



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

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Committee on Enforced Disappearances

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Consideration of reports of States parties to the Convention

**Additional information submitted by France under article 29
(4) of the Convention***

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* The present document is being issued without formal editing.



Introduction

A. Preparation of the report

1. Following the consideration of the report submitted by France (CED/C/FRA/1) under article 29 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance at its forty-sixth and forty-seventh meetings, held on 11 and 12 April 2013, the Committee on Enforced Disappearance adopted its concluding observations (CED/C/FRA/CO/1) at its fifty-seventh meeting, held on 19 April 2013.

2. On 18 April 2014, the Government of France responded to the request to provide, within one year, information on the implementation of the recommendations set out in paragraphs 23, 31 and 35 of the concluding observations (CED/C/FRA/CO/1/Add.1). The Committee assessed the implementation of those three recommendations during its seventh session, from 15 to 26 September 2014, as described in its report on follow-up, CED/C/7/2.

3. Pursuant to article 29 (4) of the Convention, in its concluding observations, the Committee requested the French Government to submit, no later than 19 April 2019, specific and updated information on the implementation of all its recommendations and any new information on compliance with the obligations under the Convention.

4. This report is a response to that request. In order to ensure the participation of civil society, the National Consultative Commission on Human Rights¹ was consulted with regard to the information contained in this report. In accordance with the provisions of article 1 of Decree No. 2007-1137 of 26 July 2007 on its composition and functioning, the Commission “promotes cooperation between the authorities, representatives of different views within civil society and the various relevant non-governmental organizations and institutions” and “contributes to the preparation of reports that France is required to submit to international organizations, pursuant to its human rights treaty obligations”.

5. The French Government, in accordance with the requirements of the common core document and following the harmonized guidelines on reporting under the international human rights treaties, submitted the updated version of the core document on France (HRI/CORE/FRA/2017) on 3 November 2017.

B. Cases of enforced or involuntary disappearance in France and the application of provisions on the prevention and punishment of this crime

6. As at 8 January 2019, 17 proceedings (pretrial investigations and/or judicial inquiries) before the division of the Paris *Tribunal de Grande Instance* (court of major jurisdiction) dealing with crimes against humanity and war crimes were classified as enforced disappearances, including 3 that were classified as crimes against humanity.² Of

¹ Article 4 of Decree No. 2007-1137 of 26 July 2007 on the composition and functioning of the National Consultative Commission on Human Rights provides information on the composition of the Commission: “To ensure pluralism of opinions and beliefs, the Commission is composed of, with voting rights,

- (a) 30 representatives of the main non-governmental organizations working in the areas of human rights, international humanitarian law or humanitarian action, and the main trade union confederations, nominated on the proposal of such organizations and confederations;
- (b) 30 persons chosen on the basis of their acknowledged competence in the field of human rights, including persons serving as independent experts on international human rights bodies;
- (c) A parliamentary deputy and a senator;
- (d) The National Ombudsman;
- (e) A member of the Economic, Social and Environmental Council.”

² See article 212-1, subparagraph 9, of the Criminal Code: <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000027811403>.

those 17 proceedings, 13 were initiated under article 689-13 of the Code of Criminal Procedure,³ 1 by virtue of personal active jurisdiction and 3 under article 689-11 of the Code of Criminal Procedure.⁴

C. Promotion of the Convention

7. In April 2018, France, together with Argentina, launched a new campaign to promote universal ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, calling on all States that had not done so to ratify the Convention and recognize the competence of the Committee on Enforced Disappearances.

Implementation of the recommendations contained in the concluding observations of the Committee on Enforced Disappearance (CED/C/FRA/CO/1)

Reply to paragraph 11 of the concluding observations

8. The crime of enforced disappearance was established pursuant to article 15 of Act No. 2013-711 of 5 August 2013 introducing various provisions to bring French law into line with European Union law and the country's international commitments; it is provided for in article 221-12 of the Criminal Code. That article stipulates that: "An enforced disappearance consists in the arrest, detention, abduction or any other form of deprivation of liberty of a person, in conditions that place such a person outside the law, by one or more agents of the State or by a person or group of persons acting with the authorization, support or acquiescence of State authorities, where such actions are followed by a person's disappearance and accompanied by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person. Enforced disappearance is punishable by rigorous imprisonment for life."

9. Article 212-1 of the Criminal Code also provides that, when committed "as part of a concerted plan directed against any civilian population as part of a widespread or systematic attack", enforced disappearance constitutes a crime against humanity, in conformity with article 5 of the Convention and article 7 of the Rome Statute of the International Criminal Code of 17 July 1998.

10. These amendments aligning the Criminal Code with the Convention were presented in the circular of 19 December 2013 on the criminal law provisions of Act No. 2013-711 of 5 August 2013 introducing various provisions to bring French law into line with European Union law and the country's international commitments.⁵

11. Although the Act does not state explicitly that no exceptional circumstances – whether a state of war or threat of war, internal political instability or any other public emergency – may be invoked to justify the offence of enforced disappearance, it should be noted that those exceptional circumstances are not among the grounds for exemption from criminal liability or mitigating circumstances set forth in articles 122-1 ff. of the Criminal Code on exemption from criminal liability or mitigating circumstances. Criminal legislation

³ See article 689-13 of the Code of Criminal Procedure: https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=8C36B12AE072E5F0F69E49CE059BF06A.tplgfr38s_1?idArticle=LEGIARTI000027809234&cidTexte=LEGITEXT000006071154&dateTexte=20190409&categorieLien=id&oldAction=&nbResultRech= and 689-1 of the Code of Criminal Procedure to which this article refers: <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006577254&cidTexte=LEGITEXT000006071154&dateTexte=20190411>.

⁴ See article 689-11 of the Code of Criminal Procedure: https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=8C36B12AE072E5F0F69E49CE059BF06A.tplgfr38s_1?idArticle=LEGIARTI000038312592&cidTexte=LEGITEXT000006071154&dateTexte=20190409&categorieLien=id&oldAction=&nbResultRech=.

⁵ See http://www.textes.justice.gouv.fr/art_pix/JUSD1331417C.pdf, especially Section II-1 Protection against enforced disappearance, pp. 6–7 of the circular.

is assessed strictly (Criminal Code, art. 111-4). Therefore, no exceptional circumstance, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearance. Article 1 (2) of the Convention has thus been respected.

Reply to paragraph 13 of the concluding observations

12. The crime of enforced disappearance is classified as a separate offence in article 221-12 of the Criminal Code established by Act No. 2013-711 of 5 August 2013 introducing various provisions to bring French law into line with European Union law and the country's international commitments, which provides that: "An enforced disappearance consists in the arrest, detention, abduction or any other form of deprivation of liberty of a person, in conditions that place such a person outside the law, by one or more agents of the State or by a person or group of persons acting with the authorization, support or acquiescence of State authorities, where such actions are followed by a person's disappearance and accompanied by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person. Enforced disappearance is punishable by rigorous imprisonment for life." The definition of the crime of enforced disappearance set forth in the Criminal Code thus contains all the constituent elements of the definition provided in the Convention.

Reply to paragraph 15 of the concluding observations

13. Article 212-1 of the Criminal Code provides that "The following actions when committed as part of a concerted plan directed against any civilian population as part of a widespread or systematic attack also constitute a crime against humanity: (...) 9. Enforced disappearance."

14. While a "concerted plan" is not mentioned as a constituent element in article 7 of the Rome Statute of the International Criminal Code, in domestic legislation it is used as a contextual element characterizing the acts and attack committed. This contextual element is always required to establish a crime against humanity.

Reply to paragraph 17 of the concluding observations

15. Article 221-13 of the Criminal Code established by Act No. 2013-711 of 5 August 2013 introducing various provisions to bring French law into line with European Union law and the country's international commitments, provides that: "A superior who knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority or control were committing or were about to commit the offence of enforced disappearance, and failed to take all necessary and reasonable measures within his or her power to prevent or repress such commission or to submit the matter to the competent authorities for investigation or prosecution, although the offence was linked to activities under his or her effective authority or control, shall be considered an accessory to a crime of enforced disappearance under article 221-12.0."

16. For the crime against humanity of enforced disappearance (and for all other crimes against humanity), there is specific legislation setting forth exceptions from the law in cases of "complicity": article 213-4-1 of the Criminal Code.⁶

⁶ Article 213-4-1: "Without prejudice to the application of the provisions set forth in article 121-7, a military commander or a person acting in his or her stead who knew or, owing to the circumstances, should have known that subordinates under his or her effective authority or control were committing or were about to commit such a crime and who failed to take all necessary and reasonable measures within his or her power to prevent or repress such commission or to submit the matter to the competent authorities for investigation or prosecution shall be considered an accessory to a crime under the present subtitle. Without prejudice to the application of the provisions set forth in article 121-7, a superior other than a military commander who knew that subordinates under his or her effective authority or control were committing or were about to commit such a crime or who consciously disregarded information which clearly indicated this, and who failed to take all necessary and reasonable measures within his or her power to prevent or repress such commission or to submit the matter to the competent authorities for investigation and prosecution, although the offence was

17. Article 221-13 of the Criminal Code, which takes account of “passive complicity” and “complicity by omission” in regard to enforced disappearance, meets the expectations of the Convention, article 6 of which requires States parties to hold criminally responsible a superior who: “knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or were about to commit a crime of enforced disappearance” (art. 6 (1) (b) (i)); “exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance”; (art. 6 (1) (b) (ii)) and “failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution” (art. 6 (1) (b) (iii)).

18. Furthermore, by being “punished as an offender” (art. 121-6 of the Criminal Code), he or she is liable to the same punishment, principal and secondary, as the perpetrator of an offence of enforced disappearance.

Reply to paragraph 19 of the concluding observations

19. Although the French Criminal Code has not contained any provisions on mitigating circumstances since 1994, its article 132-78 provides for exemption from punishment for anyone who has sought to commit a crime or offence but prevented it from being committed by alerting the administrative or judicial authorities and, where possible, facilitated the identification of other perpetrators or accomplices. This article also provides for a reduced sentence for anyone who has committed a crime or offence but, by alerting the administrative or judicial authorities, has enabled them to stop the ongoing offence, to prevent it from causing any harm or to identify other perpetrators or accomplices. The same provision for a reduced sentence is provided for individuals who have committed a crime or offence if they have either prevented a similar, subsequent crime from being committed, stopped such an offence when ongoing, prevented it from causing harm or facilitated the identification of the perpetrators or their accomplices.

20. The crime of enforced disappearance does not, however, figure among the 32 offences in relation to which this provision can be applied.

21. A working group has recently been set up by the Ministry of Justice (Directorate for Criminal Matters and Pardons) to improve the coherence and effectiveness of the provision, and consideration will be given to its potential application in respect of crimes of enforced disappearance. The working group held its first meeting on 14 December 2018. Its second and third meetings took place in February and on 29 March 2019, respectively.

Reply to paragraph 21 of the concluding observations

On the statute of limitations and its starting point

22. Article 7 of the Code of Criminal Procedure sets the statute of limitations for prosecution at 30 years; it also states that enforced disappearance, when committed in a context that makes it a crime against humanity, is not subject to the statute of limitations.

23. As enforced disappearance is a continuing crime, the statute of limitations commences from the moment the disappearance ceases: the day when the victim reappears, or when his or her death is established, in line with article 8 (b) of the Convention.

Statute of limitations for civil damages

24. Pursuant to article 10 (1) of the Code of Criminal Procedure, civil action seeking redress for damages caused by a criminal offence is governed by the same rules as criminal action and is therefore subject to the same statute of limitations.

25. Civil action for a crime of enforced disappearance, when brought before the criminal court, is therefore subject to a 30-year statute of limitations.

linked to activities under his or her effective authority or control, shall be considered an accessory to a crime under the present subtitle.”

26. Only civil cases seeking redress before the ordinary courts are governed by the regulations set out in the Civil Code, according to which the statute of limitations shall be 5 years from the day that the victim becomes aware of the facts (Civil Code, art. 2224) and 10 years if the facts have resulted in physical harm. That time limit shall start from the moment that harm has been established (Civil Code, art. 2226).

27. The victim can, however, by choosing criminal action, benefit from the 30-year statute of limitations in a case seeking civil redress.

28. The statute of limitations thus provides even greater protection than that applied to the crime of torture and acts of barbarity, which, for criminal cases, and therefore for civil cases before the criminal courts, is set at 20 years (Code of Criminal Procedure, art. 7).

Reply to paragraph 23 of the concluding observations

“Committee’s evaluation (2014):

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

29. Of the 17 proceedings brought for enforced disappearance by the specialized unit in Paris (see paragraph 6 above), 13 have been instituted by virtue of article 689-13 of the Code of Criminal Procedure, concerning the extraterritorial jurisdiction of French courts with regard to enforced disappearance. On the basis of that article, individuals who have committed crimes of enforced disappearance outside French territory (irrespective of whether those crimes constitute crimes against humanity) may – if they are in France – be prosecuted and sentenced by the French judiciary.

30. The introduction of article 689-13 of the Code of Criminal Procedure thus brings French legislation into line with the Convention (art. 11) by granting the State jurisdiction, whether or not there has been a request for the suspect’s extradition.

Reply to paragraph 25 of the concluding observations

On the statement regarding military jurisdiction

31. There is no military jurisdiction in France during peacetime. This means that any military personnel accused of having committed acts, in service, that could constitute enforced disappearance under article 221-12 of the Criminal Code, will be brought before common law courts with a military specialization, pursuant to article 697-1 of the Code of Criminal Procedure.⁷

32. These are “civilian” courts, which apply common law criminal procedure and are specialized in such cases. Specific procedural provisions must be applied. The offence must be reported by, or an opinion sought from, the Minister of Defence or authorized military authority before criminal action can be instituted, except in cases of serious or flagrante delicto crimes (Code of Criminal Procedure, art. 698-1). Victims may not institute criminal proceedings through civil action for crimes committed during military operations outside French territory. Criminal action in such cases can only be instituted by the prosecution (Code of Criminal Procedure, art. 698-2 (2)), which thereby ensures that the particular circumstances of military missions and operations are taken fully into account.

⁷ For article 697-1 of the Code of Criminal Procedure (French only), see: <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000024970995&cidTexte=LEGITEXT000006071154&dateTexte=20190411> (accessed 15 August, 2019) and for article 697 of the Code of Criminal Procedure (French only) see: <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000028345329&cidTexte=LEGITEXT000006071154&dateTexte=20190411> (accessed 15 August, 2019).

33. In a crisis situation (state of siege) or war, when military courts would be reintroduced, military personnel accused of having committed acts that could constitute enforced disappearance would be brought before the military courts.

On ensuring that a police force suspected of the crime of enforced disappearance does not participate in the investigation

34. In France, the judicial police operates under the aegis of the public prosecutor (Code of Criminal Procedure, art. 12). In each appeal court, the judicial police is under the supervision of the prosecutor general and under the management of the investigating chamber (Code of Criminal Procedure, art. 13).

35. The judicial police therefore participates in judicial investigations under the management and authorization of the judicial authority. It does not take up cases of its own volition. The judge in charge of the investigation is responsible for requesting its services. Furthermore, the public prosecutor (in preliminary investigations and cases of flagrante delicto) and the investigating judge (for judicial inquiries) can call freely on the services of their choice, anywhere within national territory, to conduct investigations (Code of Criminal Procedure, art. 41).

36. Pursuant to article 43 (2) of the Code of Criminal Procedure, “If the public prosecution has before it the facts of a case that involve, as either a perpetrator or a victim, a judge (...), a member of the national police force (...) or any other person occupying a position of public authority or fulfilling a public service who, in the performance of professional duties, comes into regular contact with judges or court officers, the prosecutor general may, systematically, at the proposal of the public prosecutor and at the request of the person concerned, hand the proceedings over to the public prosecutor of the nearest high court under the jurisdiction of the court of appeal. If the person concerned is in regular contact with the judges or court officers of the court of appeal, the prosecutor general may transfer the proceedings to the prosecution of the nearest court of appeal, which will, in turn, pass them on to the public prosecutor of the nearest high court. That court will thus have the territorial jurisdiction to hear the case (...).”

37. In such situations, the judge (public prosecutor or investigating judge) leading the investigation could under no circumstances call on a police service that is, itself, suspected of having committed a crime of enforced disappearance. The Code of Criminal Procedure also provides further safeguards in that regard, such as those in article 83-1, which provides for the dual submission of information, “if the seriousness and complexity of the case warrant it”. Furthermore, article 39-3 (2) of the Code of Criminal Procedure provides that the public prosecutor “shall ensure that the investigations uncover the truth and that both the prosecution and the defence shall respect the rights of the victim, the plaintiff and the suspect”.

On the competence of the specialized judicial unit

38. By virtue of Act 2011-1862 of 13 December 2011 on the distribution and streamlining of certain judicial procedures, a specialized unit for crimes against humanity, genocide and war crimes was set up under the aegis of the Paris *Tribunal de Grande Instance* (court of major jurisdiction). The court is also competent to hear cases relating to crimes of torture of the type over which French courts have jurisdiction (Code of Criminal Procedure, art. 628-10).

39. The remit of the specialized unit thus covers only enforced disappearances that can be considered crimes against humanity and does not interfere with the remit of courts with territorial jurisdiction with regard to the application of articles 43⁸ and 52⁹ of the Code of Criminal Procedure.

⁸ Article 43: “The public prosecutors local to the place where the crime was committed, the place of residence of one of the suspects, the place of arrest of one of the suspects (even if the arrest took place for another reason), and the place of detention of one of the suspects (even if they were placed in detention for another reason) shall be deemed competent. For offences listed in article 113-2-1 of the

40. The National Assembly, however, recently adopted Act 2019-222 of 23 March 2019 on planning for 2018–2022 and judicial reform, by which it amended, inter alia, article 628-10 of the Code of Criminal Procedure. Under the Act, a national prosecution service was established, mandated to handle cases of terrorism on the one hand, and crimes against humanity, war crimes, torture and enforced disappearance on the other. The Act also provides that the specialized judicial unit of the Paris *Tribunal de Grande Instance* will have jurisdiction in cases of enforced disappearance, as it already has for crimes against humanity, war crimes and crimes of torture. Thus amended, the new version of article 628-10 of the Code of Criminal Procedure will enter into force “on a date set by decree, no later than 1 January 2020”.

On the right to contest the prosecution’s decision to discontinue proceedings

Contesting a decision through the authorized channels

41. Article 40-2 of the Code of Criminal Procedure provides that, should the prosecution decide to discontinue proceedings, it must inform the plaintiffs, giving the legal reasoning or circumstances justifying the decision. Furthermore, article 40-3 stipulates that “any person who has filed a case with the public prosecution services may submit an appeal to the prosecutor general against a decision to discontinue the case”. The prosecutor general may then order the public prosecutor to reopen and try the case. If, on the other hand, the prosecutor general considers the grounds for appeal to be insufficient, he or she shall inform the petitioner.

Contesting a decision by suing for damages in criminal proceedings

42. In line with the provisions of article 85 of the Code of Criminal Procedure, any person who considers themselves a victim of a crime or offence may file a complaint and in so doing sue for damages in criminal proceedings before an examining magistrate. The French courts may then decide whether they have jurisdiction, which may be the case if the perpetrator or accomplice, or the victim, of the crime of enforced disappearance has French nationality.

43. Furthermore, regarding crimes of enforced disappearance that do not constitute crimes against humanity, pursuant to articles 689-13 and 689-1 of the Code of Criminal Procedure, which provide for application of the principle of universal jurisdiction¹⁰ (if the perpetrator is a foreign national, the crime was committed on foreign territory and the victim was foreign but the perpetrator happens to be present on French territory), a complaint to sue for damages in criminal proceedings may also be lodged with the examining magistrate.

44. When it comes to crimes of enforced disappearance that constitute crimes against humanity, however, prosecutions are the sole preserve of the prosecution service, as stipulated in article 689-11 of the Code of Criminal Procedure. The legal restrictions on instituting criminal proceedings are consistent with the severely limited scope of application of article 689-11. In practice, these are only likely to be invoked for crimes committed outside French territory by a foreign perpetrator when none of the victims are French nationals, where there is no extradition order, no formal complaint has been filed, no case is being heard before the International Criminal Court, and if no other case can be

Criminal Code, the public prosecutors of the place of residence or headquarters of the physical or juridical persons listed in that article shall also be deemed competent.”

⁹ Article 52: “The investigating judge local to the place where the crime was committed, the place of residence of one of the suspects, the place of arrest of one of the suspects (even if the arrest took place for another reason), and the place of detention of one of the suspects (even if they were placed in detention for another reason) shall be deemed competent. For offences listed in article 113-2-1 of the Criminal Code, the investigating judge of the place of residence or headquarters of the physical or juridical persons listed in that article shall also be deemed competent.”

¹⁰ Article 689-1: “In application of the international conventions listed in the articles that follow, any person who has committed any of the offences set out in those articles may, if they are on French territory, be tried and sentenced by the French courts. The provisions of this article may also be applied to attempts to commit those crimes, if such attempts are punishable.”

brought under quasi-universal jurisdiction, such as prosecution for crimes of torture or other cruel, inhuman or degrading treatment or punishment.

Reply to paragraph 27 of the concluding observations

45. While French law prohibits refoulement, it does not refer specifically to the risk of enforced disappearance.

46. That being said, in line with the country's obligations as a State party to the European Convention on Human Rights and with the jurisprudence of the European Court of Human Rights, foreign nationals may not be sent to a country if they can prove that their life or freedom would be in danger there, or that they would be at risk of treatment that would constitute a violation of article 3 of the European Convention. The jurisprudence of the European Court of Human Rights consistently deems enforced disappearance to be a violation of both articles 2 and 3 of the European Convention, which safeguard the right to life and prohibit torture and inhuman or degrading treatment, respectively (European Court of Human Rights, Grand Chamber, 18 September 2009, *Varnava and others v. Turkey* – Nos. 16064/90, 16065/90, 16066/90 et al.). This obligation is reflected in French law, through article L.513-2 of the Code on the Entry and Residence of Aliens and the Right of Asylum, which effectively prevents foreigners from being returned to a country where they are at risk of enforced disappearance.

47. Furthermore, respect for the principle of non-refoulement is guaranteed in French law, in line with article 33 of the 1951 Convention Relating to the Status of Refugees (see, in particular, Code on the Entry and Residence of Aliens and the Right of Asylum, art. L.711-1 ff. and art. L.743-2). The French authorities thereby guarantee that they will under no circumstances expel or return a refugee to a place where his or her life or freedom will be threatened on grounds of race, religion, nationality, social affiliations or political opinions. Foreigners are thus afforded this protection if there is proof that they are in danger of enforced disappearance. If risk of enforced disappearance is invoked before the French Office for the Protection of Refugees and Stateless Persons and an asylum application is still rejected, the risk of enforced disappearance can be invoked for a second time before the National Court of Asylum. Fear of enforced disappearance can therefore be invoked and, as appropriate, used as grounds for authorizing protection at all stages in the asylum process.

48. Furthermore, in line with article 13 of the European Convention on Human Rights, France guarantees the right to an effective remedy to any person whose asylum application at the border has been refused by decision of the Office for the Protection of Refugees and Stateless Persons (Code on the Entry and Residence of Aliens and the Right of Asylum, art. L.213-9). An application to overturn a decision to refuse asylum, filed before the administrative court, has full suspensive effect. This means that the applicant may not be returned to his or her country of origin pending the expiry of the 48-hour appeal period, or, if the appeal has come before a judge, pending a judicial ruling within the statutory 72-hour deadline (Code on the Entry and Residence of Aliens and the Right of Asylum, art. L.213-9 (7)).

49. Furthermore, article L.213-9 provides that an asylum seeker who has been refused entry may request the president of the administrative tribunal, or the appointed judge, to provide the support of an interpreter and the assistance of legal counsel.

50. The Council of State has endorsed this provision, deeming the 48-hour appeal period to be in line with asylum seekers' right to appeal, given the support afforded to them at the border (Council of State, 29 April 2013, *Anafé* No. 357848).

51. It should also be pointed out that, pursuant to the law of 29 July 2015 on the right of asylum, any appeal against a decision by the Office for the Protection of Refugees and Stateless Persons to reject an asylum claim, filed before the National Court of Asylum, has suspensive effect, including when reviewed under the accelerated procedure (Code on the Entry and Residence of Aliens and the Right of Asylum, art. L.743-1). The only practical implication of the accelerated procedure is that the National Court of Asylum must issue the decision of a single judge within five weeks rather than five months (Code on the Entry

and Residence of Aliens and the Right of Asylum, art. L.731-2). The asylum seeker then has a further month, which is also suspensive, in which to appeal the decision.

52. In derogation of article L.743-1 of the Code on the Entry and Residence of Aliens and the Right of Asylum, an appeal before the National Court of Asylum is not automatically suspensive for some categories of asylum seekers, provided that the provisions of article 33 of the 1951 Convention on the Status of Refugees and article 3 of the European Convention on Human Rights are fully respected. Those categories are listed in the amendments to the Code introduced through the adoption of the law of 10 September 2018 (asylum seekers from safe countries of origin, certain cases under review and asylum seekers whose presence constitutes a serious threat to public order). The Code provides that such individuals shall have the possibility, when appealing the removal decision, to request, before the National Court of Asylum, that the judge reinstate the suspensive nature of the appeal. In such cases, the administrative judge can order the suspension of the removal order if he or she considers that the asylum seeker can present evidence, under his or her asylum application, justifying the request to allow him or her to stay on French territory during consideration of the appeal by the National Court of Asylum (Code on the Entry and Residence of Aliens and the Right of Asylum, art. L.743-3). In this regard, Directive 2013/32/EU of the European Parliament and of the Council, dated 26 June 2013, on common procedures for granting and withdrawing international protection, recasting European Council Directive 2005/85/EC, which had been interpreted by the European Union Court of Justice (European Union Court of Justice, Grand Chamber, 19 June 2018, *S. Gnanidi v. Belgium*, C-181/16) only requires a judicial authority (in France an administrative judge), not a judge specializing in asylum law, to consider this type of appeal, when the decision of the Office for the Protection of Refugees and Stateless Persons has been overturned on grounds of the right to remain.

Reply to paragraph 29 of the concluding observations

Delays in communication to the chain of command regarding the capture or detention of persons

53. The French military informs the chain of command immediately regarding any persons captured during its participation in armed conflict. On rare occasions in military operations, such communication has been temporarily delayed as a result of a physical impediment, the need to protect the security of the captured individual, the security of military personnel or the success of the military operation.

Ensuring that the protection standards enshrined in the Convention are fully applied to persons deprived of their liberty in situations of armed conflict

54. When deployed abroad, the French military may need to capture and detain individuals for compelling reasons of military or public security related to the armed conflict. This process is strictly regulated to eliminate any risk of those detained being subject to arbitrary treatment.

55. Thus anyone captured is informed as quickly as possible about the reasons for their deprivation of liberty and about their status. Persons held captive are registered and detained in an officially recognized facility. The International Committee of the Red Cross (ICRC) is also informed about the capture as soon as possible and works to ensure that family ties are maintained by informing the detainee's family, unless the detainee requests otherwise. ICRC representatives also have the right to access persons held in detention and hold private interviews with them.

56. The situation of individuals who have been captured and detained is re-examined at regular intervals along the chain of command. Successive periods of continued detention are authorized at increasing levels of the hierarchy and must be justified with explicit reasoning.

57. Furthermore, if the person captured dies during detention or transfer, the military will communicate this information to either the local authorities or ICRC, thereby enabling the deceased's next of kin to be informed.

Establishing a protocol for the transfer of detainees between States that is consistent with international law

58. The transfer of individuals captured by the French armed forces into the custody of other States is conducted in full respect of France's international commitments, including those under the International Convention for the Protection of All Persons from Enforced Disappearance.

59. Before proceeding with the transfer of any individual captured by the French armed forces, the French authorities must obtain, from the authorities in the States concerned, satisfactory guarantees that the individuals being transferred into their custody are not at risk of enforced disappearance. The status of forces agreements regulating the deployment of French troops in Mali¹¹ and the Central African Republic¹² therefore contain provisions that are intended to avoid any potential risk of enforced disappearance during transfers.

60. Under those agreements, the authorities in Mali and the Central African Republic are required, among other things, to keep a register of information on each of the individuals transferred into their custody (identity, date of transfer, place of detention, state of health of the detainee). This register is open for consultation by the parties, ICRC or, where appropriate, any other human rights body.

61. Detainees may not be transferred to a third party without the prior agreement of the French authorities. This also prevents the risk of onward refoulement which, without a prior assessment of the associated risks, could result in violations of the individual's fundamental rights, including enforced disappearance.

62. Furthermore, the agreements guarantee the French authorities and ICRC the right to unrestricted access to places of detention, as well as the possibility of holding private interviews with detainees. On that basis, French military legal advisers or their representatives, who may be accompanied by military health-care staff, visit detainees regularly to ensure that the guarantees enshrined in those agreements are being respected.

Reply to paragraph 31 of the Concluding Observations

“Committee's evaluation (2014)

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

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

¹¹ Agreement in the form of an exchange of letters between the Governments of France and Mali, determining the status of the Serval troops, signed in Bamako on 7 March 2013 and in Koulouba on 8 March 2013.

¹² Agreement between the Governments of France and the Central African Republic on the status of French troops deployed in the Central African Republic in implementing the resolutions of the United Nations Security Council, and rebuilding peace in the Central African Republic signed in Bangui on 18 December 2013.

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

63. In the context of inquiries carried out under the authority of the public prosecutor’s office, such as preliminary inquiries or expedited flagrante delicto procedures, police custody may be extended by the public prosecutor in charge of the investigation. The prosecutor’s written and reasoned authorization is, however, required. Certain conditions must also be met regarding the nature of the offence for which custody is sought, with the minimum penalty for the offence being at least 1 year’s imprisonment.

64. With regard to the detention of foreign nationals in an irregular situation, it should be pointed out that, since the introduction of the Act of 7 March 2016,¹³ the liberty and custody judge – a sitting judge – decides on extending the detention measure after the initial 48 hours, rather than after the first five days, as previously.¹⁴ In addition, the foreign national has the right to appear before the judge at any time during his or her detention. Moreover, pursuant to article L.551-2 of the Code on the Entry and Residence of Aliens and the Right of Asylum, detained persons have all the necessary guarantees and can assert their rights with regard to legal assistance, interpretation, material conditions of detention and contact with the consular authorities.

65. This judicial oversight of detention by the liberty and custody judge includes:

- Monitoring the conditions of arrest
- Reviewing the conditions in which administrative detention occurs (notification of rights, supervision of the procedures leading to administrative detention with a view to removal)
- Verifying the lawfulness of the initial detention order

66. The purpose of this amendment is to ensure respect for the right to an effective remedy, as guaranteed under article 5 (4) of the European Convention on Human Rights. It complies with the decision of the European Court of Human Rights in the case of *A.M. v. France* (Case No. 56324/13), in which the Court found that, under the legislation that existed prior to this legislative reform, the supervision of the administrative courts was insufficient insofar as it did not examine the lawfulness of the deprivation of liberty.

67. The liberty and custody judge can also release the detained person at any time during the procedure (Code on the Entry and Residence of Aliens and the Right of Asylum, art. R.552-18).

68. Lastly, with regard to mobile or ad hoc holding areas, article 10 (ii) modified article L.221-2 of the Code on the Entry and Residence of Aliens and the Right of Asylum, concerning the definition of holding areas, by inserting a second paragraph, which states that: “In cases where it is clear that a group of at least 10 foreign nationals has just entered France at a point other than a border crossing, at the same location or at a number of locations no more than 10 kilometres apart, a holding area shall be established for a maximum of 26 days and shall extend from the location(s) at which the persons concerned were discovered up to the nearest official border crossing.”

¹³ Act No. 2016-274 of 7 March 2016 on the rights of foreigners in France (art. 36).

¹⁴ Act No. 2019-161 of 1 March 2019 on the time limit for the intervention of the liberty and custody judge with regard to administrative detention in Mayotte (*Journal officiel*, the country’s official gazette, 5 March 2019) provides an exemption for Mayotte, where the time limit of five days has been re-established, owing to the particular migratory situation of the island and the need to combat irregular immigration in the Department.

69. These provisions were upheld by the Constitutional Council, in its Decision No. 2011-631 of 9 June 2011, which found that these holding areas resolved the difficulties of processing, in line with the rules governing entry into French territory, groups of persons entering France at places other than official border crossings. Extending the holding area from the location of discovery of the persons concerned to the nearest border crossing has the effect of enabling the rules under Title II of Book II of the Code on the Entry and Residence of Aliens and the Right of Asylum to be applied to only those foreigners in the group whose entry justifies the implementation of the measure. Furthermore, having considered that: all members of the group in question had to have been identified within the legally defined perimeter, which could not be extended; that border crossing points were precisely defined and publicized pursuant to article 34 (b) of the regulation of the European Parliament and of the Council of 15 March 2006; that the holding area was established for a period of 26 days, which could not be extended or renewed; and that the contested measure could only be implemented, under the supervision of a judge, when it was clear that a group had just entered France; the Constitutional Council concluded that the legislation contained provisions sufficiently clear and precise in nature to safeguard against the risk of arbitrariness.

70. In addition, it is stated in the circular of 17 June 2011 that this measure is intended to be used on an exceptional basis and that the foreign nationals concerned are to be transferred as soon as possible to the nearest border crossing point, where there is a permanent holding area.

71. In any case, since this is a border-crossing-related procedure, it cannot be extended to the entire territory.

72. Lastly, implementation of this measure has no impact on the legal regime governing holding areas. The Constitutional Council, which confirmed the principle of detaining foreign nationals in holding areas (Decision No. 92-307 of 25 February 1992), found that the level of restraint used was not the same as that used on foreign nationals placed in detention, since foreign nationals in holding areas had the option to leave France at any time. The European Court of Human Rights also ruled that deprivation of liberty regimes used at the border were not contrary to the European Convention on Human Rights (European Court of Human Rights, No. 13229/03, *Saadi v. the United Kingdom*, 29 June 2008, para. 64).

73. Article L.213-9 of the Code on the Entry and Residence of Aliens and the Right of Asylum provides sufficient guarantees insofar that an appeal against a decision to refuse entry is considered to be in compliance with the European Convention on Human Rights. Foreign nationals in holding areas have the right to be assisted by an interpreter or by counsel. Although appeals must be filed within 48 hours, the same time limit applies to other procedures and is in no way incompatible with the right to an effective remedy, especially as foreign nationals have access to legal assistance in the holding area. The Constitutional Council does not require the appeal to have suspensive effect; however, as indicated previously, in cases where an application for asylum is made at the border, a decision to refuse entry to an asylum seeker may not be enforced until the administrative court has made its decision.

Reply to paragraph 33 of the concluding observations

74. With regard to access to information concerning the disappeared person referred to in article 17 (3), the standard prison rules of procedure (art. R57-6-18) provide that, on arrival, a detained person is subject to admission formalities. The Code of Criminal Procedure (arts. D148 ff.) provides that all prisons must have a prison register, for which the prison governor is responsible, thus ensuring the lawfulness of the imprisoned persons' detention. A record of prisoner arrival is entered in this register for every entrant to a prison establishment. It details the circumstances of the person's surrender to the detention facility and the date, type and issuing authority of the order for committal. The process involves verifying the detained person's identity by confirming their civil status and taking photographs and fingerprints, as well as recording information such as the transfer of the detainee to the prison guard, transcriptions of the arrest warrants and judgments, commencement of sentence and release dates, and so on.

75. Every detained person shall immediately be allowed to inform his or her family of his or her incarceration.

76. Persons with a legitimate interest can gain access to information concerning the detainee. In fact, during the arrival procedure, the detained person is invited to provide the name of a person to be notified in the event of death, serious illness, accident or placement in a psychiatric institution. In the event of a detained person's death, the prison administration is responsible for informing the designated person, the judicial and prison authorities, the prefect, the public prosecutor and the Minister of Justice. In the case of the death of a person on remand awaiting trial, the judge in charge of the case file must also be informed; if the death is of a convicted person, the sentence enforcement judge must be notified. If the detained person is a member of the armed forces, the military authorities must also be informed.

77. On the death certificate, only the street and number of the building should be recorded as the place of death (Code of Criminal Procedure, arts. D280 ff.).

78. In the event of the death of a detained person, the documents in the possession of the prison clerk are given to the next of kin or, failing that, attached to the individual file and, if necessary, deposited along with that file in the departmental archives (Code of Criminal Procedure, art. R57-6-4).

Reply to paragraph 35 of the concluding observations

“Committee’s evaluation (2014)

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

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

79. It is already provided for in French law that persons other than the disappeared person can be considered to be victims. Thus, relatives of the disappeared person or any other person may be considered as victims if they can prove that they have personally suffered direct injury as a result of the offence (Code of Criminal Procedure, arts. 2 and 3).

80. When a relative has suffered harm stemming from the offences that are the subject of the proceedings, the harm is considered to be direct and personal in nature. It is therefore incumbent on the relatives to prove that they have suffered material injury, such as economic harm linked to the loss of income or costs incurred, or moral injury, such as emotional loss, separation from a loved one or bearing witness to trauma. Harm suffered by a direct or an indirect victim entitles him or her to full reparation through the payment of financial compensation. The level of harm is evaluated when the court issues its ruling.

81. In addition, the victim may sue for damage in criminal proceedings before the investigating judge, who determines whether the claim is admissible. If it is deemed admissible, the investigating judge undertakes an investigation of the facts. The plaintiff will have access to the file of the proceedings (Code of Criminal Procedure, art. 85 ff.). Although the plaintiff has the right to be assisted by a lawyer, legal representation is not obligatory (Code of Criminal Procedure, art. 80-3).

82. Victim support associations assist the victims of a criminal offence by providing them with information, supporting them during the criminal proceedings and guiding them towards the most appropriate care for their needs.

83. Lastly, any objects belonging to the victim that have been sealed as evidence as part of the investigations may be returned to the victim or his or her next of kin during or at the conclusion of the criminal proceedings.

Reply to paragraph 37 of the concluding observations

On the introduction of the acts described in article 25 (1) of the Convention as offences specifically related to enforced disappearance

84. Article 25 (1) of the Convention involves preventing and punishing under criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

85. These acts are already punishable under French criminal law through the offences of abduction, false imprisonment (Criminal Code, arts. 224-1 ff.) and fraud (Criminal Code, arts. 441-1 ff.). For example, the apprehension, abduction, detention or false imprisonment of a person is punishable by 20 years' imprisonment.

On appeals for the review of adoption decrees when an adoption originates from an enforced disappearance

86. The judicial review procedure is provided for under articles 593 ff. of the Code of Civil Procedure. Although full adoptions are irreversible and simple adoptions are reversible only under certain conditions, it has been ruled that "article 593 of the Code of Civil Procedure neither excludes from its scope of application decisions in non-contentious proceedings nor any other text, meaning that it can only be considered applicable to such decisions, which includes adoption decisions" (Versailles Court of Appeal, 22 November 2011, *Bulletin d'information de la Cour de cassation (Information Bulletin of the Court of Cassation)*).

87. The grounds for applying for a review are provided for in article 595 (1) of the Code of Civil Procedure, in which it is stated that an application for review is available "if it becomes clear, after the ruling, that the decision was inadvertently based on a fraud committed by the party in whose favour it was made". If an adoption originates from an enforced disappearance or an abduction, it clearly falls under the remit of the fraud referred to in article 595 (1) of the Code of Criminal Procedure.

88. It is not necessary to introduce an explicit provision on this matter, since article 595 of the Code of Criminal Procedure is intended to be general and non-specific in nature.

On the right of the child to express his or her opinion

89. Pursuant to article 388-1 of the Civil Code, a minor who is capable of forming his or her own views shall, in any procedure that concerns him or her, and without prejudice to provisions providing for his or her involvement or consent, be heard by the court or, when it is in the child's best interests, by a person designated by the judge for that purpose.

90. This hearing is obligatory when it is requested by the child.