareness-raising and networking among the actors concerned.

## **Article 24**

### **Rights of victims**

184. French law, without any need for new amendments, fully guarantees the definition of “victim” provided in article 24 of the Convention and the rights of victims under the same article.

185. Thus, under article 2 of the Code of Criminal Procedure, “civil action aimed at the reparation of damage caused by an indictable or a minor offence shall be open to all those who have personally suffered damage directly caused by the offence”. French criminal procedure entitles parties claiming damages to participate in criminal proceedings and thereby to find out the truth the truth regarding enforced disappearance cases heard by

criminal courts. Moreover, under the preambular article of the Code of Criminal Procedure, “the judicial authority shall ensure that victims are informed and their rights respected in the course of any criminal process”.

186. The victims' right to obtain reparation is doubly guaranteed: by the possibility given to any victim to claim damages at the time of criminal proceedings; and by the possibility to engage before an administrative court the State's responsibility for offences committed, according to article 2 of the Convention, “by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State”.

187. To this date, however, there has been no occasion to implement the above provisions since no case of enforced disappearance has been brought before any French ordinary or administrative court.

## **Article 25 Children**

188. Under articles 224-1–224-4 of the Criminal Code, the arrest, abduction, detention or imprisonment of children is punished under any circumstances. Moreover, penalties are increased where the victim is a minor under 15: under article 224-5 of the Code, the penalty is increased to imprisonment for life where the offence is punished by 30 years' imprisonment and to 30 years' imprisonment where the offence is punished by 20 years' imprisonment.

189. Accordingly, implementation of article 25, paragraph 1 (a), of the Convention does not seem to require amending the criminal provisions in force.

190. The same applies to falsification, concealment or destruction of documents with a view to the abduction of children, as described in article 25, paragraph 1 (b), since such offences are already punishable under Criminal Code articles 441-1 and 441-2, whose wording is provided below.

191. Article 441-1: “Forgery consists in any fraudulent alteration of the truth liable to cause harm and occasioned by any means in a document or other medium of expression whose object is, or whose effect may be, to provide evidence of a right or of a situation carrying legal consequences. / Forgery and the use of forgeries carry three years' imprisonment and a fine of €45,000.”

192. Article 441-2: “Forgery committed in a document delivered by a public body for the purpose of establishing a right, an identity or a capacity, or to grant an authorization, carries five years' imprisonment and a fine of €75,000. / Use of a forgery specified in the previous paragraph is subject to the same penalties. / The penalty is increased to seven years' imprisonment and to a fine of €100,000 where the forgery or use of forgery is committed: (1) by a person holding public authority or discharging a public service mission, acting in the exercise of his or her office; (2) habitually; or (3) with the intent to facilitate the commission of a crime or to secure impunity for the perpetrator.”

193. French law on adoption contains strong safeguards that satisfy, although of necessity not in any specific manner, the provisions of article 25, paragraphs 2 and 4, of the Convention.

194. Two forms of adoption are distinguished under French law: simple adoption, which does not terminate the connection of the adoptee with the family of origin and is revocable on the basis of serious reasons (article 370 of the Civil Code); and full adoption, which terminates all legal connection with the family of origin and is irrevocable (article 359 of the Civil Code).

195. In either case, articles 593 *et seq.* of the New Code of Civil Procedure permit, in exceptional cases in which the good faith of the judge been misled, to file an application for de facto and de jure review of the adoption decision.

196. This remedy, available to persons who were party to or represented at the proceedings, including public prosecution, may be used only on specific grounds, within two months after those grounds came to the knowledge of the party invoking them, provided that he or she could not invoke them at the time of the proceedings. There four such grounds, specified in article 595 of the New Code of Civil Procedure as follows:

- If after the proceedings it is discovered that the decision was taken as a result of fraud on the side of the party favoured by the decision;
- If after the proceedings key documents are recovered, which had been held back by an act of the other party;
- If the proceedings were based on documents later recognized as forged or judicially declared to be forged;
- If the proceedings were based on statements, testimony or oaths which were later judicially declared to be false.

197. If requested by another State to assist in identifying or locating children abducted from their parents and constituting victims of enforced disappearance, French authorities would certainly respond with all due diligence.

198. As a general rule, French law fully guarantees consideration of the best interests of the child and, where appropriate, of the child's views, in accordance with the Convention on the Rights of the Child of 20 November 1989, to which France is a party.

---