



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

Distr.: General  
31 August 2015  
English  
Original: French  
English, French and Spanish only

**Committee on Enforced Disappearances**

**Consideration of reports submitted by States parties  
under article 29, paragraph 1, of the Convention**

**Reports of States parties due in 2013**

**Gabon\***

[Date received: 10 June 2015]

\* The present document is being issued without formal editing.



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## **I. Introduction**

1. The International Convention for the Protection of all Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations on 20 December 2006 and signed in Paris on 6 February 2007, confirms respect for the right of all persons not to be subjected to enforced disappearance. All States parties to the Convention are required to adopt both preventive and punitive measures to ensure strict observance of that right. The Convention was signed by Gabon in 2007 and ratified on 19 January 2011.

2. This report is submitted to the Committee on Enforced Disappearances, which was established under article 26 of the Convention, in accordance with article 29, paragraph 1, which requires States parties to report on the measures they have taken to give effect to their obligations under the Convention. To that end, the provisions of the Convention must be implemented in domestic law.

3. The current state of Gabonese law has been analysed for that purpose and the substance of this report sets out the main domestic measures. The form and content of the report have, of course, been aligned with the methodology proposed by the Committee, at its session held from 26 to 30 March 2012, while taking into consideration the need for an inclusive and participatory approach at the national level. Accordingly, the report was drafted with input from non-governmental organizations; the National Human Rights Commission; representatives of civil society, such as Samba Mwana, the National Association of Persons with Disabilities of Gabon (ANPHG), Mission Nisi, the Association against Ritual Crimes (ALCR), ARCADE; and development partners, especially the United Nations Children's Fund (UNICEF). The report was submitted, during a national meeting for feedback and approval, to some 20 organizations for their amendments and contributions.

4. Lastly, it is noted that, after considering the content of this report, the Committee may issue comments and observations in accordance with the provisions of article 29, paragraph 3, and may request additional information under article 29, paragraph 4.

## **II. Legal framework**

### **A. Provisions of the Constitution and of criminal and administrative law for the prohibition of enforced disappearance**

5. Enforced disappearance is considered a crime against humanity, albeit not specifically condemned or treated as a separate unlawful offence by Gabonese legislation. However, the main provisions of the Convention do have their equivalents in current Gabonese law. An act of enforced disappearance is viewed as a crime. In this regard, the international provisions derived from the international instruments to which Gabon is a party, as well as the provisions of the Constitution and the Criminal Code, are put into practice to help prevent acts of enforced disappearance.

### **B. International treaties dealing with enforced disappearance to which Gabon is a party**

6. The following instruments, among others, are worthy of mention:

- (a) United Nations instruments:

- The International Covenant on Civil and Political Rights, ratified on 21 January 1983;
  - The International Convention on the Suppression and Punishment of the Crime of Apartheid, ratified on 29 February 1980;
  - The Convention on the Prevention and Punishment of the Crime of Genocide, ratified on 21 January 1983;
  - The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 8 September 2000;
  - The Rome Statute of 17 July 1998 establishing the International Criminal Court, ratified on 20 September 2000;
  - The United Nations Convention against Transnational Organized Crime, ratified on 10 December 2004;
  - The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, signed on 8 September 2000;
  - The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed on 15 December 2004;
  - The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, ratified on 10 September 2007;
  - The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 8 October 2010;
  - The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, ratified in October 2010;
- (b) African Union instruments:
- The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, ratified in August 1975;
  - The African Charter on Human and Peoples' Rights, ratified on 20 February 1986;
  - The Protocol relating to the Establishment of the Peace and Security Council of the African Union, ratified on 29 December 2003;
  - The Organization of African Unity Convention on the Prevention and Combating of Terrorism, ratified on 25 February 2005;
  - The Protocol of the Court of Justice of the African Union, ratified on 18 May 2007;
  - The African Charter on the Rights and Welfare of the Child, ratified on 18 May 2007;
  - The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, signed on 29 January 2010.

### **C. The Convention and the domestic legal order**

7. The Constitution of the Gabonese Republic actually helps to ensure compliance with the substance of the Convention, not only in its preamble, which emphasizes the commitment of Gabon to the basic human rights and fundamental freedoms defined in

the 1789 Declaration of the Rights of Man and of the Citizen and the 1948 Universal Declaration of Human Rights and embodied in the 1981 African Charter on Human and Peoples' Rights and the 1990 National Charter of Freedoms. The following two articles of the Constitution are worth highlighting:

Article 1, paragraph 23: "No one shall be arbitrarily detained. No one shall be kept in police custody or be held under a detention order if he or she provides adequate surety, subject to security and procedural requirements. An accused person is presumed innocent until proven guilty by a fair trial at which the necessary guarantees are provided for his or her defence. The judiciary, as guardian of the freedom of the individual, shall ensure respect for these principles within the time frame laid down by law."

Article 47: "Notwithstanding the cases expressly provided for under the Constitution, the law establishes rules regarding, among others, the exercise of rights and duties of citizens; the judicial system and the status of judges; the definition of indictable offences and the penalties applicable to them and the criminal procedure, prison regime and amnesty system; and the general organization of national defence and public security. ... The provisions of this article may be further clarified or supplemented by organic law."

Article 67: "Justice is dispensed in the name of the Gabonese people by the Constitutional Court, the ordinary, administrative and fiscal courts, the High Court of Justice and other courts of special jurisdiction."

Article 68: "Judges, in exercising their functions, are to be guided solely by the authority of the law."

8. Although the Convention is not often formally invoked by judges, there is nothing to prevent them from referring to it for information insofar as a judge or lawyer may, if so desired during the course of a trial, draw on the articles of the Convention.

9. In practice, the Gabonese Criminal Code deals with the presentation of procedures for arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization of the State, which place such a person outside the protection of the law.

#### **D. Cases of enforced or involuntary disappearances and the application of provisions on the prevention and punishment of this crime**

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

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

#### **Article 1**

#### **Prohibition of enforced disappearance**

11. Gabonese criminal law, which is based on the Romano-Germanic legal system, reflects the concerns of the Convention, particularly with regard to the application of the theory of "rational obedience", which authorizes the refusal to obey an unlawful command. Any act of enforced disappearance is considered to be a serious offence under Gabonese law. Thus, any such act is automatically treated by the authorities as a serious offence, with the rules for demonstrating and proving the offence or deciding the gravity thereof being independent of the capacity in which the State exercises its

jurisdiction. The Criminal Code punishes as perpetrators, accomplices or instigators of a crime, those persons in positions of authority or power who have given instructions for the commission of an act of enforced disappearance. The order to commit or incite an act of enforced disappearance is therefore punished in the same way as the offence itself.

12. An enforced disappearance constitutes an illegal act for which there is no justification. It constitutes crime against humanity under international law, and articles 49 and 49 bis of the Gabonese Criminal Code warn against the abuse of authority. Article 49 specifies that anyone who through abuse of authority or power gives instructions for the commission of an act defined as an indictable offence shall be punished as an accomplice. Article 49 bis, supported by Act No. 19/93 of 27 August 1993, stipulates that anyone who knowingly instigates the commission of a criminal act by another person or directly incites anyone to commit a crime or an offence shall be sentenced to the same punishment as the perpetrators, even if, for reasons beyond their control, such incitement is not acted upon.

13. In connection with the same article, article 15 and 20 of the Code of Criminal Procedure ensures compliance with the Convention by stating that criminal investigation officers must inform the examining judge or the public prosecutor within 48 hours of any crime, offence or misdemeanour of which they have knowledge and above all must identify their official status in the police report. Article 20, paragraph (c), states that in the event of professional misconduct, the chief prosecutor may take all necessary measures to suspend criminal investigation officers from their duties, pending a decision by the Minister of Justice.

14. In addition, article 95 of Act No. 19/2010 of 27 July 2010 amending Ordinance No. 013/PR/2010 of 25 February 2010 on the status of the national police states that prejudicial acts committed by a police officer in the exercise of his or her functions, in connection with the exercise of his or her functions or outside his or her functions must be reported to the competent jurisdictions. Article 97 of the same Act confirms that when a procedure is instituted against a police officer, he or she must appear before the competent judicial authority.

15. Moreover, to ensure conformity with article 1 of the Convention, article 100 of Act No. 18/2010 of 27 July 2010 amending Ordinance No. 7/PR/2010 of 25 February 2010 on the status of members of the armed forces states that members of the armed forces are subject to criminal law as well as to the provisions of the Code of Military Justice and the law of war.

16. In connection with the crimes and offences committed by civil servants, articles 134, 135, 136 and 138 of the Code of Criminal Procedure address to the concerns expressed in article 1 of the Convention. Article 134 provides for penalties for any civil servant or government agent or employee who has ordered or committed an arbitrary act or one that violates individual freedom, the civil rights of one or more individuals or the Constitution. Article 135 punishes any public officials with responsibility for administrative or criminal investigation functions who disregard or fail to comply with a lawful request to establish the illegality or arbitrariness of a person's detention in police custody or elsewhere if those officials fail to show that they have reported the detentions to a higher authority. Article 136 establishes penalties for prison officials and employees who receive a prisoner without a warrant, judgement or a note instructing the bearer to report to prison, or, in the cases provided for by law, without a provisional government order; for those who have detained the prisoner or refuse to bring him or her before a police officer or the bearer of his or her instructions and who are unable to show that they have been prohibited from doing so by the public prosecutor or the court, and for those who refuse to produce their custody registers to a police officer. Finally, the fourth of the articles establishes

penalties for any administrative or criminal investigation official, any court or police officer and any law enforcement officer who, acting in his or her official capacity, enters the home of a citizen against the will of that citizen, except as provided for by law and subject to the formalities required by law. The same applies to any person who, by threat or by force, has entered the home of an individual and any person who, through ruse, threat or coercion, has entered a public or private building, a house used for commercial or residential purposes or a place of worship.

17. Regarding states of siege and emergency, article 25 of the Constitution states that “the President of the Republic may, when circumstances so require, after deliberation by the Council of Ministers and consultation with the Bureau of the National Assembly and the Bureau of the Senate, issue a decree proclaiming a state of emergency, which confers on him special powers defined by law”. In practice, when an imminent threat to internal or external security, such as a foreign or civil war or an armed insurgency, endangers the nation, the exercise of certain rights may be restricted or annulled to safeguard national interests, which have the highest priority. When there is an imminent threat to public safety, or in the event of serious incidents, a curfew may be imposed, involving the imposition of house arrests, the closure of meeting places or instructions for searches. In this case, the situation is a state of emergency. However, these extraordinary procedures do not authorize enforced disappearances as defined in the Convention. Accordingly, no grounds may be invoked to justify the practice of enforced disappearances by the State or its agents.

## **Article 2**

### **Definition of enforced disappearance in domestic law**

18. Currently, Gabonese law does not reproduce verbatim the definition of enforced disappearance contained in the Convention; it relies instead on acts covered by the Gabonese Criminal Code, such as torture and cruel or inhuman treatment, as well as arbitrary confinement, detention and concealment of minors and other vulnerable groups. Specifically, enforced disappearance is punishable under the Code of Criminal Procedure, in accordance with articles 48 and 49, paragraph 2, which address the accomplice and the perpetrator; articles 134, 135, 136 and 138, which address the crimes and offences committed by civil servants; article 250, which covers arbitrary arrests and confinement; and articles 275, 278 and 279, which address crimes and offences against children. Any act of enforced disappearance may be prosecuted on the basis of those provisions.

## **Article 3**

### **Prohibitions and legal proceedings in connection with article 2 of the Convention**

19. The acts mentioned in article 2 of the Convention, if committed by persons or groups of persons acting without the authorization, support or acquiescence of the State, may, as appropriate, constitute acts of torture, inhuman, cruel or degrading treatment and crimes and offences against children and other vulnerable persons. As these acts constitute abduction and unlawful confinement, they may be prosecuted under the articles mentioned in paragraph 17. Crimes and offences committed by civil servants are punishable by a prison sentence of 1 to 10 years and variable fines, as appropriate; as criminal association is considered a crime against public order, it is punishable by life imprisonment if the authorities have cognizance of the agreement entered into or of the existence of the association before any legal proceedings are instituted. Arbitrary arrests and confinement are punishable by 5 to 10 years’



imprisonment, long-term rigorous imprisonment if the detention or confinement lasted more than 1 month, life imprisonment if the person or confined received death threats or in the event of any ransom demands. Crimes and offences against children are punishable by a term of imprisonment of 5 to 10 years and life imprisonment if a ransom was paid or if the abduction was followed by the death of the minor.

#### **Article 4**

#### **Classification of enforced disappearance as a criminal offence**

20. The information above in respect of article 2 and article 3, addresses the concern expressed in article 4 of the Convention — namely, making enforced disappearance an offence under criminal law.

#### **Article 5**

#### **Classification of enforced disappearance as a crime against humanity**

21. Considering enforced disappearance a crime against humanity is authorized by book VI (“On Cooperation with the International Criminal Court”) of Gabonese criminal law. Articles 612 to 635 refer to the acceptance by Gabon of the provisions of the Rome Statute of the International Criminal Court, which it ratified on 20 September 2000.

22. The Rome Statute of the International Criminal Court was incorporated into the new Code of Criminal Procedure in 2010. In accordance with the procedures set out in the Statute, Gabon cooperates fully in the investigation or prosecution of crimes by the International Criminal Court. In summary, this cooperation is made official through requests for mutual assistance that may be addressed to the chief prosecutor assigned to the Libreville Court of Appeal, who acts on them, subject to article 99, paragraph 4, of the Rome Statute of the International Criminal Court. When the International Criminal Court submits a warrant of arrest or a request for provisional arrest, the chief prosecutor not only begins searches and orders the arrest but also ensures the person’s incarceration.

23. The chief prosecutor ensures the enforcement of any summons to appear issued by the International Criminal Court, pursuant to article 58, paragraph 7, of the Statute. If Gabon receives a request from the Court for the surrender of a person and a request from another State for the extradition of the same person, the provisions of article 90 of the Statute will apply. At the request of the Court, the enforcement of a sentence of imprisonment on Gabonese territory is subject to the supervision of the Court, and the conditions of imprisonment are consistent with the provisions of article 106 of the Statute. Finally, fines, forfeitures and reparations ordered by the Court are enforced directly in Gabon, under the supervision of the chief prosecutor. They are enforced in accordance with the provisions, not inconsistent with the Rome Statute, of the Gabonese Criminal Code (book V, chapter II), without prejudice to the rights of bona fide third parties.

24. In line with article 5 of the Convention, when enforced disappearances constitute crimes against humanity, they should attract the legal consequences provided for under international law.

## **Article 6**

### **Criminal responsibility**

25. The following commentary focuses essentially on criminal responsibility for enforced disappearance when it does not constitute a crime against humanity rather than when it does.

26. Book I, chapter I, of the Code of Criminal Procedure, on penalties and persons liable to punishment, specifies the penalties for all offences or attempted offences (arts. 1, 6 and 7). In this respect, all offences are punishable by imprisonment under the law, which states that an attempted offence whose execution was initiated and was suspended or failed to achieve its effect only for reasons beyond the perpetrator's control shall be considered to be equivalent to the offence itself. Under article 48 of the Gabonese Code of Criminal Procedure accessories to and instigators of a crime are subject to the same penalties as the perpetrators of the crime, unless otherwise provided for by law.

27. In Gabonese law, accessories are defined as persons who:

- Through gifts, promises, threats, abuses of authority or power, conspiracies or culpable ruses, cause the act to be committed or give instructions for it to be committed; persons who procure arms, tools or any other means used in the act in the knowledge that they will be used for that purpose;
- Knowingly aid or abet the perpetrator or perpetrators in preparing, facilitating or committing the offence, without prejudice to the penalties specially set out in the Code of Criminal Procedure for persons plotting or inciting persons to commit acts detrimental to the security of the State, even in the event that the crime that was the purpose of the plotters or the agitators is not committed;
- Through speeches, shouts or threats in public places or at public meetings, or through writings or documents that are sold or distributed, put on sale or displayed in public places or meetings, or by posters or signs visible to the public, directly incite the perpetrator(s) to commit the act, if the incitement led to an offence or an attempted offence;
- Knowingly instigate the commission of a criminal act by another person or directly incite a person to commit a crime or an offence; such an instigator will be sentenced to the same punishment as the perpetrators, even if, for reasons beyond their control, such incitement is not followed by acts.

28. In addition, regarding the criminal liability of a superior, the Code of Criminal Procedure (chapter IX, arts. 127 to 129) states that officials and agents who act on the orders of their superiors are exempt from penalties only if the orders were given by the superiors in matters within their competence and they were required to obey by virtue of their rank; in this case, the penalties established for public servants will apply only to the superiors who gave the order.

29. The criminal responsibility of a superior in cases of complicity and incitement is also provided for in article 49 (b) of the Code of Criminal Procedure, as well as in article 119, which states clearly that the jurisdiction in respect of a defendant or offender extends to all his or her co-principals or accessories.

## Article 7

### Applicable penalties

30. The Gabonese Criminal Code establishes that offences relating to enforced disappearances, such as torture, inhuman treatment, unlawful and arbitrary detention and abduction, are punishable under, *inter alia*:

Article 250, which states that anyone who — without an order from the authorities and apart from cases in which the law requires the seizure of the accused — arrests, detains or illegally confines any other person shall be punished by a prison term of 5 to 10 years and may also be fined up to 1,000,000 CFA francs (CFAF).

Article 252, which states that anyone who places or receives a person in bondage, regardless of the reason shall be punished by a prison term of 3 months to 2 years and a fine of 24,000 to 120,000 CFA francs. The prison sentence may be increased to 5 years if the person placed or received in bondage is less than 15 years of age.

Article 253, which states that “the perpetrators of any of the offences listed below shall be liable to:

1. Long-term rigorous imprisonment if the detention or illegal confinement lasted more than 1 month;
2. Life imprisonment if the arrest was conducted with the use of false uniforms, under a false name or on the basis of a false order by a public authority, if the person arrested, detained or held in illegal confinement was threatened with death, or if ransom was demanded from that person;
3. Rigorous imprisonment if the arrest, detention or illegal confinement involved a person vested with public authority or if the victims, regardless of who they may be, were subjected to physical torture”.

31. In all the cases mentioned above, convicted offenders may also be deprived, for a period of 5 to 10 years after they have served their sentence, of the following civic, civil and family rights: the right to vote and participate in elections; the right to run for office; the right to be appointed as a judge in a court or to serve in other public roles, or to be employed in the civil service or work as a civil servant; the right to bear arms; the right to be a guardian, except to one’s own children, and only on the family’s recommendation; the right to be an expert or to serve as a witness in proceedings; the right to give testimony in court, other than to make mere statements; the right to wear a decoration.

32. Article 135 of Order No. 013/PR/2010 of 9 April 2010 on the status of the national police refers to two kinds of breaches of discipline or misconduct committed by the police: disciplinary offences are breaches of professional duties or honour, behaviour or dress code, and professional misconduct is violations of regulations on discipline, violations of rules on the performance of duties, or negligence in the performance of duties. Article 137 provides for four groups of sanctions applicable to the police: group 1, disciplinary sanctions for officers and non-commissioned officers; group 2 and group 3, statutory sanctions; and group 4, sanctions for non-commissioned officers (warning, suspension, custodial arrest and reprimand) and for officers (warning, suspension, reprimand, custodial arrest and reprimand with an entry on the officer’s personal file).

## **Article 8**

### **Statute of limitations**

33. Since its ratification of the Convention on the Prevention and Punishment of the Crime of Genocide on 21 January 1983 and of the International Convention on the Suppression and Punishment of the Crime of Apartheid, Gabon has been in compliance with international law and has made every effort to ensure that statutory limitations do not apply to violations of international law.

34. Sentences handed down in criminal trials are subject to statutory limitations 20 years after the date of the final judgement. The convicted offender is subject, as of right, to lifelong banishment from the department where the victim and his or her direct heirs lived.

35. Under Gabonese law, victims of enforced disappearances may initiate legal proceedings. Specifically, the law states that “civil indemnity proceedings to seek compensation for harm caused by a crime may be brought by anyone who has suffered personally from the harm directly caused by the offending act”. In addition, article 3, paragraph (a), of the Code of Criminal Procedure states that civil indemnity proceedings may be instituted at the same time as the prosecution and before the same court and that such civil action is admissible for all types of loss or injury, both material and physical or mental, resulting from the offences forming the subject of the proceedings. This provision is a corroboration of the spirit of title I, article 2, of the Constitution, which states that Gabon ensures the equality of all citizens before the law, without distinction as to origin, race, sex, opinion or religion, as well as that of article 46 of the Code of Criminal Procedure, which specifies that anyone claiming to have been injured as the result of a crime or a misdemeanour may lodge a complaint with the investigating judge. In accordance with articles 81 and 82 of the Code of Criminal Procedure, the investigating judge transmits the complaint to the public prosecutor, who is responsible for bringing charges against a person who is named or unnamed. If the judge does not do so, he or she issues a substantiated decision that is open to appeal.

36. Moreover, Act No. 047/2010 of 12 January 2011 states:

“Any defendant may, in proceedings before an ordinary court, challenge the constitutionality of any law or regulation that disregards his or her basic rights.”

## **Article 9**

### **Competence**

37. Thirteen articles of the Criminal Code (arts. 327 to 339) address offences committed on board an aircraft or ship registered in Gabon; the planting of an explosive device, whether it exploded or not, the sabotage of vehicles, ships, aircraft, railway convoys; setting fire to residential buildings; wilful destruction of buildings; bridges and dykes; wilful damage to crops, plants or trees belonging to others; and the deliberate destruction of records, minutes or original documents of public authorities. All these types of destruction and damage are punishable by a prison term of 1 month to 10 years, together with fines.

38. If the offence of enforced disappearance is committed in Gabon by a Gabonese national against a foreign national, Gabon alone has jurisdiction. If it is committed by a foreign national in the territory of that foreign national’s State against another national of that State and the perpetrator of the offence is in Gabon, that State alone, in accordance with the customary principles of international criminal law, has

jurisdiction and is thus responsible for requesting the extradition of the guilty party or suspect. This extradition is normally granted by Gabon, in accordance with its international commitments.

39. Articles 526 to 528 of the Code of Criminal Procedure contain provisions relating to offences committed abroad. Specifically, all Gabonese nationals living outside the country who have committed an offence under Gabonese law may be prosecuted and tried in Gabon, unless the offence is penalized under the law of the country in which it was committed. Prosecution, however, may be initiated only at the request of the Public Prosecution Service, and it must be based on a complaint from the aggrieved party or an official charge submitted to the Gabonese authorities by the authorities of the country in which the offence was committed. Finally, any foreign national outside Gabon who is guilty as the perpetrator, accessory to or instigator of an offence detrimental to the national security of Gabon may be prosecuted and sentenced under Gabonese law if he or she is apprehended in Gabon, or if the Government secures his or her extradition.

40. Depending on the situation, ordinary law is applied as defined by the Code of Criminal Procedure: initial inquiries are conducted by the criminal investigation department (art. 40) either automatically or as ordered by the magistrate referred to in article 16; custody for 48 hours, renewable once, until prosecution is instituted through the opening of an investigation by an examining judge (arts. 27 to 29 of the Code) at the request of the public prosecutor (arts. 21 to 26) when the accused, after charges have been filed, is placed in pretrial detention.

## **Article 10**

### **Pretrial detention**

41. In Gabon, pretrial detention is an exception ordered or maintained only when it is the sole means of preserving material evidence and preventing pressure on witnesses or victims, or collusion between the accused and their accomplices. It is used when it is necessary to protect the public from the disturbance caused by the offence, to put an end to the disturbance or to prevent its recurrence or when it is necessary to ensure that the accused will appear in court.

42. In criminal cases, the length of pretrial detention may not exceed 1 year. However, it may be extended by 6 months by the investigating judge, who transmits the case file to the court's indictments division, which, in a substantiated decision and at the chief prosecutor's request, rules on a further extension for a period not to exceed 6 months. The investigating judge and the indictments division must rule before the end of the legal duration of preventive detention, or the accused is released by order of the Public Prosecution Service.

43. If the President of the indictments division receives a request for interim release, he or she is to inform the chief prosecutor, who notifies the pretrial chamber of the International Criminal Court. The President must reach a decision within no more than 15 days. Before reaching a decision, however, the President must give consideration to the recommendations of the pretrial chamber, in accordance with article 59 of the Rome Statute of the International Criminal Court. The President is responsible for determining the conditions ensuring the surrender of the person to the International Criminal Court. The issuance of a summons to appear by the Court's pretrial chamber obliges the chief prosecutor to begin an investigation that may lead to the person's arrest and incarceration. The chief prosecutor is the enforcement authority.

44. Prison guards and officials who receive duly authorized release orders and continue to detain accused persons in breach of the law are prosecuted for arbitrary

detention and subject to the penalties set forth in article 136 of the Code of Criminal Procedure, which states: “Prison guards and officials who admit a prisoner without a warrant, judicial decision or note instructing the bearer to report to prison, or, as provided for by law, without an interim order from the Government; those who detain a prisoner or refuse to bring him or her before a court, a police officer or a person bearing orders, without an injunction from the public prosecutor or a judge; and those who refuse to show custody registers to a police officer shall be deemed guilty of arbitrary detention and liable to a prison term of between 6 months and 2 years and a fine of between 50,000 and 500,000 CFA francs or to one of these two penalties.”

45. Gabonese law states that:

- Appeals against orders relating to the extension of pretrial detention may be made by the accused, the plaintiff, the chief prosecutor and the public prosecutor;
- The public prosecutor determines whether acts constitute crimes;
- A release may be ordered by the investigating judge, at the public prosecutor’s request, provided that the accused pledges to appear at all stages of the proceedings;
- The accused or counsel may petition the investing judge for an interim release at any stage of the proceedings;
- If the accused is present at all court proceedings and complies with the judgement, the obligations arising from the grant of bail no longer apply.

## **Article 11**

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

46. All requests for arrest and surrender made by the International Criminal Court are transmitted to the chief prosecutor of the Libreville Court of Appeal, who examines the request and acts on it, in accordance with article 89 of the Rome Statute of the International Criminal Court and the provisions of the Gabonese Code of Criminal Procedure. Identification of the person (appearance, place of residence) is initiated.

47. When the person is apprehended, he or she is brought before the chief prosecutor of the Court of Appeal who ordered the arrest within 24 hours. Within eight days of the person’s appearance before the chief prosecutor, he or she appears before the President of the indictment division. If the President of the indictment division observes that no significant error has been made, he or she orders the person’s surrender.

48. If Gabon receives a request from the International Criminal Court for the surrender of a person and also receives a request from another State for extradition of that person, the provisions of article 90 of the Rome Statute apply. The transit through Gabon of a person being surrendered to the International Criminal Court is authorized by the Ministry of Justice, in accordance with article 89 of the Rome Statute. In addition, Gabonese law states: “All persons detained on the national territory may, with their consent, be provisionally surrendered to the International Criminal Court for identification or questioning purposes, or for any other component of an investigation.”

49. The Code of Criminal Procedure has four major articles (632 to 635) on the enforcement of sentences and other enforcement measures. In summary, it states that:

- When any person is convicted by the International Criminal Court and received in Gabon to serve his or her sentence of imprisonment, the conviction is enforceable as soon as the transfer is effected, in accordance with article 106 of the Rome Statute of the International Criminal Court, which supervises the enforcement of the sentence;
- Any person who is not a national of Gabon may be transferred to another State that agrees to receive him or her, in accordance with article 107 of the Rome Statute, unless Gabon authorizes the person to remain in its territory. In accordance with article 108 of the Rome Statute, however, a sentenced person in the custody of Gabon is not subject to prosecution or punishment or to extradition to a third State for any offences committed prior to that person's delivery to Gabon, unless prosecution, punishment or extradition has been approved by the Court at the request of Gabon. Finally, the provision above ceases to apply if the sentenced person remains voluntarily for more than 30 days in Gabon after having served the full sentence imposed by the Court, or returns to Gabon after having left it;
- Decisions of the International Criminal Court relating to fines and forfeiture or reparation measures are enforceable in Gabon, in accordance with the provisions of the Rome Statute, and their enforcement is ensured by the chief prosecutor.

## **Article 12**

### **Reporting and investigation**

50. The provisions of article 12 of the Convention are reflected to some extent in the first three articles of the preliminary title of the Code of Criminal Procedure, on prosecution and civil indemnity proceedings. Although not explicit on the distinction with regard to the origin of the alleged offender, their content shows that criminal law is applicable to offences committed in Gabon, provided that the acts are relevant in Gabon. In such cases, "criminal proceedings for the enforcement of sentences shall be initiated and conducted by the judges or court officials empowered to do so by law". Moreover, regardless of whether or not the alleged offender is a Gabonese citizen, article 1, paragraph (b), of the Code of Criminal Procedure specifies that anyone who considers that his or her rights have been violated may institute proceedings in accordance with the provisions of the Code.

51. Thus, irrespective of where a person may be in Gabon, articles 2 and 3, paragraph (a), of the Code stipulate that civil indemnity proceedings to seek compensation for harm caused by a serious, ordinary or minor offence may be brought by anyone who has suffered personally from the harm directly caused by the offence. In addition, civil indemnity proceedings may be instituted at the same time as the prosecution and before the same court, and such civil action is admissible for all types of loss or injury, both material and physical or mental, resulting from the offences forming the subject of the proceedings.

52. The spirit of paragraph 48 of the report confirms that upheld not only in title I, article 2, of the Constitution, which states that Gabon ensures that all citizens are given equal treatment before the law, regardless of their origin, sex, opinion or religion, but also in article 46 of the Code of Criminal Procedure, which states that anyone considering him- or herself to have been injured as the result of a crime or a misdemeanour may lodge a complaint with the investigating judge.

53. The criminal investigation department, which operates under the supervision of the public prosecutor and the Court of Appeal, is responsible for investigations. It ensures respect for due process, questions anyone suspected of being involved in an

office, draws up reports on all its operations and all statements and has witnesses sign their statements. If they are unable to sign, this is noted in the record. The department may keep persons suspected of involvement in a crime in custody for no more than 48 hours. In all other places in which, because of remoteness or communication difficulties, it is not possible to bring the accused immediately before the judge, it may issue a non-renewable custody order of 8 days, within which the detainee must be brought before the investigating judge. As soon as they arrive, the public prosecutor or district judge takes over the case from the criminal investigation department.

54. The criminal investigation department, on its own initiative or on the orders of the Public Prosecution Service, conducts preliminary investigations. Wherever there are reasonable grounds to believe that an act is an enforced disappearance, article 31 of the Code of Criminal Procedure calls for the opening of an inquiry and the initiation of judicial investigation proceedings if the victim makes such a request in accordance with the law. To that end, the criminal investigation officer to whom the matter is referred must immediately inform the examining judge or the public prosecutor, attend the scene of the crime without delay and establish the facts. In practice, the criminal investigation officer hands over the case to the public prosecutor or the examining judge upon their arrival. The defendant is questioned, remanded in custody and brought before the judge at the next scheduled hearing. Witnesses are heard, and the defendant is informed of his or her right to request a time to prepare his or her defence. If such a request is made, a period of at least three days is granted. If the case is not ready for trial, the court must release the defendant provisionally, with or without bail, pending the receipt of additional information.

55. The Code of Criminal Procedure contains not only general provisions (arts. 41 to 45) but also specific provisions on lodging complaints (arts. 46 to 52), inspection of the premises and searches (arts. 53 to 62), questioning and confrontations (arts. 63 to 70), letters rogatory (art. 71), expert opinions (arts. 72 to 80) and provisional release pending trial (arts. 81 to 88).

56. Title V, article 68, of the Constitution specifies that “the judiciary is independent of the legislative and executive branches and that, in the exercise of their duties, judges are subject solely to the authority of the law”.

### **Article 13 Extradition**

57. To date, the Gabonese authorities have not received any request for extradition in relation to acts of enforced disappearance. Whenever Gabon receives a request from another State to extradite an individual, however, it applies article 90 of the Rome Statute, pursuant to article 629 of the Code of Criminal Procedure. Nevertheless, Gabon ensures that the extradition request is not a pretext for prosecution that is based on the race, religion, ethnic origin or political opinion of the accused person. Similarly, when the Pretrial Chamber of the International Criminal Court issues a summons pursuant to article 58, paragraph 7, of the Statute of the International Criminal Court, the chief prosecutor ensures its implementation, as stipulated in article 627 of the Code of Criminal Procedure.



## **Article 14**

### **Mutual legal assistance**

58. Although Gabon has not enacted comprehensive legislation on mutual legal assistance and to date has not received any request for assistance relating to an enforced disappearance, under the current legal system legal assistance may be provided when it is based on official bilateral or multilateral conventions signed on the basis of domestic legal provisions and the principle of reciprocity. On this basis, Gabon may cooperate with another State in a criminal case of enforced disappearance on the basis of the applicable regulations and procedures established in domestic law to implement requests for legal assistance.

59. Mutual legal assistance is covered in Book VI of the Code of Criminal Procedure. Those provisions are summarized in paragraphs 21 and 22 of this report.

## **Article 15**

### **International cooperation**

60. To date, the Gabonese authorities have not received any request for assistance relating specifically to mutual assistance for victims of enforced disappearance. For all intents and purposes, however, paragraphs 20 to 23 of this report describe the main aspects of international cooperation.

## **Article 16**

### **Non-refoulement**

61. Gabon has an obligation to respect the principle of non-refoulement under a number of international and regional instruments, and in particular the Convention relating to the Status of Refugees, which it ratified on 27 April 1964, the Protocol relating to the Status of Refugees, which it ratified on 28 August 1973; and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which it ratified in August 1975. All international and regional standards therein take precedence over domestic law and are directly applicable.

62. Building on these commitments, Gabon has adopted a law, a decree and an order:

- Act No. 5/98 of 5 March 1998 on the Status of Refugees in Gabon;
- Decree No. 00648/PR of 19 July 2000 establishing the powers, structure and operation of the National Commission for Refugees;
- Order No. 1145/PM/PAECF of 30 July 2000 establishing an identity card for refugees and regulating its issuance and renewal.

63. The Gabonese authorities never carry out any expulsion order, whether in time of peace or war, against foreign nationals who claim that their life or physical integrity would be at risk in the event of return without first conducting an individual review of their situation in the presence of a representative of the Office of the United Nations High Commissioner for Refugees.

## **Article 17**

### **Prohibition of incommunicado detention**

64. The Constitution of the Gabonese Republic includes four articles that relate to article 17 of the Convention.

Article 6: “The law is the expression of the general will. All citizens have the right to assist in the making of laws, either on their own initiative or through their representatives. The law shall be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, shall be equally eligible to all high offices, public positions and employments, according to their ability, and with no other distinction than that of their virtues and talents.”

Article 7: “No one may be accused, arrested or detained other than in the cases defined and the manners prescribed by law. Those who solicit, expedite, enforce or ensure the enforcement of arbitrary orders must be punished; however, any citizen who receives a subpoena or summons pursuant to the law must obey at once, and anyone who resists shall be deemed guilty.”

Article 8: “The law should provide only for those punishments that are strictly and clearly necessary, and persons may be punished only under laws that were drafted and enacted before the offence was committed and that are legally implemented.”

Article 9: “All persons are presumed innocent until found guilty. If it is deemed necessary to arrest them, any force used beyond that necessary to take them into custody must be severely punished by law.”

65. Pursuant to these Constitutional provisions, the law establishes which authorities have the power to order a person’s deprivation of liberty and provides, in particular, that:

- Summonses and arrest, committal and detention warrants are issued by the investigating judge (art. 106 of the Code of Criminal Procedure), or by the public prosecutor in cases where the individual is arrested in flagrante delicto (art. 285 of the Code of Criminal Procedure);
- Detention orders are issued by the investigating judge (art. 116 of the Code of Criminal Procedure);
- The case of a person kept in custody pending trial may be referred to the President of the Indictment Division at the request of the chief prosecutor.

66. The current regulations governing police custody are set out in articles 50 to 55 on flagrante delicto. Specifically, the duration of police custody is 48 hours. It may not be extended orally, but only on written authorization from the public prosecutor, and any extension may not exceed 48 hours. In addition, in cases of flagrante delicto it may be extended to a maximum of 8 days to avoid possible abuse of authority by officers who have the person in their custody or the lodging of complaints by citizens, who are sometimes unaware of the procedures and who claim that the time limits on police custody have not been respected.

67. All records kept by the police, gendarmerie and military intelligence services include the sequence of events for all deprivations of liberty. These bodies hold registers in which they record the identity of the person deprived of liberty; the date, time and place of deprivation of liberty; the authority that ordered the deprivation of liberty and the authority responsible for monitoring the deprivation of liberty; the place of deprivation of liberty and the date and time of admission to that place;

information on the health of the person deprived of liberty; and the date of the person's release or transfer to another place of detention or, in the event of their death in detention, the causes and circumstances of that death.

68. In prisons, the judgement or sentence sent by the public prosecutor is recorded in the prison register. The judicial authorities may request access to it in accordance with the procedure prescribed by law.

69. The law provides that all sentenced, accused or detained persons must have contact with the outside world in accordance with the law. They may contact their lawyer; correspond by mail; receive visits from their relatives, friends and acquaintances, and, in the case of foreigners, meet with officials from their country's embassy. In addition, in accordance with articles 52 through 54 of the Code of Criminal Procedure, they may inform a family member about their situation, be examined by a doctor and meet with a lawyer. Any person deprived of liberty has the right to appeal against their detention in accordance with the law.

70. Foreigners who are refused entry to the country, either by air or by sea, are kept in a holding area. With regard to the deprivation of liberty of foreigners who have illegally entered or are illegally residing in the country (in addition to the necessary measures to return them to their country of origin), while they are not always systematically detained, a detention centre for persons unlawfully in Gabon was established in June 2010 under the auspices of the Directorate General of Documentation and Immigration. The centre, which is required to keep a register, is a reception facility at which persons irregularly or unlawfully in the country are properly lodged while they await authorization to remain in Gabon or their repatriation. It meets international human rights standards (providing guarantees for the occupants with regard to moral and religious requirements, medical and social assistance, and their material well-being and hygiene), and it has a capacity of 130 beds, 80 for men and 50 for women. For entertainment, there is a large flat-screen television in a spacious dining room adjacent to the bedrooms, which are equipped with modern showers and toilets. This investment sets the stage for the construction of a large modern holding centre in the municipality of Owendo, for which the State has included 500 million CFA francs in the investment budget of the Directorate General of Documentation and Immigration.

## **Article 18**

### **Information on detained persons**

71. As noted above in the comments relating to article 17 of the Convention, all persons taken into police custody or placed in pretrial detention shall be fully informed of their rights (paras. 65-68). National law guarantees the right to information for relatives of Gabonese citizens or foreigners who have been detained, while respecting the boundary between the right to information and the right to privacy. In any case, anyone who is unable to obtain information about a relative who is being held in a place of detention has the right under Gabonese law to sue for damages in criminal proceedings in accordance with the established legal procedures.

## **Article 19**

### **Protection of personal information**

72. With regard to constitutional provisions, in 2011 Gabon enacted a law on the protection of personal information. The law protects individuals' privacy in the

context of the collection, processing (whether automatic or manual), transmission, storage and use of personal information.

73. The National Commission for the Protection of Personal Information has been established as an independent administrative authority. It is tasked with informing all persons concerned and all those who handle personal information about their rights and obligations, while also ensuring that such information is handled in accordance with the law. It is made up of nine permanent members: three appointed by the President of the Republic (including the Chairperson of the Commission); a judge who is a member of the Council of State and is appointed by the President of the Council of State; a judge from the Court of Cassation who is appointed by the First President of the Court of Cassation; a lawyer appointed by the bar association; a doctor appointed by the medical council; a representative of human rights defence organizations appointed by his or her peers, and an expert in information and communication technology appointed by the Minister of the Digital Economy. The remaining members of the Commission are four non-permanent members, as follows: a representative appointed by the President of the National Assembly; a senator appointed by the President of the Senate; a government commissioner appointed by the Prime Minister and a representative of Gabonese employers appointed by his or her peers.

74. Every precaution is taken to ensure that unauthorized persons do not gain access to personal information. Such information may be transmitted to another State only if that State guarantees that individuals' privacy and fundamental rights and freedoms will be adequately protected with respect to the way their information is handled or may be handled.

75. Gabonese law guarantees that all persons who suspect that an offence has been committed have the right to lodge a complaint and sue for damages suffered. Violations of the law will be punished with monetary and criminal penalties. Monetary penalties for a first offence may not exceed 98.4 million CFA francs; if a second offence is committed within five years, they may not exceed 300 million CFA francs and 5 per cent of a company's pre-tax revenue for the previous financial year. Criminal penalties are based on a prison sentence of 6 months to 1 year and a fine of 1 to 10 million CFA francs.

## **Article 20**

### **The right to information**

76. Explanations pertaining to the first paragraph of this article are provided elsewhere in this report in the reply relating to article 18 of the Convention.

77. Section 5 of the Code of Criminal Procedure outlines the elements of detainees' right to information. The investigating judge informs accused persons of the charges against them and of their right to choose whether or not to make a statement. As soon as they have made their initial appearance before the judge, persons charged may communicate with their legal counsel (art. 100 of the Code of Criminal Procedure).

78. The remedy provided for in article 20, paragraph 2, is discussed in paragraph 69 of this report relating to article 17 of the Convention. In addition, article 48 of the Code of Criminal Procedure stipulates that the plaintiff may become a party to proceedings at any time during the investigation and may sue for damages. Any such claims are directly investigated as provided for by law.

79. Articles 307 and 308 of the Code of Criminal Procedure stipulate, inter alia, that if the defendant is not proficient in the French language the President shall appoint an interpreter who is at least 21 years of age. The defendant and party to the proceedings

may refuse the services of that interpreter. If the defendant is a deaf-mute, the President shall appoint as an interpreter someone who regularly communicates with the defendant.

## **Article 21**

### **Release**

80. Accused persons or defendants may in any event ask to be released at any point in the proceedings, as provided for in article 87 of the Code of Criminal Procedure. The request is submitted to the court of criminal investigation or the trial court, and the President of the Court of Appeal takes a decision on the request.

81. Details such as the date of release must be recorded in the various registers in all instances of release from prison or police custody. Prison releases are carried out by prison guards, while releases from police custody may be carried out by police officers, gendarmes or military personnel.

## **Article 22**

### **Penalties for obstructing access to information and failing to provide information**

82. As stated in paragraph 69 of this report, Gabonese law guarantees the right of all persons deprived of their liberty to appeal against the lawfulness of that deprivation of liberty.

83. Any attempt to obstruct or interfere with the smooth operation of justice carries criminal, disciplinary or statutory penalties.

84. Thus, articles 127 to 137 of the Code of Criminal Procedure provide that any government employee or official or any person vested with State authority at any level who orders or commands, or has others order or command, the public use of force or action to present the enforcement of a law, the collection of a legal payment, or the enforcement of a court order or any other order issued by a legitimate authority shall be criminally liable. The perpetrator shall be punished with 5 to 10 years' imprisonment.

85. Furthermore, any government employee or official or any person vested with State authority who orders or carries out an arbitrary act or one that violates a citizen's individual freedom or civil rights shall be sentenced to 1 to 5 years' imprisonment and a fine of up to 1 million CFA francs.

86. Any officer responsible for policing or criminal investigation who neglects or refuses to refer a legal complaint of illegal and arbitrary detention to the courts and fails to report it to a higher authority shall be liable to the penalties set out in paragraph 82 of this report. The same applies to prison guards and officials who admit a person to prison without a warrant, sentence or administrative detention order, or who refuse to show prison registers to a police officer. For such violations, they are liable to 6 months to 2 years' imprisonment and/or a fine of 50,000 to 500,000 CFA francs.

## **Article 23**

### **Training**

87. Actions being taken by the Government include initiatives to rehabilitate the judicial system and place it on a sound moral footing. On 5 August 2011, the Minister

of Justice announced that a counsellor had been appointed in his cabinet to consider ethical questions, with the objective of instituting a debate on the judicial environment. It is expected that ultimately officials of the Ministry of Justice will treat detainees with greater justice, humanity and understanding — without lapsing into exaggerated familiarity — by showing more concern for their physical and moral state.

88. The creation of tools for the smooth functioning of prison security through training seminars, such as that held for prison staff in May 2011, has definitely been a positive contribution. The purpose of the seminar was to draw the attention of personnel to the responsibilities of the prison administration, thereby allowing participants to address a number of aspects of prison regulations. Issues covered included detention structures and procedures, the attitude of prison staff, corruption in prisons and drug abuse.

89. On 6 May 2010, a law reorganizing the Legal Service Training College was adopted so as to meet the public's expectations and need for more credible justice. Formulated pursuant to Act No. 20/2005 of 3 January 2005 on the establishment, organization and administration of State services, the law defines both the functions and structures of the Legal Service Training College. The College will train student judges and registrars, prison administrators, guidance counsellors and bailiffs, as well as teachers responsible for initial and ongoing training. This ongoing training guarantees that detainees are properly treated and prevents ill-treatment. The training covers human rights in the context of ethics, civil liberties and fundamental rights.

90. The police take initial, in-service, advanced and specialized training courses. Initial and further training is regarded as a right and an obligation for police officers (arts. 199-205 of Order No. 013/PR/2010 of 9 April 2010 establishing the status of the police). The objective of ongoing training is to improve the skills and attitudes of police officers and thus ensure better public service (arts. 206-211).

91. The training provided to military personnel and gendarmes is the same as that provided to police officers, except that it takes into account the specific characteristics of their work. With regard to military personnel, for example, provisions are clearly set out in articles 184 and 199 of Act No. 18/2010 of 27 July 2010 amending Order No. 7/PR/2010 of 25 February 2010 establishing the status of military personnel. In accordance with article 100 of the Act, members of the armed forces are subject to criminal law as well as to the provisions of the Code of Military Justice and the law of war.

## **Article 24**

### **The rights of victims**

92. In addition to Act No. 9/89 on pretrial detention and Act No. 10/99 on compensation for unlawful detention, article 7 of the Code of Criminal Procedure states that the objective of bringing a civil indemnity proceedings is to obtain reparation for damages directly caused by an offence. Any natural or legal person who has directly suffered such damages is entitled to bring a civil indemnity proceedings. Thus, any persons claiming to have been injured as the result of a crime or offence may become a party to the proceedings by lodging a complaint with the investigating judge. They may do so at any point during the investigation. Once an investigation has been opened as the result of such a complaint, in the event of a decision to dismiss the case, any party may claim damages in accordance with the law. The right of victims to reparation is guaranteed by the fact that all persons are entitled to seek reparation during criminal proceedings, and by the fact that the State may be held accountable before an administrative court for illegal acts committed by State officials.

93. Without prejudice to the provisions of the Code of Civil Procedure, persons who have been held in pretrial detention during proceedings against them are entitled to compensation for harm suffered if the proceedings ultimately result in their release or acquittal or if a decision is taken to discontinue the proceedings.

## **Article 25**

### **Children**

94. Gabon has not only ratified several international instruments to benefit children but has also established provisions at the national level to protect them.

(a) International instruments:

- The International Labour Organization (ILO) Night Work of Young Persons (Industry) Convention, 1919 (No. 6), ratified on 14 October 1960;
- ILO Minimum Age (Underground Work) Convention, 1965 (No. 123), ratified on 19 April 1967;
- ILO Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124), ratified on 18 October 1968;
- Convention on the Rights of the Child, ratified on 9 February 1994;
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, ratified in October 2010;
- ILO Worst Forms of Child Labour Convention, 1999 (No. 182), ratified on 28 March 2001;
- ILO Worst Forms of Child Labour Convention (No. 182), ratified on 27 January 2005;
- African Charter on the Rights and Welfare of the Child, ratified on 18 May 2007;
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, ratified on 10 September 2007;
- Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, ratified on 8 October 2010.

(b) National instruments:

- Act No. 9/2004 of 21 September 2005 on combating and preventing child trafficking in Gabon;
- Decree No. 000024/PR/MTE of 6 January 2006 establishing the conditions for checks, investigations and searches to combat trafficking in children in Gabon;
- Decree No. 000873/PR/MFPEPF of 17 November 2006 on the establishment, responsibilities and structure of a national observatory for children's rights;
- Decree No. 00031/PR/MTEEF of 8 June 2002 on combating child trafficking;
- Order No. 000158/PM/MSNASBE of 8 August 2000 on the establishment, responsibilities and structure of a committee to monitor the implementation of the platform for action on trafficking for labour exploitation;
- Decision No. 055/MASSNCRA/SG/DAS/SASS of 5 April 1992 establishing an ad hoc commission on foster care for abandoned children;

- Decision No. 00001/PM/MESI/PDM of 3 June 2006 establishing the procedure to care for and repatriate victims of child trafficking in Ogooué-Maritime Province;
  - The signing of the Multilateral Cooperation Agreement to Combat Trafficking in Persons, especially Women and Children, in West and Central Africa and its resolution on combating trafficking in children.
95. The Code of Criminal Procedure criminalizes the various forms of conduct that may constitute the enforced disappearance of a child, namely:
- Abducting, harbouring or concealing a child; substituting one child for another or attributing a child to a woman who did not give birth to the child (art. 275);
  - Raising a child who has not been brought before the persons who hold claimant rights (art. 276);
  - Exposing a child to a situation in which he or she is unable to protect himself or herself, or leaving a child in such a situation (art. 277);
  - Kidnapping children through fraud or violence; abducting and removing children from where they were placed by the authority or body responsible for them (art. 278);
  - Kidnapping or abducting a minor without the use of fraud or violence (art. 279).
96. Articles 275 and 276 establish a penalty of 5 to 10 years' imprisonment, while article 277 punishes perpetrators with 1 to 5 years' imprisonment and a fine of 24,000 to 240,000 CFA francs. In cases of kidnapping for ransom, article 278 establishes a penalty of rigorous imprisonment. Article 279 establishes a penalty for perpetrators of 3 months to 2 years' imprisonment and/or a fine of 24,000 to 120,000 CFA francs.
97. A children's court has been established as a court of first instance for minors under 13 years of age who are brought before the children's judge. Those between the ages of 13 and 18 years are instead brought before the investigating judge. In such cases, the investigating judge, acting with the required consent of the chairman of the bar, assigns a lawyer to defend the minor during both the investigation and the hearing.
98. Gabon has strengthened its efforts to combat trafficking in persons, particularly during the investigation conducted into such trafficking in Libreville and Port Gentil. A number of victims were rescued and protected as a result of this investigation. The Government continues to provide care to child trafficking victims through public shelters. When cases of trafficking in persons arise, the Government sends delegations to the source countries in collaboration with the embassies present in Libreville. For some time now, the ability to prosecute, convict and punish traffickers has been strengthened by allocating resources to convene the High Court of Justice. In addition, there is greater cooperation between law enforcement officials, immigration officials and gendarmes to jointly deal with victims of trafficking in persons. Gabon has also begun establishing a system to identify cases of trafficking, assign law enforcement authorities to those cases and generate statistics on protection for victims.
99. Act No. 9/94 enacted in September 2004, referred to in paragraph 94 (b) above, establishes a term of 5 to 15 years' imprisonment and a fine of US\$ 20,000 to US\$ 40,000 for all perpetrators. Sixty-eight persons suspected of trafficking were arrested between 2003 and 2010, though none were convicted. The Government receives expert assistance from INTERPOL in relation to trafficking in persons. The Government grants temporary residency to trafficking victims, and if repatriation or resettlement is not an option it regularizes the victims' immigration status and places them within a community in Gabon. Gabon has a National Procedural Manual for



Assisting Trafficking Victims, which provides information on the constituent elements of the offence of trafficking in children; the Council for Preventing and Combating Trafficking in Children; the Monitoring Committee; the National Centre for the Care of Child Victims of Trafficking; the Watchdog Committee; identification; removal; hearings, the initial audience, interviews and initial action; psychosocial assistance; administrative assistance; and departure and prosecution.

## **Annex**

### **List of governmental and non-governmental organizations involved in drafting and endorsing the report**

- Ministry of Human Rights;
- Ministry of Defence;
- Ministry of Justice;
- Ministry of Health;
- Ministry of the Interior;
- Ministry of Foreign Affairs;
- National Observatory for Children's Rights;
- National Commission on Human Rights;
- Samba Mwanas;
- SIFOS;
- Sylvia Bongo Ondimba Foundation;
- Mission Nissi;
- Association against Ritual Crimes;
- ACADE;
- National Association of Persons with Disabilities of Gabon.

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