



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Third periodic reports of States parties due in 1996

Addendum* **

FRANCE

[7 November 2003]

* For the initial report submitted by the Government of France, see document CAT/C/5/Add.2; for the summary records of the meetings at which the Committee considered that report, see documents CAT/C/SR.26 and 27 and *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 45 (A/45/44)*, paras. 60-86.

For the second periodic report, see CAT/C/17/Add.18; for its consideration by the Committee, see CAT/C/SR.320, 321 and 322 and *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/54)*, paras. 137-148.

** The annex to the present report may be consulted in the files of the secretariat.

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Annex: Report to the Government of the French Republic on the visit to France between 14 and 26 May 2000 by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and reply from the French Government.

I. GENERAL LEGAL FRAMEWORK

1. France signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment when it was opened for signature, on 4 February 1985. Act No. 85-1173 of 12 November 1985 authorized its ratification. France deposited its instrument of ratification on 18 February 1986. The Convention, which entered into force on 26 June 1987, was published in France by Decree No. 87-916 of 9 November 1987. All the formalities required by both international and internal law have therefore been fulfilled.
2. In the French legal system, which is monistic, “Treaties or agreements duly ratified or approved shall, upon their publication, have an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party” (Constitution, art. 55). This primacy naturally applies in the case of the Convention and is binding on the legislature, executive, administration and judiciary.
3. The applicability of the Convention to Overseas France is based on the general principle that international instruments are applicable there as in Metropolitan France when, as is the case here, there is no express provision in the instrument excluding these communities from its sphere of application. The Convention is applicable without restriction in Guadeloupe, French Guiana, Réunion, Mayotte, Saint Pierre and Miquelon, Wallis and Futuna, French Polynesia, New Caledonia and the French Southern and Antarctic Territories.
4. France has subscribed to the principle stated in article 5 of the Universal Declaration of Human Rights (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”) and is bound by several comparable international instruments prohibiting torture and treatment, in particular:

The International Covenant on Civil and Political Rights (article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”);

The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) [article 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”].
5. In the context of the above two instruments, France has entered into commitments allowing individuals who consider that the rights guaranteed under them have been violated to bring actions against the French State in the bodies established by the instruments. France is a party to the Optional Protocol to the International Covenant on Civil and Political Rights, which established the right of individuals to submit communications to the Human Rights Committee. It has also ratified Protocol No. 11 to the European Convention on Human Rights, giving the Court jurisdiction to examine the individual petitions that it receives.
6. Lastly, on 9 January 1989, France ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which it signed on 26 November 1987. For the prevention of ill-treatment this Convention, which came into force on 1 February 1989, instituted special machinery based on a committee empowered to visit

any place under a State party's jurisdiction where persons are deprived of their liberty by decision of a public authority. The Committee, the European Committee for the Prevention of Torture (CPT), is made up of experts. After each visit, it draws up a report setting out its findings and such recommendations as it deems it necessary to make to the State party visited. It is incumbent on the State party to respond to those comments in writing. Subject to the agreement of the State party concerned, all the information may be published.

7. CPT has made seven visits to France: in 1991, 1994 (twice), 1996, 2000, 2002, and most recently, in June 2003. France has authorized the publication of the reports made by CPT following those visits (the report on the 2000 visit is annexed to the present document). The process of authorizing the publication of the report on the 2002 visit is ongoing. CPT has not yet communicated its report on the 2003 visit to the French Government.

II. INFORMATION RELATING TO THE ARTICLES OF THE CONVENTION

Article 1

8. This article does not in itself call for any special implementation measures on the part of the States parties. Paragraph 1 seeks to provide a definition of torture for the purposes of the Convention by specifying the acts that come within its sphere of application. It should be noted that this definition is the first to appear in an international instrument. Consequently, the clause contained in paragraph 2 applies, as far as international instruments are concerned, only to future instruments.

9. French legislation does not contain any definition of torture within the meaning of the Convention. However, the Ministry of Justice circular of 14 May 1993 on the new Criminal Code that came into force on 1 March 1994 refers expressly to article 1 of the Convention:

“Generally speaking, there may be qualified as torture within the meaning of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at New York on 10 December 1984, ‘any act whereby severe pain or suffering, whether physical or mental, is intentionally inflicted on a person’. It should be noted, however, that the provisions of the new Criminal Code are far wider in scope than those of the Convention, which concern only acts committed by a public official for specified purposes.”

10. Articles 689-1 and 689-2 of the new Code of Criminal Procedure that came into force on 1 March 1994 together give French courts jurisdiction to prosecute and try anyone in France who has committed torture outside French territory. Article 689-2, indeed, refers to the definition in article 1 of the Convention:

“For the purposes of the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted at New York on 10 December 1984, any person guilty of torture within the meaning of article 1 of the Convention may be prosecuted and tried under the conditions stated in article 689-1.”

Article 2

Paragraph 1

11. The division among legislative, administrative, judicial and other measures of the arrangements that each State party must make to prevent acts of torture in any territory under its jurisdiction depends on the constitutional system of the State in question.

12. In France, under article 34 of the Constitution, laws establish “the regulations governing civil rights and the fundamental guarantees granted to citizens for the exercise of their public liberties (...), the determination of crimes and misdemeanours and the penalties imposed therefor, criminal procedure (...)”. Legislative authorization is also necessary for the ratification of international treaties and agreements that amend legislative provisions.

13. In addition to the laws authorizing ratification of the relevant international instruments, essentially the Convention, the legislation making torture an offence, setting the penalties for it and defining the judicial remedies available to victims also has to be taken into consideration. The judiciary, “the guardian of individual liberty” in the words of article 66 of the Constitution, acts within the framework thus set by the law. It may be invoked, for example, when a public official commits an act that violates the legally protected rights and freedoms of the individual (theory of assault).

14. Acts of torture committed by officials would come in particular under articles 222-1 and 222-3 of the new Criminal Code:

Article 222-1: “The subjection of persons to torture or to acts of barbarity shall be punishable by 15 years’ rigorous imprisonment”;

Article 222-3: “The offence referred to in article 222-1 shall be punishable by 20 years’ rigorous imprisonment if committed:

[...]

In or in connection with the performance of his or her functions or duties by a person vested with public authority or a public servant.”

15. Articles 432-4 to 432-6 of the new Criminal Code punish arbitrary infringement of others’ freedom of movement by persons endowed with public authority or public servants. In particular, article 432-4 provides as follows:

“The arbitrary ordering or performance by a person vested with public authority or a public servant in or in connection with the performance of his or her functions or duties of an act that infringes freedom of the person shall be punishable by seven years’ imprisonment and a fine of 100,000 euros.

When the act consists in detention or restraint for a period of more than seven days, the penalty shall be increased to 30 years’ rigorous imprisonment and a fine of 450,000 euros.”

16. More specifically, acts of torture ascribed to military personnel (who in France include gendarmes) are prosecuted under Act No. 99-929 of 10 November 1999, reorganizing the military system of justice. Pursuant to this Act, the government procurator's office operates under the sole supervision of the Minister of Justice:

(a) In the ordinary law courts (the courts of major jurisdiction and the appeal courts), competent to deal with all ordinary offences committed in French territory by military personnel, including offences committed while on but not in the course of duty;

(b) In specialized courts (the competent chambers of the courts of major jurisdiction) for ordinary crimes and offences committed in the course of duty and the military offences specified in book III of the Code of Military Justice;

(c) Outside France, in the Paris military court, which has jurisdiction over offences committed by members of the armed forces operating abroad.

17. Therefore, the law prohibits and sets penalties for torture; the judiciary punishes it. The mere existence of this punitive system has an obvious preventive and deterrent effect. It is supplemented by administrative measures consisting primarily of instructions from the executive to public officials on how to behave in order to comply with the law. These will be examined in detail under each article.

Paragraph 2

18. A state of war cannot be invoked in France in order to justify torture. Article 383 of the Code of Military Justice states that acts contrary to the laws and customs of war constitute ordinary crimes or offences and by that token are subject to criminal penalties. The Code also punishes purely military offences, including "incitement to commit acts contrary to duty or discipline" (art. 441). Similarly, the Act of 13 July 1972, amended by Act No. 75-1000 of 30 October 1975 establishing the general military regulations, specifies that military personnel may not carry out acts that are contrary to the law, the customs of war or international conventions or acts that constitute crimes or offences (art. 15). Lastly, the general disciplinary regulations for the armed forces, as governed by amended Decree No. 75-675 of 28 July 1975, state explicitly in article 9 bis, on respect for the rules of international law applicable to armed conflicts, that, pursuant to duly ratified or approved international conventions, military personnel are prohibited from "violating the life, person or personal dignity of the sick, the wounded or the shipwrecked or of prisoners or civilians, in particular through murder, mutilation, cruel treatment or any form of torture".

19. Ordinance No. 59-147 of 7 January 1959, on the general organization of the defence system, defines the conditions for mobilization and state of alert in the event of a threat of war. The Code of Criminal Procedure (art. 699-1) provides that, if mobilization or a state of alert is ordered, the Code of Military Justice may be rendered applicable by decree in the Council of Ministers.

20. French law sets forth very strict definitions for the various states of exception:

(a) The state of siege is defined by the Act of 9 August 1849, amended by the Act of 3 April 1878. It may be declared in cases of imminent danger resulting from a foreign war, a civil war or an armed uprising. Under article 36 of the Constitution, the decision on declaration must be taken in the Council of Ministers. A state of siege may not be maintained for more than 12 days without the approval of Parliament. It involves mainly the transfer of police powers and powers relating to the maintenance of law and order to the military authority;

(b) The state of emergency is regulated by the Act of 3 April 1955. It may be ordered by the Council of Ministers in cases of imminent danger resulting from serious breaches of law and order or from public disasters. It involves an extension of police powers that is counterbalanced by specific guarantees. Article 700 of the Code of Criminal Procedure states that “In the event of a declared state of siege or emergency, a decree in the Council of Ministers (...) may establish territorial courts of the armed forces under the conditions provided for by the Code of Military Justice. The jurisdiction of these courts derives from the Code of Military Justice for time of war and specific provisions of the legislation on states of emergency and states of siege”;

(c) The main effect of recourse to article 16 of the Constitution is to strengthen the powers of the President of the Republic, who must then take action to restore the constitutional authorities to normal operation.

21. Through specific procedures particular to each one, the various states of exception modify the normal division of authority, in particular in police matters and certain judicial procedures. They do not, however, affect the legal provisions and regulations prohibiting torture. Any acts of torture committed under them would therefore be punished as severely as in normal times.

Paragraph 3

22. In French law, an order by a superior may be invoked in justification of an act that itself constitutes a crime or offence only under the conditions set forth in article 122-4 of the new Criminal Code, which stipulates:

“No criminal responsibility shall attach to a person who commits an act that is prescribed or authorized by a law or regulatory instrument.

No criminal responsibility shall attach to a person who commits an act ordered by a legitimate authority unless that act is manifestly unlawful.”

23. It follows from these provisions that a manifestly unlawful order from a lawful authority cannot in itself justify the commission of an offence by an obedient subordinate. The law cannot in any circumstances order torture, since it expressly prohibits torture. A person in a position of authority who ordered subordinates to commit torture would be giving them a manifestly unlawful order and, under the regulations defining their rights and duties, they would be bound

not to obey it. Thus, article 28 of the Act of 13 July 1983 on the rights and obligations of civil servants states that all civil servants must comply with the instructions of their superiors, except where an order is manifestly unlawful and would seriously jeopardize the public interest.

24. Article 17 of the Decree of 18 March 1986 establishing the Code of Ethics of the National Police Force contains an identical provision and adds that “if the subordinate believes that he/she has been given an unlawful order, it is his/her duty to make his/her objections known to the issuing authority, indicating expressly why he/she believes the order to be illegal”. Article 10 provides that “a civil servant who witnesses prohibited behaviour shall be liable to disciplinary measures if he/she does nothing to stop it or fails to inform the competent authority”.

25. Article 15 of Act No. 72-662 of 13 July 1972 establishing the general military regulations states that:

“Military personnel must obey the orders of their superior officers and are responsible for executing the missions entrusted to them.

However, they may not be ordered to perform and may not perform acts that are contrary to the law, the customs of war or international conventions or that constitute crimes or offences, in particular against the security and integrity of the State.

The personal responsibility of subordinates does not relieve superiors of any of their responsibilities.”

26. Similarly, the Decree of 28 July 1975 establishing the general disciplinary regulations for the armed forces requires obedience only to “orders received in conformity with the law” (art. 7) and stipulates that a subordinate shall not execute an order requiring him/her to perform an act that is manifestly unlawful or contrary to the rules of international law applicable in armed conflict or to duly ratified or approved international conventions (art. 8).

Article 3

Paragraph 1

27. French law as it stands is consistent with this article as regards refoulement at the border, deportation from the territory (return to the frontier and expulsion) and extradition.

(a) Refoulement

28. Refoulement constitutes refusal to allow entry into a State. The measure is provided for in article 5 of Ordinance No. 45-2658 of 2 November 1945, as amended, relating to the conditions for aliens’ entry to, and residence in France. Article 2 of the Ordinance states that the rules it lays down apply “subject to international conventions”. Consequently, refusal of entry to France in contravention of the principles set forth in article 3 of the Convention would be unlawful. In practice, persons who do not meet the legal conditions for admission to France and fear that they will be tortured in the event of their refoulement to another State apply for the right of asylum in France, invoking the “fear of being persecuted” mentioned in article 1 of the

Geneva Convention relating to the Status of Refugees of 28 July 1951, an instrument that is binding on the French authorities and article 33 of which prohibits the refoulement of refugees to countries where they fear for their lives or freedom.

29. Decree No. 82-442 of 27 May 1982, as amended, which was the enabling instrument for article 5 of the Ordinance, states in article 12 that: “when an alien applies for the right of asylum on arrival at the frontier, the decision to refuse him/her entry into France may only be taken by the Minister of the Interior after consultation with the Minister for Foreign Affairs”. All asylum-seekers are systematically heard in their language by a trained and qualified expert representing the Foreign Ministry seconded from the French Office for the Protection of Refugees and Stateless Persons (OFPRA) or the International Organization for Migration (IOM), who gives a reasoned and substantive opinion on the basis of which the decision is made.

30. In a decision dated 3 September 1986, the Constitutional Council determined that article 5 of the Ordinance (as amended by Act No. 86-1025, promulgated on 9 September 1986) implicitly but necessarily preserved the rights of refugees. The Council of State had, moreover, previously decreed, in a decision dated 27 September 1985, that article 12 of the Ordinance merely defined the competent authority and the procedure for refusing entry “insofar as the legally applicable provisions allow it, taking into account inter alia the stipulations of the international conventions relating to refugees”. Hence a refugee cannot be returned if the effect of doing so would be to send him/her to a country where he/she was at risk of torture.

31. Act No. 92-625 of 6 July 1992, which spells out the conditions under which aliens can be kept in holding areas, refers expressly to the case of persons who request asylum in France. Such persons may only be kept in a holding zone “for so long as is strictly necessary [...] for an enquiry to determine whether [their] request is not manifestly unfounded” (Ordinance No. 45-2658 of 2 November 1945 relating to the conditions of entry and residence of aliens in France, article 35 quater, as amended). Conversely, providing an alien’s request for asylum is not “manifestly unfounded”, he/she can enter France.

32. Even if it was considered that the case of individuals under threat of torture was different from that of refugees, and consequently was not covered by the rules formulated for refugees, a similar line of reasoning would have to be followed concerning the possibility of returning a person at risk of being tortured. The Convention would prevent the person’s refoulement, since it takes precedence over domestic law.

33. The decision to refuse entry, whether to an asylum-seeker or not, can be appealed before an administrative court. While decisions to refuse entry could not previously be subject to a stay of execution, now, in accordance with the Act of 30 June 2000 regarding proceedings for interim measures before administrative courts, such a decision can be subject to an interim suspension (Code of Administrative Justice, art. 521.1) in cases where there is “urgency” and “a bona fide way of justifying the annulment of the contested decision”, or to an interim injunction (art. 521.2) which can be passed down by the judge in cases of “serious and obviously illegal infringement of a fundamental freedom”.

(b) Removal from the territory

34. Under French law, the removal of an alien from French territory may be a consequence of a judicial decision banning the person from entering the territory and entailing escort to the border, of an administrative decision to escort the person to the border because he/she had entered or was in France illegally, or of an administrative decision to expel the person because his/her presence represents a serious threat to public order.

35. Act No 93-1027 of 24 August 1993 added to the Ordinance of 2 November 1945 an article 27 bis reading:

“An alien who is the subject of a deportation order or who must be escorted to the border shall be sent:

1. To his/her country of nationality, unless the French Office for the Protection of Refugees and Stateless Persons or the Refugees Appeal Board has recognized him/her as a refugee or a decision is still pending on his/her request for asylum; or
2. To the country which issued him/her with a valid travel document; or
3. To a country to which he/she may lawfully be admitted.”

36. In order to strengthen the protection for people whose lives or liberty are at risk or who are threatened with inhuman or degrading treatment, the Act of 25 July 1952 regarding the right to asylum has been amended by the Act of 11 May 1998, which provides that refugee status is recognized not only to the persons mentioned in the Convention relating to the Status of Refugees but also to “all persons who are persecuted for their pursuit of freedom” (art. 2). It also empowers the Minister of the Interior, after consultation with the Minister of Foreign Affairs, to grant territorial asylum to an alien whose life or liberty is threatened in his/her country or who would be at risk of treatment contrary to article 3 of the European Convention on Human Rights (art. 13) there. These provisions cover the circumstances envisaged in article 3 of the Convention against Torture.

37. The bill on immigration control and the stay of aliens in France which will soon be submitted to a parliamentary vote aims to strengthen the protection from removal for certain categories of aliens meeting conditions regarding family connections in France, length of stay or other specific conditions. In addition to this, article 25, paragraph 8, of the Ordinance of 2 November 1945, as amended by the Act of 24 April 1997, provides that, unless an alien living in France whose state of health requires medical attention without which he/she could suffer exceptionally serious consequences will be able to receive suitable treatment in the country of return, no deportation order may be issued against him/her. He/she may be granted a temporary, one-year, renewable residence permit (article 12 bis, paragraph 11, as amended by the Act of 11 May 1998).

38. Article 27 ter of the Ordinance of 2 November 1945 as amended by the aforementioned Act of 24 August 1993 stipulates that the decision as to the country to which an alien who is subject to removal from French territory shall be returned is a separate matter from the decision

on removal and is appealable to an administrative court. If the appeal against the decision fixing the country of return is lodged at the same time as an appeal against the order for escort to the border on grounds of unlawful entry to or residence in France, it stays execution in the same way.

39. In any event, it must be stressed that procedural safeguards exist as regards both escort to the border and expulsion, and that aliens are granted protection when such a measure is executed.

Safeguards regarding removal

40. The very principle of the measure is subject to judicial control.

Escort to the border

- (i) Upon being notified of the order to escort him/her to the border, the alien is immediately allowed to notify a counsel, his/her consulate or a person of his/her own choosing;
- (ii) Pursuant to article 22 bis of the Ordinance of 2 November 1945, as most recently amended by Act No. 98-389 of 11 May 1998, an order for escort to the border is not enforceable for 48 hours after the alien has been notified of it by the authorities (or within seven days, if the escort order is delivered by post). In the intervening period the alien may lodge with the president of the administrative court an application for the annulment of the order. The president or his representative must rule on the application within 48 hours of its submission. The appeal stays execution, meaning that the order for escort to the border cannot be enforced until the aforementioned 48-hour or seven-day time limit has expired or, if annulment has been sought, until the court has ruled on the application;
- (iii) The alien may, in connection with the proceedings before the president of the administrative court or his representative, request the assistance of an interpreter and the production of the file containing the documents on the basis of which the decision complained of was taken. The hearing is public and must take place in the presence of the alien and of his/her counsel, if he/she has one. When an alien has no counsel, he/she may request the president of the court or his representative to assign him/her one. The ruling may be appealed to the Council of State.

Expulsion

- (i) The alien must be notified in advance and given at least two weeks' notice to appear before a commission of magistrates, whose proceedings are public;
- (ii) Act No. 89-548 of 2 August 1989 states that, while his/her situation is being reviewed by the commission, the alien has the right to be assisted by counsel or any person of his/her choice and to be heard with an interpreter. Furthermore, since the adoption of Act No. 91-647 of 10 July 1991, he/she may apply for legal aid in order to have the services of counsel free of charge; this entitlement must be mentioned in the summons to appear before the commission of magistrates;

- (iii) The alien may explain to the commission the reasons why he/she should not be expelled. A record of his/her explanations must be sent, together with the commission's substantiated opinion, to the Minister of the Interior, who decides;
- (iv) If the Minister of the Interior decides on expulsion, the expulsion can be appealed before a judge for cancellation; a judge can also give an interim suspension or an interim injunction to suspend the measure, in accordance with the Act of 30 June 2000 (see above, paragraph 33);
- (v) The requirement to seek the opinion of the commission is waived in cases of the utmost urgency. Even then, however, the judicial remedies listed in subparagraph (iv) above are available.

Safeguards regarding removal

Aliens who cannot be removed

41. In addition to the measures preventing the execution of removal orders in the circumstances outlined above (para. 37), there are other measures prohibiting the execution of these orders. Article 27 bis of the Ordinance of 2 November 1945 prohibits the removal of aliens at risk ("No alien may be sent to a country if he/she proves that his/her life or freedom would be in danger there or that he/she would be at risk there of treatment contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950."), and provides that in these same circumstances a legal residence permit may be granted.

42. The last paragraph of article 27 bis therefore incorporates directly into the Ordinance of 2 November 1945 the requirements of article 3 of the European Convention on Human Rights, which provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". It thereby also fulfils the requirements of article 3 of the Convention against Torture. No administrative authority which has properly decided that an alien shall be removed from French territory can lawfully send the person to a country where he/she will be at risk of torture or inhuman or degrading treatment.

Immediate enforcement

43. Article 26 bis of the Ordinance of 2 November 1945 provides that orders for the expulsion of aliens are immediately enforceable by the authorities. This provision exists in order to ensure that aliens whose presence constitutes a serious threat to public order and whose continued freedom on French territory could lead them to go underground and undertake further activities endangering law and order are removed from the country. Immediate removal necessarily entails police escort to the border with the destination country, but to see that process as a transfer from one police force to another would be wrong. The Paris Administrative Appeal Court has, in a number of rulings, notably on 30 May 2000 and 22 March 2001, confirmed the legality of the methods for ensuring the removal of aliens holding that they were not signs of decisions, in response to approaches by States of return, to hand over persons to those countries' police forces, but were intended solely to ensure, in all legality, the application of deportation orders.

(c) **Extradition**

44. In France, extradition is regulated by the Act of 10 March 1927, which is the ordinary extradition law applicable to relations between France and States having no extradition treaty with France, as well as a residual law applicable to the matters not covered by international agreements. The Act makes the admissibility of requests for extradition subject to requirements of substance and form, the reason for which is to safeguard the rights of the defence. An individual whose extradition is requested is heard by the examining chamber of a Court of Appeal. Extradition is not permitted if the chamber rejects the request for it. If extradition is granted by executive order from the Prime Minister following approval by the examining chamber of the extradition request, the extraditee also enjoys certain safeguards in connection with the possibility of appealing to the Council of State.

45. These provisions are supplemented by France's international commitments, with the aim of providing increased protection for persons subject to extradition. When France ratified the European Convention on Extradition (done at Paris on 13 December 1957), on 10 February 1986, it made the following reservations:

“Extradition will not be granted when the person sought would be tried in the requesting State by a court which does not offer the fundamental guarantees in respect of procedure and protection for the rights of the defence or by a court established for his/her particular case, or when extradition is requested for the purposes of executing a sentence or a security measure imposed by such a court.

Extradition may be refused if his/her surrender is likely to have exceptionally serious consequences for the person sought.”

France has also reserved the option of refusing extradition if “the penalties or security measures are not provided for in the scale of penalties applicable in France”.

46. The legal remedies available ensure that these principles are respected. If the examining chamber of a Court of Appeal declares in favour of an extradition request, an appeal to vacate may be made, with suspensive effect (decision by the Court of Cassation, 17 May 1984).

47. Furthermore, the administrative court has decided that decrees adopted on behalf of a foreign State pursuant to the Act of 10 March 1927 can be treated separately from France's international relations, and a person whose extradition has been authorized may appeal on grounds of illegality (Council of State, decision of 28 May 1937, *Decerf*). The Council of State monitors the legal classification of the circumstances justifying extradition (Council of State, 24 June 1977, *Astudillo Caleja*) and verifies the conformity of the extradition orders with international conventions. It takes French public policy into account. Consequently, it has decided that the extradition of an individual who might well incur the death penalty (which has been abolished in France) would be contrary to French public policy (decision of 27 February 1987, *Fidan*). It also takes into account the general principles of the law on extradition. In particular, it examines the respect for the “fundamental rights and freedoms of the human person”, especially by the judicial system of the requesting country (*Uriza Murquutio*, 14 December 1987).

48. Lastly, in a decision of 1 April 1988 (*Bereciartua Echarri*), the Council of State quashed an order granting to the authorities of the country of origin the extradition of a person who had been granted refugee status. The examining chamber of the Paris Court of Appeal recently took a similar decision by refusing to approve the extradition of a refugee to his country of origin (*Arrospide-Sarasola*, 1 June 1988).

49. Consequently, even if France had not ratified the Convention, extradition that would render a person liable to torture would be considered to be unlawful by French courts. With the entry into force of the Convention, that is now definitively the case. It should be emphasized that observance of the provisions of article 3 is ensured not only by national legal remedies, but also by individual applications, as mentioned in the introduction, to the United Nations Human Rights Committee and the European Commission of Human Rights.

50. Mention should be made in this respect of the ruling of the European Court of Justice of 7 July 1989 to the effect that a decision by the United Kingdom to surrender a German national to the United States authorities would, if enforced, breach article 3 of the European Convention on Human Rights. The Court reached this finding after noting that there were serious grounds for thinking that if the German returned to the state of Virginia, where he had been accused of a double murder, he would be sentenced to death and therefore at risk from "death row syndrome" (European Court of Human Rights, 7 July 1989, *Soering v. United Kingdom*).

Article 4

Paragraph 1

51. As already stated, acts of torture are classified as a distinct crime by article 222-1 of the new Criminal Code that came into force on 1 March 1994. Under the previous Code, they merely constituted an aggravating circumstance in connection with certain offences. The first paragraph of the new article 222-1 provides that "the subjection of persons to torture or to acts of barbarity shall be punishable by 15 years' rigorous imprisonment".

52. The classification of torture and acts of barbarity as a crime has eliminated shortcomings in the punishment of torture. Before the new provisions came into effect, how violations of the person were classified depended directly on the degree of injury. Now what counts is that such violations are inherently serious, irrespective of their outcome. In particular, a person may now be prosecuted for attempted voluntary injury; that was not the case before. The result is that nowadays attempted mutilation may be classified as attempted torture.

53. Moreover, article 222-3 of the new Criminal Code, which enumerates aggravating circumstances relevant to torture and acts of barbarity, refers expressly to the commission of such acts by public officials:

"The offence defined in article 222-1 shall be punishable by 20 years' rigorous imprisonment if committed:

[...]

7. In or in connection with the performance of his/her functions or duties by a person vested with public authority or a public servant;”

Should a public official commit acts of torture on instructions from representatives of the “lawful authorities”, article 122-4 of the new Criminal Code precludes his/her exoneration if the acts are “manifestly unlawful” - as would, clearly, be the case.

54. The new provisions of the Criminal Code concerning torture are also applicable to members of the armed forces. That is so pursuant to article 27, paragraph 1, of Act No. 72-662 of 13 July 1972, which states that “members of the armed forces are subject to the provisions of ordinary criminal law and to those of the Code of Military Justice”. In addition, article 441 of the Code of Military Justice punishes incitement to commit acts that are contrary to duty or to discipline.

55. Articles 121-4 to 121-7 of the new Criminal Code make attempted torture and complicity in torture punishable in the same way as torture itself:

Article 121-4: “‘Author of the offence’ shall mean the person who:

1. Commits the acts constituting the offence;
2. Attempts to commit a serious or, in the cases provided for by law, an ordinary offence”;

Article 121-5: “An attempt occurs when action commences and is interrupted or fails to achieve its aim only because of circumstances beyond the author’s control”;

Article 121-6: “An ‘accomplice’ within the meaning of article 121-7 shall be punishable as the author of the offence concerned”;

Article 121-7: “‘Accomplice’, shall mean any person who wittingly aids or abets the preparation or commission of a serious or an ordinary offence.

The term ‘accomplice’ shall also apply to any person who, by gift, promise, threat, order or abuse of authority or power, causes an offence or gives instructions for it to be committed.”

56. Lastly, it should be noted that “torture and inhuman acts” may also count as constituent elements of a crime against humanity as defined in article 212-1 of the new Criminal Code. Crimes against humanity, which rank as the most serious of the crimes and offences against the person (Book II of the Criminal Code), are divided into four offences:

(a) Genocide is defined in article 211-1 of the Criminal Code. The definition of genocide is broader than the one contained in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, since the Criminal Code protects not only groups of victims defined on national, ethnic, racial or religious grounds, but also groups determined by “any other arbitrary criterion”.

(b) Other crimes against humanity are defined in article 212-1 of the Criminal Code. They include deportation, enslavement or the massive and systematic practice of summary executions, of the abduction and subsequent disappearance of persons, or of torture or inhuman acts motivated by politics, philosophy, race or religion and carried out as part of an organized campaign against a section of the civilian population.

(c) Aggravated war crimes are the subject of article 212-2 of the Criminal Code. Under this definition, the acts referred to in article 212-1 are punishable as crimes against humanity when committed in time of war as part of an organized campaign against those fighting the ideological system in whose name crimes against humanity are perpetrated. Article 212-2 is intended in particular to protect armed forces fighting against armed forces that are in the service of a racist ideology.

(d) Participation in a group or an agreement with a view to preparing to commit crimes against humanity is punishable under article 212-3 of the Criminal Code. Such participation is a special form of criminal association, and is denoted as “conspiracy” in the law of English-speaking countries and also in international law in the Charter of the International Military Tribunal of Nuremberg.

57. With regard to crimes against humanity, the following points should be made:

First, they are subject to no statutory limitation: the imprescriptibility provided for under Act 64-1326 of 26 December 1964 is confirmed by article 213-5 of the Criminal Code;

Second, such crimes are punishable by life imprisonment, including a period of up to 22 years of unconditional detention during which no modification of the sentence is permitted (Criminal Code, article 132-23);

Third, the perpetrator of such a crime can never be absolved of criminal responsibility simply on the grounds that he was carrying out an act prescribed or authorized by statutory or regulatory provisions or was acting on the orders of a legitimate authority (Criminal Code, article 213-4);

Fourth, legal entities can be held criminally liable for crimes against humanity (Criminal Code, article 213-3);

Fifth, French legislation to bring domestic law into line with the statutes of the international criminal tribunals for crimes committed in the former Yugoslavia and Rwanda had given French courts universal jurisdiction over offences falling within the competence *ratione materiae* of those tribunals, including the crime of genocide and crimes against humanity (Acts Nos. 95-1 of 2 January 1995 and 96-432 of 22 May 1996). Furthermore, by a judgement dated 6 January 1998 the criminal division of the Court of Cassation recognized the competence of French courts to try a Rwandan priest who was present in French territory for acts constituting torture committed in Rwanda against Rwandan citizens at the time of the genocide in April 1994;

Lastly, France was one of the first signatories of the Rome Statute, adopted on 17 July 1998, whereby the International Criminal Court has competence to try the crime of genocide, crimes against humanity and war crimes.

58. Justifying crimes against humanity or war crimes can constitute the offence of advocating those crimes provided for in article 24 of the Act of 29 July 1881: this is illustrated in the conviction of General Aussaresses for justifying the use of torture during the Algerian war, a conviction that the Paris Court of Appeal upheld on the ground that such justification constituted advocacy (Paris Court of Appeal, 25 April 2003, preliminary ruling that gave rise to a request for judicial review).

Paragraph 2

59. The new Criminal Code has an entire paragraph (arts. 222-1 to 222-6) devoted to the punishment of torture and acts of barbarity. Article 222-1, which establishes the offence of torture, provides for a penalty of 15 years' rigorous imprisonment subject to an automatic minimum term, meaning that the prisoner must serve half his sentence before becoming eligible for abatement. Articles 222-44, 222-45, 222-47 and 222-48 provide for numerous supplementary penalties, including deprivation of civic, civil and family rights, prohibition of residence in France and banishment from French territory.

60. The law provides for three levels of aggravation of the offence:

(a) The penalty is increased to 20 years' imprisonment if the acts are accompanied by sexual assault other than rape or if they are committed in any of the 10 other aggravating circumstances provided for in article 222-3. As had already been said, those circumstances include the commission of torture by a person vested with public authority or a public servant in or in connection with the performance of his/her functions or duties;

(b) The penalty is increased to 30 years' imprisonment in any of the following three cases: if the offence is committed against a child under 15 by an older relative or a person in authority over the minor; if the offence is repeatedly committed against a child under 15 or a vulnerable person; if the offence occasions mutilation or permanent disability;

(c) The penalty of life imprisonment is applicable if the torture or acts of barbarity unintentionally cause the victim's death or are practised in conjunction with another crime.

61. It should be noted that the commission of acts of torture always constitutes an aggravating circumstance in relation to certain other offences: for example, rape (art. 222-6); procuring art. 225-9); kidnapping (art. 224-2, para. 2); theft (art. 311-10) and extortion (art. 312-7).

Article 5

62. Book I, Title One, chapter III, of the new Criminal Code, concerning the territorial scope of criminal law, largely reproduces the provisions of the old Code of Criminal Procedure, Book IV, Title X, i.e. the former articles 689 to 689-2 and 693 which were quoted in the initial report of France in 1988 (CAT/C/5/Add.2). The requirements of article 5 of the Convention are, therefore, satisfied by the following provisions:

Paragraph 1

63. Articles 113-2 to 113-7 of the new Criminal Code respectively provide as follows:

Article 113-2: “French criminal law shall be applicable to offences committed within the territory of the Republic;

An offence shall be deemed to have been committed within the territory of the Republic if any of the acts constituting it took place within that territory”;

Article 113-3: “French criminal law shall be applicable to offences committed on board or against vessels flying the French flag, wherever they may be. It alone shall be applicable to offences committed on board or against vessels of the French Navy, wherever they may be”;

Article 113-4: “French criminal law shall be applicable to offences committed on board or against aircraft registered in France, wherever they may be. It alone shall be applicable to offences committed on board or against French military aircraft, wherever they may be”;

Article 113-5: “French criminal law shall be applicable to any person who renders himself/herself guilty within the territory of the Republic, as an accomplice, of a serious or ordinary offence committed abroad if that offence is punishable by both French and foreign law and is confirmed by a final decision of a foreign court”;

Article 113-6, paragraph 1: “French criminal law shall be applicable to any serious offence that is committed by a French national outside the territory of the Republic”;

Article 113-7: “French criminal law shall be applicable to any serious or ordinary offence punishable by imprisonment that is committed outside the territory of the Republic by a French national or an alien if the victim was of French nationality at the time of its commission.”

64. Article 689 of the Code of Criminal Procedure as amended by the Act of 16 December 1992 states that:

“The authors of and accomplices in offences committed outside the territory of the Republic may be prosecuted and tried by French courts when, pursuant to the provisions of the Criminal Code, Book 1, or of another legislative instrument, French law is applicable or when an international convention gives French courts jurisdiction to deal with the matter.”

65. It follows that French courts have jurisdiction over torture and acts of barbarity in the cases referred to in article 5, paragraph 1, of the Convention.

Paragraph 2

66. Articles 689-1 and 689-2 of the Code of Criminal Procedure as amended by the Act of 16 December 1992 came into force on 1 March 1994 and concern just the situation referred to in article 5, paragraph 2, of the Convention:

Article 689-1: “Pursuant to the international conventions referred to below, any person who renders himself/herself guilty outside the territory of the Republic of any of the offences enumerated in those articles may, if in France, be prosecuted and tried by French courts. This article shall apply to attempts to commit any of those offences whenever such attempts are punishable”;

Article 689-2: “For the purposes of the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted at New York on 10 December 1984, any person guilty of torture within the meaning of article 1 of the Convention may be prosecuted and tried under the conditions stated in article 689-1.”

These new provisions are very similar to those of article 689-2 of the old Code of Criminal Procedure as amended by Act No. 85-1407 of 30 December 1985.

Article 6

Paragraphs 1 and 2

67. To explain how article 6 may apply, it is necessary to specify the circumstances in which it may apply, assuming the suspect to be on French territory.

68. In the first category of situation, i.e. when the offence has been committed by a French national on French territory against another French national, France alone has jurisdiction. In a second category of situation, i.e. when the offence has been committed by a national of a foreign State on the territory of that State against another national of the same State, it is, in accordance with the usual principle of international criminal law, that State alone which has jurisdiction and is entitled to demand extradition of the offender or suspect. France would generally agree to such extradition, particularly in view of article 8 of the Convention. If, however, France does not grant extradition in such a case, it has the necessary jurisdiction to try the individual in question, as was shown with reference to article 5.

69. The question of competing jurisdiction may arise between France and another State, in particular when an offence has been committed by a French national or against a French national on the territory of that State, or when it has been committed by a national of that State on French soil.

70. Depending on the circumstances and the stance adopted by the French Government, the following may be applied:

(a) The system of ordinary law as defined in the Code of Criminal Procedure: a preliminary investigation by the judicial police on instructions from a district prosecutor or automatically under the supervision of a district prosecutor; 24-hour police custody, which may

be renewed once pending the institution of proceedings by an initiating order issued by an examining magistrate on the instructions of a district prosecutor; possibly preventive detention if charges are preferred (*mise en examen*);

(b) The law on extradition (Act of 10 March 1927, under article 696 of the Code of Criminal Procedure): interim arrest warrant issued by a district prosecutor (Act of 10 March 1927, article 19); examination as to personal particulars by the prosecutor or a member of his/her department within 24 hours of the arrest (art. 11); earliest possible transfer and remand in custody in the public jail of the seat of the Court of Appeal within whose territorial jurisdiction the person concerned was arrested (art. 12); notification abroad within 24 hours of receipt of the documents supporting the extradition request and the evidence on which the arrest was made; interrogation within the same period; immediate referral to the examining chamber of the Court of Appeal, and appearance of the alien before that chamber within a period not exceeding one week (arts. 13 and 14).

71. Hence, in all cases, French legislation enables the responsible authorities to ensure the presence or detention of the suspect and it prescribes an immediate investigation.

Paragraph 3

72. This point is covered by paragraphs 1 (b) and (c) and 2 of article 36 (Communication and contact with nationals of the sending State) of the Vienna Convention on Consular Relations of 24 April 1963, which provides as follows:

“1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

[...]

(b) If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.”

73. With a view to simplifying the application of these provisions, on 17 May 1982 the Minister of Justice sent a circular to judges, prosecutors and prison administrators (Circular No. 82-14). It was supplemented by circular NOR.JUS.E92.400.62A of 18 August 1992 on the arrest and detention of foreign nationals. The circular of 1992 was issued with a view to improving the conditions governing the provision of information by prison authorities to the public prosecutor's office: it made it incumbent on the public prosecutor's office systematically to inform the diplomatic or consular authorities of the relevant State and updated the list of the treaty provisions applicable depending on the nationality of the person imprisoned in France.

74. A circular to update the list of bilateral consular conventions concluded with France is expected to be issued soon.

75. For prisoners who are nationals of a State that grants reciprocity, article D.264 of the Code of Criminal Procedure provides explicitly that:

“Provided that the State of which they are nationals grants reciprocity, foreign detainees may contact the diplomatic representatives or consular agents of that State.

To that end, those representatives shall be granted the necessary authorization to correspond or communicate with detainees from their country ...”.

76. It should be noted that the provisions of article 36 of the Vienna Convention on Consular Relations must be applied even to nationals of States which have not ratified the Convention. That instrument did not specifically regulate the case of stateless persons. The Convention against Torture equates stateless persons with nationals of the State where they usually reside.

Paragraph 4

77. This paragraph informs States parties of the conduct to be followed in the instances contemplated in paragraph 1. There is no current provision in French law to impede its implementation.

Article 7

Paragraph 1

78. This paragraph follows directly from article 5, paragraph 2, and applies the principle of *aut dedere aut judicare* to the specific case of offences referred to by the Convention. No particular comments are therefore required.

Paragraph 2

79. As was stated above concerning article 4, under French law acts of torture constitute serious offences. Accordingly, they may be treated only as such by the competent prosecuting authorities. In addition, the standards of evidence are independent of the grounds on which the State exercises its jurisdiction.

Paragraph 3

80. In accordance with French law and the international instruments to which France is a party, foremost among which are the International Covenant on Civil and Political Rights (art. 14) and the European Convention on Human Rights (art. 6), all persons facing charges are entitled to fair treatment regardless of the nature of the offence with which they are charged.

Article 8

Paragraph 1

81. This is a directly enforceable provision which complements existing extradition treaties. It is binding, even if an extradition treaty concluded in the future between States parties to the Convention does not include torture as grounds for extradition.

Paragraphs 2 and 3

82. These two paragraphs deal with two mutually exclusive cases. Paragraph 2 does not apply to France, as France does not make extradition conditional on the existence of a treaty. Indeed, the Act of 10 March 1927 defines conditions, procedure and effects in respect of extradition in the absence of a treaty. Hence, France is among the States referred to in paragraph 3 and recognizes acts of torture as cases for extradition under the conditions laid down in the Act of 10 March 1927. Furthermore, political considerations which, under French law, may block extradition, may not be taken into account when an act of torture has been committed.

83. Admittedly, article 5 of the Act of 10 March 1927 states that extradition will not be granted “when the crime or offence is political in character or the product of circumstances such that extradition is requested for a political purpose”. The Act does, however, allow extradition if “acts of abhorrent barbarity and vandalism prohibited by the laws of war” have been committed during a civil war. Furthermore, and above all, the Council of State considers that the fact that some crimes of a non-political nature may have been committed for a political purpose does not, in view of their seriousness, warrant those crimes being regarded as political in character (cf. judgements in *Croissant*, 7 July 1978, and *Gador Winter and Piperno*, 13 October 1982).

Paragraph 4

84. This provision is directly enforceable. It should be noted that between States parties to the Convention applying it in good faith there can be no contradiction between article 8 and article 3. Nonetheless, there are some grounds on which France may impede the extradition of a torturer. This would be the case, for example, if the person faced the death penalty in the requesting country, either for the crime of torture or on some other count. In such an instance, article 5, paragraph 2, would naturally be invoked.

Article 9

85. This traditional provision is similar to that appearing in several international conventions on criminal matters such as the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 (art. 10), and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal

on 23 September 1971 (art. 11). In French internal law the rules applicable to the satisfaction of demands for judicial assistance are, in the absence of a mutual assistance convention, those set forth in articles 30 et seq. of the above-mentioned Act of 10 March 1927.

Article 10

86. The rules prohibiting and punishing the use of torture appear in the basic provisions regulating each of the professions concerned. A working knowledge of these articles is therefore included in the training courses organized for their members. Obviously, study of the Criminal Code and Code of Criminal Procedure forms the basis for the training of magistrates and lawyers. As regards military personnel, the General Disciplinary Regulations for the Armed Forces (Decree No. 75-675 of 28 July 1975, amended) are part of the programme for all training courses. The principle of the prohibition of torture, established by international law and by the Convention in particular, is therefore widely publicized.

87. The other relevant texts (the General Military Regulations and the Code of Military Justice) form part of the programmes intended for future non-commissioned and commissioned officers. The courses organized by the national advanced training centre for judicial police and courses for non-commissioned and senior officers of the national gendarmerie emphasize Circular No. 9600 DN/GEND EMP/SERV of 4 March 1971, which concerns the measures to be taken to ensure respect in the activities of the judicial police for the fundamental rights of the individual. Attention was further drawn to the contents of that circular in Note No. 10990 DEF/GEND/OE/PJ/DR of 22 April 1994.

88. Concerning the police, the Code of Ethics (Decree No. 86-592 of 18 March 1986) is widely circulated and discussed and is taught in police training colleges. Regarding police training, the Act of 29 August 2002 outlining the country's internal security policy and budget, provides that "ethics, improving knowledge of the law and procedure [...] are the main aims of training". In addition, the training of police officers is overseen by the National Police Complaints Authority, which is responsible in particular for monitoring training institutions. The members of this body themselves take part in the teaching, particularly regarding police ethics.

89. An ethics manual was published in 1999 to supplement the Code of Ethics. It is a tool designed to help police deal with real-life situations and therefore indicates the proper conduct for dealing with the public, victims of crime and offenders. It expands on the principles set forth in article 10 of the Code of Ethics: prohibition of inhuman or degrading treatment, and the liability to disciplinary proceedings of any police officer who, on witnessing such conduct, does nothing to stop it or fails to report it to the competent authority.

90. Furthermore, a National Security Ethics Committee was set up by the Act of 6 June 2000 (entailing the abolition of the National Police Ethics Board). The Committee is responsible for ensuring that professional ethics are respected by all forces and authorities providing security or protection services: national and municipal police officers, gendarmes, and private persons providing security services as security firms. It has "independent administrative authority" status, is presided over by the senior president of the Court of Cassation and comprises eight members nominated by the highest State authorities and the heads of the country's highest courts for a renewable term of six years. Following the entry into force of article 117 of the

Act of 18 March 2003 on internal security, which will increase the number of members of parliament in this body from 2 to 4 and the number of experts from 2 to 6, the Committee will comprise 14 members. Matters can be brought to its attention through a member of parliament by any person who is the victim of or a witness to a breach of ethics, by victims' dependants and authorized representatives, and by the Prime Minister and members of Parliament. It has its own substantial investigative powers and in particular can conduct on-site verification.

91. In its first two activity reports presented to Parliament concerning respectively 2001 and 2002, the National Security Ethics Committee reported on 19 complaints received in 2001 and some 40 in 2002. Its opinions and recommendations dealt principally with the day-to-day work of the police forces, law enforcement and prison administration. The relevant authorities took note of the opinions and recommendations and followed up on them. Indeed the Committee stated specifically in the 2002 report its appreciation for the fact that after giving its opinion on cases reported to it (police intervention in private lawsuits and the procedural consequences of the findings of an off-duty gendarme), the competent authorities conducted wider studies, the results of which have been passed on to the departments responsible for training the bodies in question. The Committee has recommended that the Ministry of the Interior and the Ministry of Justice each conduct studies into the way in which police go about operations at night.

92. Training in the prison regulations, the guiding principle of which is respect for the inherent dignity of the individual, is provided for all categories of prison staff by the National School of Prison Administration. Instruction on criminal law and procedure and international institutions is also provided. Criminal lawyers and representatives of humanitarian and human rights organizations assist in this instruction. In 1996, the prison service issued a publication entitled "Prison et droits de l'homme" (Prison and Human Rights) on the jurisprudence of the European Commission and the European Court of Human Rights applicable to prisoners. This document, which has been widely distributed among prison staff, draws attention in particular to the inadmissibility of subjecting prisoners to torture.

93. With regard to the medical profession, the Code of Medical Ethics as amended by a decree of the Council of State dated 6 September 1995 sets out doctors' general obligations and the duties they have to their patients. Article 2 of the Code makes it incumbent on every doctor to practise "in a spirit of respect for human life and for the individual and his/her dignity". Article 10 specifies how to behave towards persons in detention:

"No doctor who has to examine or provide care to a person deprived of liberty shall directly or indirectly promote or sanction, even if only by his/her presence, infringement of that person's physical or mental integrity or dignity."

94. Pursuant to the Code of Medical Ethics, doctors must, subject to the patient's consent, inform the judicial authorities about any mistreatment suffered by prisoners whom they are called upon to examine.

95. Similar rules appear in the codes of ethics of the other two medical professions, viz. dental surgeons and midwives, and in the professional rules for nurses. The curricula for medical and nursing studies provide for training in the legislation, ethics, deontology and responsibilities specific to these professions.

Article 11

96. The concepts of “custody” and “treatment of persons subjected to any form of arrest, detention or imprisonment” relate to a number of distinct juridical situations that are described below.

97. Firstly, it should be mentioned that, on the grounds of article 3 of the Convention, France was convicted of torture by the European Court of Human Rights in a judgement dated 28 July 1999 (*Selmouni v. France*). The case concerned the treatment inflicted by police officers on a person being questioned in police custody.

98. The Court defined the acts committed against the person of Mr. Selmouni as “repeated and sustained assaults over a number of days of questioning” and considered that they “caused ‘severe’ pain and suffering and [were] particularly serious and cruel”, so justifying their classification as torture.

99. Having regard to the fact that the Convention is a living instrument which needs to be interpreted in the light of present-day conditions, the Court held that “certain acts which were classified in the past as ‘inhuman and degrading treatment’ as opposed to ‘torture’ could be classified differently in future”.

100. The police officers involved in the *Selmouni* case were tried and convicted by French criminal courts. The Versailles Court of Appeal, in a judgement on 1 July 1999 upheld by a Court of Cassation judgement on 31 May 2000, classified the acts as “assault with or under the threat of the use of a weapon, occasioning total unfitness for work for less than eight days ..., by police officers in the course of their duty and without legitimate reason”. As a result, the police officers were given custodial sentences ranging from a 10-month suspended sentence to an 18-month sentence with 15 months suspended, and to payment of damages.

101. In the same judgement, the Court of Appeal stressed that the acts in question “are exceptionally serious ones [...]. They must be regarded as instances of particularly degrading treatment. Having been committed by senior officials responsible for enforcing the laws of the Republic, they must be punished firmly as such conduct cannot be justified, irrespective of the personality of the offenders in [the officials’] charge and the degree of their corruption and dangerousness”.

(a) Police custody (*garde à vue*)

102. A person may initially be deprived of freedom of movement by being placed in police custody. The decision to do this may only be taken by a judicial police officer and in the circumstances laid down by articles 63, 77 or 154 of the Code of Criminal Procedure, i.e. in the event of commission of a crime, of discovery *flagrante delicto* or of a preliminary investigation, or in execution of a rogatory commission. People may be placed in police custody only if there is “a plausible reason or reasons to suspect that they have committed or attempted to commit an offence”.

103. Acts Nos. 2000-516 of 15 June 2000 and 2002-307 of 4 March 2002 have clarified the conditions applicable to detention in police custody and given people deprived of their liberty through such custody improved rights.

Supervision of police custody by the judicial authorities

104. It should be stressed that judicial police officers are now required to notify the competent district prosecutor (*procureur de la République*) or investigating magistrate immediately of placement in police custody.

105. The law also expressly states that a district prosecutor must supervise such custody in order to ensure that all goes smoothly and that the legally required procedures are followed. Therefore, he/she visits the places where people are held in custody whenever he/she deems it necessary, and at least once a year, and to that end keeps a register of the number and frequency of inspections at such places. If he/she finds that the conditions of detention are incompatible with protection of detainees' dignity, he/she must so inform the chief police or gendarmerie officer at the place concerned and the public prosecutor (*procureur général*) (Code of Criminal Procedure, art. 41).

Rights of persons held in police custody

106. The legislature has created new rights to end the isolation of persons in police custody without compromising the investigation in progress. These are described below.

The right of a person in police custody to be informed, in a language he/she understands, of the nature of the offence being investigated, the safeguards legally available to him/her and the law governing the duration of the custody

107. The person is also immediately informed "that he/she can choose whether to make statements, to respond to questions asked of him/her or to remain silent". If the person is released from police custody without the district prosecutor having made any decision on prosecution, he/she is informed that, if he/she is not prosecuted in the interim, he/she has the right to request information from the district prosecutor six months from the end of the custody about the outcome or likely outcome of the case (Code of Criminal Procedure, arts. 63, 63-1 and 77-2).

108. The maximum duration of police custody is 24 hours. The custody may, however, be extended by not more than 24 hours with the consent of the district prosecutor or the examining magistrate.

109. However, for particularly serious offences (terrorism, drug trafficking), the length of police custody is set at 48 hours with the possibility of extension for a further 48 hours at the discretion of the liberty and custody judge or the examining magistrate.

110. Notes detailing the rights of persons in police custody have been sent to all departmental gendarmeries and police services. The notes were produced in several languages. If a person held in police custody cannot read any version of the note, the contents must be communicated to

him/her in a language that he/she understands. If the person is deaf and cannot read or write, he/she must be assisted by a sign-language interpreter or any qualified person with competence in a language or method for communicating with the deaf.

111. Article 64 of the Code requires the judicial police officer to indicate on the transcript of the hearing of any person held in police custody the lengths of the periods of questioning undergone and the periods of rest in between, the times when the person was able to eat, and the dates and times at which the person was taken into custody and subsequently released or brought before a competent court.

112. This annotation must be specially signed by the persons concerned; refusals to sign must also be shown. The annotation must specify the reason for the custody.

The right to have a family member or the employer informed immediately by telephone of the police custody

113. This right, of help in overcoming the isolation of people held in police custody, guards against the ill-treatment that may occur if a detainee is cut off from the outside world.

114. If, however, the judicial police officer believes that giving the family notice would hamper the progress of the investigation, he must refer the matter immediately to the district prosecutor, who will then decide whether to grant or deny the request or to defer notice (art. 63-2).

The right to a medical examination

115. Persons taken into police custody are informed of this right as soon as the custody begins, and can ask to be examined by a doctor designated by the district prosecutor or by the judicial police officer. They may request another examination if the custody is extended. A medical examination is obligatory, even if the detainee does not ask for one, if a member of his/her family does. Lastly, the district prosecutor or judicial police officer may at any time designate a doctor to examine a person held in police custody. Such an examination must take place without delay, and the certificate, which must include an indication of the doctor's opinion as to whether the detainee is fit to be kept in custody, must be added to the case file (art. 63-3).

The right to speak to a lawyer immediately as well as after the first 20 hours of police custody

116. This right is granted in the form of a confidential meeting with a lawyer lasting no longer than 30 minutes (art. 63-4). Detainees who are unable to designate a lawyer or whose chosen lawyer cannot be reached can ask for a lawyer to be assigned to them by the authorities.

117. The lawyer is informed of the nature and alleged date of the offence being investigated. If custody is extended, the detainee can again request a meeting with a lawyer 12 hours after the extension begins.

118. However, the detainee cannot meet with a lawyer earlier than 36 hours after being taken into police custody if the investigation concerns criminal association, offences of aggravated

procuring or extortion, or certain offences committed as part of an organized gang. The detainee cannot meet with a lawyer earlier than 72 hours after being taken into custody if the custody is subject to specific rules regarding extension (terrorism, drug trafficking).

119. Any information obtained in breach of the above provisions, which are contained in articles 63, 63-1, 63-2, 63-3 and 63-4 of the Code of Criminal Procedure, will be deemed null and void (ibid., art. 171).

120. The judicial police operates under directions from a district prosecutor (Code of Criminal Procedure, art. 12) and within the territorial jurisdiction of a Court of Appeal. As such, it is under the supervision of the public prosecutor and the control of the examining chamber of the Court of Appeal in question.

121. If judicial police officers fail to respect any of the above provisions, the examining chamber of the supervising Court of Appeal can decide to admonish them or suspend them with immediate effect, temporarily or permanently, without prejudice to any purely disciplinary measures that may be imposed by their superiors.

122. If, moreover, the examining chamber considers the judicial police officers to have committed a criminal offence, it will have the file forwarded to the public prosecutor (Code of Criminal Procedure, arts. 224 to 230).

123. Lastly, administrative enquiries into the behaviour of on-duty judicial police officers or agents are conducted jointly by the Inspectorate General of Judicial Services and the relevant investigating department. Enquiries can be ordered by the Minister of Justice and in that case are run by a judicial officer (Code of Criminal Procedure, art. 15-2).

124. Judicial police officers are not immune from criminal liability as they go about their duties, and can be prosecuted in the criminal courts. If unlawful conduct on the part of a judicial police officer amounts to a criminal offence, as would be the case with torture, the victim can obtain redress by bringing a civil action before the civil courts.

(b) Military justice

125. Since Act No. 99-929 of 10 November 1999, military justice is, save for the exceptions permitted in time of war or other public emergency threatening the life of the nation (Code of Criminal Procedure, art. 669 et seq.), administered in the same way as civilian justice. In criminal cases, members of the armed forces, pursuant to the principle of citizens' equality, are tried by the same courts, enjoy the same rights and are subject to the same obligations as civilians. This fundamental principle is very slightly adjusted to safeguard the particularity of military status and to ensure confidentiality.

126. The *Hardouin* decision, handed down by the Council of State on 17 February 1995, introduced real judicial checks on disciplinary measures in the armed forces. The Council ruled that a complaint could be lodged before the courts, on grounds of illegality, against arrest as a punishment as provided for in articles 30 and 31 of Decree No. 75-675 (General Disciplinary Regulations for the Armed Forces) dated 28 July 1975.

(c) Imprisonment

127. A person may be imprisoned either because, in the circumstances provided for by law, he/she has been placed in pre-trial detention by order of the liberty and custody judge on referral from the examining magistrate, as provided for in articles 143-1 to 148-8 of the Code of Criminal Procedure (new system instituted by Act No. 2000-516 of 15 June 2000 strengthening the protection of the presumption of innocence and victims' rights), or because he/she is serving a term of imprisonment. In either case, the prison regime is governed by Book V (Execution of sentences), Title II (Detention), of the Code of Criminal Procedure.

128. Article D.189 of the Code sets forth the general principle of respect for the individual:

“The prison administration shall ensure that all persons entrusted to its care, on whatever grounds, by the judicial authorities, are treated with respect for the dignity inherent in the human person and shall do its utmost to facilitate their reintegration into society” (text, slightly amended, taken from Decree No. 98-1099 of 8 December 1998).

129. Article D.220 of the Code specifies that:

“Officers of decentralized prison administration services and those with access to the cells are forbidden to:

- Use violence towards detainees;
- Call them offensive names, or use undue familiarity, coarse or rude language towards them;

[...]

- Employ detainees for personal service without authorization;

[...]”

130. Regarding the methods of restraining detainees used to ensure the security of prisons, article D.283-5 (formerly 174) of the same Code states that:

“Prison staff must not use force against detainees except in the event of self-defence, attempted escape, or violent or passive resistance to orders.

When they do use force, they may do so only to the extent absolutely necessary.”

131. Article D.283-3 (formerly 172) states that “no method of restraint may be used as a punishment for indiscipline”. As regards disciplinary punishment for detainees, a new system was instituted by the decree dated 4 April 1996 and the implementing circular dated 12 April 1996. The new system clearly defines what constitutes a disciplinary offence and spells out the punishments applicable.

132. The implementing circular explicitly refers to the European Prison Rules and the European Convention on Human Rights. It stipulates that disciplinary action “must satisfy the

principles [...] laid down in Council of Europe recommendation (R.87) 3 on the European Prison Rules”, which prohibit, in particular, “any cruel, inhuman or degrading punishment” as a disciplinary measure. Prison staff would of course be liable to criminal and civil proceedings if detainees were tortured.

133. Regarding the procedural safeguards available with respect to disciplinary measures taken against detainees, the Act of 12 April 2000 on citizens’ rights in their relations with the public services provided that, generally speaking, individual administrative decisions cannot be taken until the person concerned has been able to submit written or oral comments, and to do so if necessary through his/her chosen lawyer or representative. In accordance with this Act, the prison administration circular of 31 October 2000 authorized the presence of a lawyer during hearings before prisons’ disciplinary committees and thus reformed disciplinary proceedings. In addition, the Finance Act of 28 December 2001, amending the Act of 10 July 1991 on legal aid, provided for the remuneration of the detainee’s chosen lawyer from legal-aid funds.

134. In any event, there are a number of provisions guaranteeing that conditions in detention are supervised and monitored, and guarding against torture, as detailed below.

Visits and reports by judicial authorities

135. Articles 727 and D.176 to D.179 of the Code of Criminal Procedure require penalties enforcement judges, the presidents of the investigating chambers of Courts of Appeal, investigating magistrates, juvenile court judges and district and public prosecutors to pay regular visits to penal establishments to check on the conditions in which the detainees under their jurisdiction are held. If they have any comments, they may make them known to the authorities concerned for action to be taken. Additionally, penalties enforcement judges are required to report annually to the Minister of Justice, through the heads of the various courts, on the execution of sentences. First presidents and public prosecutors must report annually to the Minister of Justice on the operation of the penal establishments under their jurisdiction and the performance of their staff. They may meet detainees with no member of the prison staff present (Code of Criminal Procedure, art. D.232).

Visits by the prison supervisory boards

136. Composed of local administrative and judicial authorities, each prison’s supervisory board is responsible for “internal inspection of the prison as regards cleanliness, safety, food, health care, work, discipline, observance of the regulations, and the education and rehabilitation of detainees” (ibid., art. D.184). It must meet at least once a year, visit the establishment under its jurisdiction, conduct any interviews it considers necessary and receive applications from detainees concerning any matter within its jurisdiction. It may communicate any comments, criticisms or suggestions it feels it necessary to make to the Minister of Justice.

Inspection visits

137. Under article D.229 of the Code of Criminal Procedure, penal establishments are subject to regular inspection by the Prison Services inspection department, the regional prefect, and any other administrative authority having supervisory responsibilities with respect to a part of the Prison Service.

138. Since 1999, a variety of bodies have been looking into ways to improve the supervision of penal establishments.

139. Therefore, parliamentary supervision (article 720-1-A of the Code of Criminal Procedure, resulting from the Act of 15 June 2000, provides that members of either house of parliament may visit penal establishments at any time) and supervision by the National Commission on Ethics and Security set up on 6 June 2000 have been added to the existing supervision mechanisms such as the supervisory boards provided for in article D.180 of the Code of Criminal Procedure (described in paragraph 136 above). In addition, provision has been made for visits and reports by judicial authorities, as explained in paragraph 135.

140. Progress has already been made through the Act of 9 September 2002 on policy and the budget for the justice system, and more is expected through the bill on adjusting the justice system to cope with modern crime patterns. This demonstrates France's will to reform the public prison service.

141. Therefore, the Act of 9 September 2002 contains provisions intended to improve the operation and the security of penal establishments and to improve access to care for detainees suffering from mental illnesses. The bill on adjustment of the justice system to cope with modern crime patterns aims to refine the treatment of detainees and their preparation for release by making non-custodial sentences more effective and the conditions of short-term prison sentences more flexible. The ultimate objectives are to promote detainees' rehabilitation and prevent recidivism. France is also working to improve detainees' access to the law and justice by expanding legal aid.

Medical supervision

142. Act No. 94-43 of 18 January 1994 made the public hospital service responsible for providing detainees with diagnostic and health care. Since that time, therefore, the medical check-ups given to all new detainees and the mandatory visits to detainees being held in isolation and punishment blocks, which must be carried out at least twice a week (Code of Criminal Procedure, art. D.381, paras. (b) and (c)) have been effected by doctors from outside the Prison Service. When a doctor finds that a detainee's state of health is incompatible with his/her continued detention in a punishment block, the punishment is suspended. The doctor may whenever he/she sees fit proffer an opinion as to the desirability of continuing or ceasing to hold a detainee in an isolation block. The doctor must give an opinion if a detainee is to be kept in isolation for longer than one year. He/she may at any time advise the head of the establishment that he believes a detainee's state of health is incompatible with the person's continued detention. Lastly, a doctor must make at least two visits a week to detainees in punishment blocks (*ibid.*, art. D.381) and detainees kept in isolation (AP circular of 14 December 1998).

Judicial supervision

143. It should be made plain at the outset that no detainee may be deprived in any circumstances of the opportunity to communicate with counsel. Every detainee can also take advantage of the possibilities available under article D.259 and article D.260, paragraph 1, of the Code of Criminal Procedure:

Article 259: “Detainees may submit requests or complaints to the head of the establishment, who shall grant an interview if sufficient grounds are advanced. Detainees may request an interview, at which no member of the prison staff shall be present, with the magistrates and officials responsible for inspecting or visiting the establishment.”

Article 260 (para. 1): “Detainees and parties to whom an administrative decision gives grounds for a complaint shall be entitled to request referral of the decision to the regional director if the decision emanates from the head of an establishment, or to the Minister of Justice if the decision emanates from a regional director.”

144. The effect of these provisions is to enable any detainee to enter an administrative appeal, a prerequisite for seeking a judicial remedy before the administrative courts. The administrative courts were given greater supervisory authority over conditions in detention by the decision (*Marie*) handed down by the Council of State on 17 February 1995. The Council ruled admissible an appeal on grounds of abuse of authority against a head of establishment’s decisions to place a detainee in a punishment block. Such measures had previously been held to be internal sanctions that afforded no grounds for a complaint. In its 30 July 2003 ruling on the *Remli* case, the Council of State ruled that decisions to place somebody in isolation were also grounds for complaint and thus could be appealed before the administrative courts.

145. Moreover, article D.262 allows detainees to write confidentially to a number of administrative and judicial authorities:

“Detainees may at any time write letters to the French administrative and judicial authorities appearing on a list drawn up by the Minister of Justice. Such letters may be submitted sealed, and shall then not be subject to any form of scrutiny; their dispatch must not be delayed.”

146. Decree No. 98-1099 of 8 December 1998 supplemented article D.262 by making it obligatory to record all sealed correspondence sent by detainees to the administrative and judicial authorities listed in article A.40 of the Code of Criminal Procedure in special registers, providing a guarantee for detainees in the event of dispute.

147. The list of the authorities to which detainees can send sealed letters is set out in article A.40 of the Code of Criminal Procedure. By note dated 20 June 1994, the Prison Service Directorate included among the aforesaid authorities all members of the European Commission or European Court of Human Rights and the chairperson of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The French National Commission for Information Technology and Civil Liberties (CNIL) and the Ombudsman for Children were added to this list in 2001 (Order of 29 June 2001).

148. Military detainees may write without restriction to the French military or naval authorities, and may be visited by those authorities, duly designated representatives (art. D.263). Foreign detainees may, subject to reciprocal arrangements, contact the diplomatic or consular representatives of their home States (Code of Criminal Procedure, art. D.264).

(d) Detention of foreigners in holding areas, in administrative detention or in judicial confinement

Holding areas

149. Foreigners awaiting permission to enter France or unable to complete their onward journeys used to be kept in the “international” areas of ports and airports for as long as was necessary to consider their applications or arrange their return home. There were no specific regulations to govern this situation, and the safeguards available to them were announced by circular only (circular dated 26 June 1990).

150. When voting on Act No. 92-190 of 26 February 1992, which amended various provisions of the amended Ordinance No. 45-2658 of 2 November 1945 relating to the conditions for aliens’ entry to, and residence in France, the Constitutional Council, taking up the matter at the Prime Minister’s suggestion, affirmed by decision dated 25 February 1992 that keeping foreigners in holding areas was constitutional provided that they were not kept there for an unreasonable period and that the courts handed down a decision as soon as possible (*Journal officiel*, 27 February 1992).

151. Act No. 92-625 of 6 July 1992, on holding areas at ports and airports, was passed after that decision (*Journal officiel*, 9 July 1992). The new language appears in article 35 quater of the Ordinance of 2 November 1945, subsequently amended by Act No. 94-1136 of 27 December 1994 to cover railway stations open to international traffic. The latter Act clarified and tightened the rules applicable to transfer from one holding area, where foreigners are held, to another from which they will actually depart.

152. With an eye to the right of asylum and individual freedom, therefore, France has developed rules that offer numerous safeguards to those concerned. The latter include two distinct categories of foreigners: first, foreigners without permission to enter France or unable to complete their onward journeys, who will be held only so long as is strictly necessary for them to depart; and then, foreigners applying for admission as asylum-seekers, who can be held only for the purposes of conducting proceedings to determine whether their application for asylum is manifestly unjustified and, if it is, enforcing the decision to refuse them entry.

153. Here it should be pointed out that, to protect the right of asylum, an asylum-seeker can be refused entry into France only by a decision made by the Minister of the Interior, not the border police, after consultation with the Ministry for Foreign Affairs (article 12 of amended Decree No. 82-442 of 27 May 1982) and an interview with the asylum-seeker.

154. The procedure for holding foreigners and the related safeguards are the same for both categories of person: issuance of a holding order must be preceded by an interview with the alien concerned in the presence of his/her counsel, who since the adoption of the Act of 15 June 2000, may, at the alien’s request, be appointed by the authorities; orders may be appealed before the first president of the Court of Appeal; the foreigners may at any point in the proceedings leave the holding area for a foreign destination of their choice; they may at any time request the assistance of an interpreter or a doctor, communicate with the person of their choice and, since the adoption of the Act of 15 June 2000, acquaint themselves with the file on their case.

155. The keeping of persons in holding areas is subject to strict time limits. The procedure comprises a number of phases, each of which comes with its own safeguards:

- The decision to hold an individual for a maximum period of 48 hours, renewable once, is taken by the chief of the border control service. The decision must be in writing and state how it was arrived at; it must be registered and brought without delay to the attention of a district prosecutor for scrutiny. The foreigner must be informed immediately of his/her rights and obligations, through an interpreter if necessary.
- After four days, holding may be prolonged only with the authorization and under the supervision of a judge - the liberty and custody judge responsible for the geographical area concerned. The administrative authorities must explain to the court why it has not been possible to send the foreigner home or, if he/she has applied for asylum, to grant him/her entry, and state how long it will take to arrange for his/her departure from the holding area. The court will issue its finding in the form of an order after interviewing the individual concerned in the presence of his/her counsel, who can challenge the extension.
- The extension may not be for more than eight days. The order authorizing or denying the extension of holding may be appealed to the first President of the Court of Appeal, who has 48 hours to issue a decision.
- Only exceptionally may the extension be renewed for a further eight days, following the same procedure as described above.

156. In no case may the total time an individual is kept in a holding area exceed 20 days. In practice, the average duration of holding is 1.8 days for foreigners refused entry or unable to complete their onward journeys and, owing to the need to consider their applications, 4.5 days for asylum-seekers. A foreigner may contest the legality of a decision to refuse him/her entry before the administrative courts, and append to his/her request for the decision to be set aside an application for stay of execution.

157. With regard to unaccompanied minors placed in holding areas, the Act of 4 March 2002 on parental authority (arts. 17 and 18) has made provision for unaccompanied minors to be assisted by an ad hoc guardian with legal capacity. It is also possible for the minor to be assigned a lawyer.

158. As for the monitoring of conditions in holding areas, the district prosecutor, and, from the fifth day in which a person is kept in such an area, the liberty and custody judge may go to holding areas to inspect them and examine the special register concerning holding (art. 35 quater, para. V). In addition, the Act of 15 June 2000 requires the district prosecutor for the geographical area concerned to visit the holding areas at least once every six months. The Act also inserted into the Code of Criminal Procedure, a new article, 720-1-A, according to which members of either house of parliament may at any time visit places of police custody, detention centres, holding areas and penal establishments.

159. Moreover, pursuant to Decree No. 95-507 of 2 May 1995, amended by the Decree of 17 June 1998, representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) and humanitarian associations have access to holding areas. Under the Decree, authorized representatives of UNHCR have access to holding areas and may interview the chief of the border control service, representatives of the Ministry of Foreign Affairs and personnel from the International Organization for Migration (IOM). They may also interview asylum-seekers privately. As the Decree states, this access is intended to “enable the Office of the United Nations High Commissioner for Refugees to accomplish its mission”. Similar provisions apply to humanitarian associations. The frequency of the visits by UNHCR representatives is decided by mutual agreement between the UNHCR delegate and the Minister of the Interior. Subject to the requirements of public order, one or two authorized representatives of each humanitarian association may have access to each holding area eight times a year between 8 a.m. and 8 p.m.

160. IOM operates in holding areas, providing humanitarian support.

161. A medical and nursing service is also provided in holding areas.

Administrative detention

162. Foreigners facing an expulsion order or due to be escorted to the border who cannot immediately leave French territory may be detained in premises not under the control of the Prisons Administration for as long as is strictly necessary to effect their departure.

163. The decision whether so to detain them is made by the representative of the State in the *département* concerned. The decision must be in writing and state how it was arrived at, and is subject to scrutiny by the courts. Article 35 bis of the Ordinance of 2 November 1945, as amended by Act No. 93-1027 of 24 August 1993, establishes the safeguards indicated below.

164. The district prosecutor must be informed immediately of the decision to detain an individual, and may throughout the period of detention visit the premises and verify the conditions of detention and examine the special register that must be kept in all places of administrative detention.

165. The foreigner must be immediately informed of his/her rights, if need be through an interpreter if he/she does not speak French. Throughout his/her detention he/she may request the assistance of an interpreter, a doctor or counsel and may, if he/she so desires, communicate with his/her consulate and a person of his/her choice. Moreover, since the adoption of the Act of 11 May 1998, the regional prefect must make available information concerning the starting date and time and the exact place of detention to persons who request it. To ensure the effective exercise of the rights of foreigners held in a centre or place of administrative detention, the State concludes an agreement with a national association that protects foreigners (the current such agreement is with Cimade (Service oecuménique d’entraide)).

166. Forty-eight hours after the decision to place a foreigner in administrative detention is taken, the liberty and custody judge must, after interviewing the person in the presence of his/her counsel, if any, decide whether to extend the period of detention. Mention must be made in a

register that the foreigner must initial that he/she has been notified of his/her rights. The foreigner may, if necessary, be granted legal aid. If he/she can offer effective recognizances, the judge may, exceptionally, order him/her confined to his/her residence.

167. Detention will end at the latest five days after the judge issues his/her detention order. It may be extended by a maximum of five days, by order of the liberty and custody judge, in the event of utmost urgency and particularly serious threat to public order or when it is impossible to enforce the person's removal owing to the loss or destruction of his/her travel documents, the concealment of his/her identity or the wilful obstruction of his/her removal.

168. The liberty and custody judge's orders are appealable and the President of the Court of Appeal or his/her designated representative must rule on such appeals within 48 hours of their submission.

169. Concerning the physical conditions of administrative detention, Decree No. 2001-236 of 19 March 2001 provides a legal framework for the organization and operation of centres and places of administrative detention and defines the duties and roles of those involved. It sets at 23 the number of administrative detention centres, including 4 in the overseas *départements*, and sets out the conditions in which a prefect may establish a temporary detention centre.

170. Persons held in administrative detention are provided with health care, the need for which was recognized in legislation in article 3 of Act No. 2002-73 of 13 January 2002 on social modernization supplementing article 35 bis of the Ordinance of 2 November 1945. The health-care system is generally based on an agreement with a nearby health institution. The doctors involved perform diagnosis, treatment and first-line care. They also ensure the continuity of care until the departure of the individual concerned. They monitor hygiene at the detention centre and may make suggestions to the person in charge. The nursing staff, under the doctors' supervision, identify the detainees' health problems upon their arrival at the centre.

171. Since the adoption of the Act of 15 June 2000, a district prosecutor must visit detention centres once every six months.

172. The bill on immigration control and the stay of aliens in France provides for extension of the period of detention so as to facilitate the enforcement of removal orders, and, at the same time, for the strengthening of the legal protection available to foreigners held in administrative detention centres.

Judicial detention

173. Judicial detention was abolished by Act No. 98-349 of 11 May 1998 on the entry and stay of aliens in France.

(e) Committal to a psychiatric unit, without their consent, of mentally disturbed persons

174. Act No. 90-527 of 27 June 1990 on the rights and protection of persons hospitalized with psychiatric problems and the conditions of their hospitalization, gave people committed without their consent to psychiatric units greater rights. By Ordinance No. 2000-548 of 15 June 2000, the legislative part of the Public Health Code was reordered and, as a result, the articles on

committal without consent to a psychiatric unit were renumbered. The above Act of 27 June 1990 has been supplemented by Act No. 2002-303 of 4 March 2002 on the rights of patients and the quality of the health system.

The three forms of committal without consent

175. Three distinct forms of hospitalization come under this heading: committal at the request of a third party (Public Health Code, arts. L.3212-1 to L.3212-12 (formerly L.333 to L.341)), and committal proprio motu (ibid., arts. L.3213-1 to 3213-10 (formerly L.342 to L.351)) and committal of a prisoner with psychiatric problems (Public Health Code, arts. L.3214-1 to L.3214-5, as inserted by the Act of 9 September 2002).

Committal at the request of a third party

176. Committal at the request of a third party can take place only if the psychiatric problems from which a person is suffering prevent him/her from giving consent and his/her condition warrants immediate attention combined with full-time surveillance in a hospital environment. The request must come either from a member of the person's family or from someone likely to be acting in the person's interests, and must be accompanied by two medical certificates indicating that the conditions the law lays down are met.

177. The Act of 27 June 1990 provides for a number of monitoring mechanisms, from admission to discharge:

- A check upon admission must be performed by the director of the receiving establishment before the individual concerned is admitted. The director must ensure that the request for committal has been formulated in accordance with the regulations (arts. L.3212-1 and L. 3212-2 (formerly L.333 and L.333-1));
- Within 24 hours of admission, the patient must be examined by the psychiatrist at the establishment, who must issue a medical certificate justifying committal without consent;
- Regular medical checks are performed during commitment; a second check is scheduled to take place during the three days preceding completion of the first fortnight in care; on expiry of the period of at most a month indicated by the doctor in the certificate, a further check must be performed and another certificate issued. Commitment may be prolonged for maximum (renewable) periods of one month (art. L.3312-7 (formerly L.337));
- The administrative and judicial authorities must by law be notified of the procedure: the medical certificates authorizing committal at the request of a third party are forwarded to the departmental committee on psychiatric hospitalization and to the prefect, who must in turn notify the district prosecutors at the courts with jurisdiction over the patient's home and the hospital respectively.

178. Every establishment maintains a register in which is recorded, within 24 hours of admission, all relevant information concerning the committal of the individual concerned (personal details, identity of the person requesting committal, medical certificates). The register must be shown to persons visiting the establishment (art. L.3212-11 (formerly L.341)).

Committal proprio motu

179. This applies to people whose psychiatric problems “require treatment and endanger them or others or seriously disrupt public order” (art. L.3213-1 (formerly L.342)). This wording, based on the Act of 4 March 2002, is more precise than the reference it replaced to people whose problems “endangered public order or them or others” (art. L.342). Committal proprio motu is ordered in Paris by the prefect of police and in the *départements* by the prefects, who do so on the strength of a detailed medical certificate from a psychiatrist not employed at the receiving hospital. The order takes the form of an administrative decision (*arrêté*), which must be submitted in writing and explain how it was arrived at. Committal proprio motu is subject to the same regular checks as committal at the request of a third party: a medical certificate within 24 hours of admission, then after a fortnight of care and thereafter every month at least. The departmental committee on psychiatric committals and the district prosecutor must be informed of all such cases.

180. Under article L3213-4 (formerly L.345) the prefect, acting on the detailed opinion of a psychiatrist, may during the three days preceding completion of the first month in care order commitment to be extended for three months. At the end of that time, commitment may be extended for maximum (renewable) periods of six months by following the same procedure.

Committal of a prisoner with psychiatric problems

181. Act No. 2002-1138 of 9 September 2002 on policy and the budget for the justice system contains provisions intended to improve the care of prisoners who are committed to hospital. It therefore incorporates in the third part of the Public Health Code, in Book II, Title One, a chapter IV entitled “The hospitalization of prisoners with psychiatric problems”.

182. Previous legislation provided only for the committal proprio motu of prisoners whose psychiatric problems endangered public order or them or others and who for that reason could not be kept in a penal establishment; the criteria for committal at the request of a third party were not applicable to prisoners.

183. Now, the new article L.3214-3 of the Public Health Code lays down a procedure for committal to a psychiatric unit of a prisoner with psychiatric problems who represents a danger to himself/herself or others when the prisoner’s condition warrants immediate treatment and constant surveillance in a hospital environment. The procedure is similar to that applicable in the case of committal proprio motu under ordinary law (including with regard to an extension of the period of committal, cf. Public Health Code, new article L.3214-4).

184. The new system precludes committal to full-time psychiatric care in a penal establishment. It provides that all committals to full-time psychiatric care must be in a hospital

setting, in units that are suitable for housing prisoners and thus are, inter alia, escape-proof (new art. L.3214-1). These units will be able to take in prisoners who are committed with or without their consent.

185. Interim arrangements will apply until such time as prisoners with psychiatric problems can be taken care of in the specially designed hospital units referred to in the above-mentioned article L.3214-1.

Checks on committals without consent

186. Persons committed without their consent can contest their treatment. The Act of 27 June 1990 establishes departmental committees on psychiatric committals that are responsible for monitoring committals on psychiatric grounds, in particular committals without consent (arts. L.3222-5 and L.3223-1 (formerly L.332-3 and L.332-4)). The committees visit establishments to which patients can be committed without consent and receive complaints from inmates. Individuals committed proprio motu can challenge the relevant administrative decisions on grounds of a breach of the regulations or the rules governing jurisdiction and procedure. If they do so, their appeals are heard in the administrative courts.

187. If, on the other hand, an appeal is lodged on grounds of unwarranted detention, jurisdiction rests with the judicial courts. Under article L.3211-12 (formerly L.351) of the Public Health Code, any person committed without his/her consent, whether at the request of a third party or proprio motu, may seek to be discharged by applying to the liberty and custody judge responsible for the place where the establishment is situated. The president of a court of major jurisdiction can then issue an interim relief order authorizing the person's immediate release. The third paragraph of article L.3211-12 states: "The president of the court of major jurisdiction may also, at any time, and on his/her own authority, take up the matter and order the committal without consent to be discontinued. To this end, any interested individual may bring to the president's attention any information about the situation of a committed person that he/she may deem useful."

The rights of persons committed without their consent

188. The Act of 27 June 1990 carefully spells out the rights and liberties of patients committed without their consent, in article L.3211-3 (formerly L.326-3) of the Public Health Code. The first paragraph of the article sets forth the principle that restrictions on the exercise of personal freedoms by a person committed without his/her consent shall be limited to those required by the person's state of health and the progress of his/her treatment, stipulating that: "in all circumstances, the dignity of the committed person must be respected and his/her return to society sought".

189. Hence the list of rights in the later paragraphs of the article should not be considered exhaustive:

"[The person committed without his/her consent] must be informed upon admission, and thereafter on request, of his/her legal standing and rights.

He/she shall at all events be entitled:

1. To communicate with the authorities mentioned in article L.3222-4;
2. To apply to the committee to be established pursuant to article L.3222-5;
3. To seek the advice of a doctor or lawyer of his/her choice;
4. To send and receive correspondence;
5. To consult the rules and regulations of the establishment as defined in article L.3222-3 and to be given the requisite explanations concerning them;
6. To exercise his/her right to vote;
7. To engage in religious or philosophical activities as he/she chooses.

With the exception of those mentioned in 4, 6 and 7 above, these rights may be exercised at their request by the patient's relatives or persons likely to act in the patient's interests."

190. The authorities mentioned in article L.3222-4 (formerly L.332-2) are the prefect, the competent judicial authorities and the mayor of the commune. The committee mentioned in article L.332-3 is the departmental committee on psychiatric committals, which is responsible for receiving complaints from committed persons.

191. The Act of 27 June 1990 extended the liability to criminal proceedings of directors of establishments who do not observe the provisions governing committal without consent, and introduced a new offence covering doctors at establishments that take in patients committed without their consent (Public Health Code, arts. L.3215-1 to L.3215-4 (formerly L.352 to L.354)).

Article 12

192. Where there are reasonable grounds to believe that an act of torture has taken place, not merely an investigation but a judicial inquiry is required if the victim brings an action as described under article 13 below. It should be recalled that under article 40, paragraph 2, of the Code of Criminal Procedure,

"Any constituted authority, public official or civil servant who in the performance of his/her duties learns of a crime or offence shall be required to advise a district prosecutor without delay and to transmit to him/her all related information, reports and documents."

193. The State authorities may take the initiative of assigning senior officials or the inspecting body of the entity concerned, such as the general inspectorates of the national police or gendarmerie, to conduct an administrative or formal investigation. Such investigations will include all useful checks, interviews, collection of evidence, on-site inquiries and recourse to expert reports, if necessary. Particular attention is paid to conduct that might be considered unethical.

194. The authorities may then institute judicial proceedings under article 36 of the Code of Criminal Procedure, which states:

“The Minister of Justice may report to a public prosecutor breaches of criminal law of which he/she has knowledge, enjoining the prosecutor, by written instruction placed on the file of the proceedings, to institute or cause to be instituted legal action or to submit to the competent court such warrants as the Minister may deem appropriate.”

195. Under articles 40, paragraph 1, and 41 of the Code, the district prosecutor receives complaints and reports and determines what action should be taken on them. He/she then takes or causes to be taken such action as is required to identify and prosecute offences. As regards detainees in particular, articles D.280 to D.282 of the Code of Criminal Procedure require the chief of a penal establishment to notify his/her superiors and the prefect and district prosecutor without delay of “any serious incident affecting order, discipline or security in the prison” or the death of any inmate.

Article 13

196. Anybody who believes he/she has been subjected to torture is entitled under ordinary law to lodge a complaint.

197. Under article 85 of the Code of Criminal Procedure, “any person who claims to have suffered injury as a result of a serious or ordinary offence may, by lodging a complaint, institute criminal indemnification proceedings before the competent examining magistrate”. The proceedings may be brought against named individuals or persons unknown. In case law, for the indemnification proceedings to be brought it is sufficient that the circumstances described enable the judge to admit the possibility of the injury alleged and of a direct link between it and a breach of the criminal law. Thus the victim can himself/herself trigger criminal proceedings, causing an information to be laid and, where appropriate, a prosecution to be brought against the culprit.

198. Like any free person, detainees may apply to the criminal courts under ordinary law. It should be recalled that they may communicate privately with their lawyers (articles 727, D.67 to D.69 and D.419 of the Code of Criminal Procedure) and request an interview with the magistrates and officials responsible for inspecting or visiting the penal establishment concerned with no member of the prison staff present.

199. Protection of the complainant and witnesses against any ill-treatment or intimidation in connection with the complaint lodged or evidence given is organized in accordance with the Criminal Code, in particular articles 222-17, 222-18, 322-12, 322-13, 222-1 and 222-3, 222-11 to 222-13, 322-1 and 322-3 and 434-15 of the new Criminal Code.

(a) Protection against threats

200. Protection is provided by the following provisions:

Article 222-17: “Threatening to commit an offence against persons the attempted commission of which is punishable shall, if repeated or expressed in writing, in an image or in other material form, be punishable by six months’ imprisonment and a fine of 7,500 euros.

The penalty shall be increased to three years' imprisonment and a fine of 45,000 euros in the event of a death threat."

Article 222-18: "Threatening by any means whatsoever to commit an offence against persons shall, if accompanied by the order to fulfil a condition, be punishable by three years' imprisonment and a fine of 45,000 euros.

The penalty shall be increased to five years' imprisonment and a fine of 75,000 euros in the event of a death threat."

Article 322-12: "Threatening to cause destruction, damage or deterioration hazardous to persons shall, if repeated or expressed in writing, in an image or in other material form, be punishable by six months' imprisonment and a fine of 7,500 euros."

Article 322-13: "Threatening by any means whatsoever to cause destruction, damage or deterioration shall, if accompanied by the order to fulfil a condition, be punishable by one year's imprisonment and a fine of 15,000 euros.

The penalty shall be increased to three years' imprisonment and a fine of 45,000 euros in the event of a threat to cause destruction, damage or deterioration hazardous to individuals."

(b) Protection against acts of torture or violence

201. Regarding acts of torture, article 222-3 includes among the circumstances aggravating the offence defined in article 222-1, which makes torture a crime, the fact of committing acts of torture "against a witness, victim or claimant for criminal indemnification either to prevent him/her from reporting an incident, lodging a complaint or seeking justice or because he/she has done so".

202. Acts of violence are punishable pursuant to articles 222-11 to 222-13:

Article 222-11: "Violence resulting in complete incapacity for work for more than eight days is punishable by three years' imprisonment and a fine of 45,000 euros."

Article 222-12: "The offence defined in article 222-11 shall be punishable by five years' imprisonment and a fine of 75,000 euros if committed:

[...]

4. Against a magistrate, juror, lawyer, public or ministerial officer or any other person vested with public authority or employed in the public service in or in connection with the performance of his/her mission or duties if the victim's position was apparent or known to the perpetrator;

5. Against a witness, juror or claimant for criminal indemnification either to prevent him/her from reporting an incident, lodging a complaint or seeking justice or because he/she has done so.

[...]"

Article 222-13 stipulates a penalty of three years' imprisonment and a fine of 45,000 euros for violence against the persons enumerated in the preceding article that does not result in complete incapacity to work for more than eight days.

(c) Protection against destruction of physical property

203. Acts of destruction of physical property are punishable pursuant to articles 322-1 and 322-3:

Article 322-1: "The destruction, damage or deterioration of property belonging to another shall be punishable by two years' imprisonment and a fine of 30,000 euros unless only minor damage results."

Article 322-3: "The offence defined in article 322-1, paragraph 1, shall be punishable by five years' imprisonment and a fine of 75,000 euros:

[...]

3. If committed to the detriment of a magistrate, juror, lawyer, public or ministerial officer, a gendarme or a member of the national customs police or the prison service or any other person vested with public authority or employed in the public service with a view to influencing his/her behaviour in the performance of his/her mission or duties;

4. Against a witness, juror or claimant for criminal indemnification either to prevent him/her from reporting an incident, lodging a complaint or seeking justice or because he/she has done so.

[...]"

Attempted destruction, damage or deterioration attracts the same penalties.

(d) Protection against subornation

204. Protection against subornation is punishable pursuant to article 434-15:

Article 434-15: "The use of promises, offers, gifts, pressure, threats, bodily violence, wiles or artifice during the course of proceedings or with an eye to a judicial claim or defence for the purpose of inducing another either to make or issue a false deposition, statement or attestation or to refrain from making or issuing a deposition, statement or attestation shall be punishable by three years' imprisonment and a fine of 45,000 euros even if the subornation has no effect."

Article 14

Paragraph 1

205. If an act of torture were to be committed in the circumstances specified in article 1, paragraph 1, i.e. “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”, the first question that would arise in French law in respect of redress would be to determine the competent court. The answer is straightforward. Since an act of torture unquestionably constitutes a serious infringement of individual liberty, the ordinary courts, as the guardians of fundamental freedoms, would have jurisdiction pursuant inter alia to article 136 of the Code of Criminal Procedure, the paragraph 3 of which states: “... in cases of infringement of personal liberty the dispute may never be taken up by the administrative authority, the courts of law always having exclusive jurisdiction”.

206. From the standpoint of administrative case law, an act of torture ought to be categorized as an act of violence since it clearly cannot be linked to the application of a legislative or administrative text or to the exercise of a power belonging to the administration. Consequently, the judiciary would have full jurisdiction over the matter and would be competent inter alia to provide redress by awarding damages for any injury resulting from the act in question. Both civil and criminal law would be applicable.

207. The basis of civil liability is laid down in articles 1382 and 1383 of the Civil Code:

Article 1382: “Any act by a person which causes injury to another obliges the person by whose fault the injury occurred to make redress.”

Article 1383: “Everyone is liable for the injury he/she causes not only by his/her acts but also by negligence or imprudence.”

The injured party has the option of bringing criminal indemnification proceedings, which it may do before a civil court.

208. However, inasmuch as the injury for which redress is sought is not originally civil but stems from a criminal offence or fault, the option may also, pursuant to article 3 of the Code of Criminal Procedure, be exercised before the criminal courts: “a private action may be brought at the same time and before the same court as the public prosecution”.

209. Criminal proceedings are more expeditious and less costly than action in the civil courts. The authority of the court’s decision in criminal proceedings cannot be challenged in civil proceedings until the victim has been heard in the criminal proceedings. This seems best for the administration of justice itself since, by having the civil action judged by the criminal court, it avoids conflicting judgements. Choosing this option may nevertheless have its drawbacks for the victim who, as a party to the proceedings, cannot testify as a witness either during the preliminary investigation or during the hearings: if the victim is the principal witness for the prosecution, his/her failure to appear as such may weaken the case. He/she must therefore decide in the light of the circumstances how best to pursue his/her complaint. That this option is available to him/her does, in any event, serve to preserve his/her interests.

210. If the victim opts for criminal prosecution, the Court of Assises, which has jurisdiction over criminal matters, will rule on the private action after handing down its judgement on the public prosecution, as prescribed in article 371 of the Code of Criminal Procedure:

“Once the Court of Assises has announced its decision on the prosecution it shall, without the jury present, rule on the applications for damages filed either by the applicant for criminal indemnification against the defendant or by the acquitted defendant against the applicant for criminal indemnification, after the parties and the public prosecutor have been heard.”

211. Under article 372, “in the event of an acquittal or of waiver of punishment, the applicant for criminal indemnification may seek redress for injury caused through the defendant’s fault as established by the facts on which the prosecution was based”.

212. A criminal indemnification action brought before a civil court entails civil proceedings distinct from the criminal trial and subject to the procedural rules applicable in civil law. But because the proceedings concern the procurement of redress for criminal injuries resulting from a criminal act, the civil court must defer its decision until the criminal court, sitting before or during the civil hearings, has itself delivered a judgement on the criminal charges; it is also required to respect the decision handed down by the criminal court.

213. As regards the fairness and adequacy of the compensation, it must be borne in mind that under the case law on the subject (cf. Cass., Crim., 8 February 1983), reparation for the injury suffered by the victim must be made “in full, not just to some extent”.

214. Under article 375 of the Code of Criminal Procedure as amended by the Act of 4 January 1993:

“The court shall sentence the perpetrator of the offence to pay to the applicant for criminal indemnification a sum that it shall determine to cover expenses incurred by the applicant and not paid by the State. The court shall have due regard for fairness or the economic circumstances of the guilty party. It may of its own motion declare on grounds deriving from the same considerations that such a sentence is uncalled for.”

215. In the event, lastly, that the victim is unable to obtain full and fair compensation through the usual channels for the injuries he/she has suffered, article 706-3 of the Code of Criminal Procedure as established by the Act of 6 July 1990 and amended by the Act of 16 December 1992 offers a subsidiary line of recourse:

“Any person who has suffered injury as a result of actions, voluntary or otherwise, that in substance resemble a criminal act may obtain full compensation for the injuries resulting from infringements of personal rights under the following conditions:

1. The infringements neither fall within the scope of article L.126 of the Insurance Code or chapter I of the Traffic Accident Victims (Improvement of Situation and Expedition of Compensation Procedures) Act No. 85-677 of 5 July 1985, nor result from a hunting accident or the destruction of vermin;

2. The actions:
 - Either have brought about a person's death, permanent disability or complete incapacity to work for a month or more;
 - Or are covered by and punishable under articles 222-22 to 222-30 and 227-25 to 227-27 of the Criminal Code.
3. The injured person is of French nationality. If not, the actions were committed on French territory and the injured person:
 - Either is a national of a State member of the European Economic Community;
 - Or, subject to the provisions of international treaties and agreements, was legally resident on the date of the actions or the application.

Compensation may be refused or reduced on the grounds of fault on the part of the victim.”

216. This article thus establishes the principle of full compensation for injuries resulting from serious infringements of personal rights provided that the actions behind the injuries in substance resemble a criminal act; the judicial authorities do not even need to establish that a criminal act has been committed.

217. Concerning the costs incurred by a victim in bringing an action, Act No. 2002-1138 of 9 September 2002 on policy and the budget for the justice system added to Act No. 91-647 of 10 July 1991 on legal aid article 9-2 exempting victims and relatives or dependants of victims of certain offences, including those provided for under articles 221-1 to 222-6 punishing torture and acts of barbarity, from a means test in order to qualify for legal aid with a view to bringing an action to seek compensation for injuries resulting from infringements of personal rights.

Paragraph 2

218. If the victim of an act of torture dies, his/her successors are entitled to compensation and may apply in their own right for criminal indemnification. The condition for entering an application for criminal indemnification is that one has suffered personal injury as a result of the criminal act in question.

219. According to the case law on the subject, anyone to whom a criminal act has caused physical or moral injury, even if not directly the victim of the act, is regarded as having suffered personal injury, whether he/she be an heir, ascendant, descendant or brother, or sister of, or anyone else with stable bonds of affection and interest to the deceased victim. The personal injury invoked by the successors must nevertheless be direct, i.e. associated by a cause-and-effect relationship with the criminal act. Moral injury through infringement of emotional ties is in certain cases regarded as direct, and the successors can then receive a *pretium doloris*.

Article 15

220. Under French law the question how evidence is established arises from the viewpoint of this article only in criminal proceedings. In civil law, the law itself governs how evidence is established, its admissibility and its probative value; in criminal law, evidence established by any means is accepted provided that it has been sought and obtained in accordance with certain procedures and rules and that it has been produced and discussed adversarially at the hearings.

221. There are, naturally, limits to the freedom of evidence. Although the objective is to lay bare the truth, the truth cannot be sought by any means whatsoever. Torture is forbidden under the Convention and the other international instruments binding on France that are cited at the beginning of this report.

222. It was stated, in reference to article 11, that the conditions under which individuals can be questioned, inter alia while in police custody, are strictly regulated, and that infringements of the bodily integrity of accused persons are severely punished under the Criminal Code. Case law has also rejected all unfair procedures as provocative. French doctrine prohibits interrogation combined with the use of narcotics (injections of pentothal or “truth serum”).

223. An additional safeguard is provided by the fact that the judges in criminal matters have sovereign authority to evaluate the value and probative force of evidence and must for that purpose take into consideration the circumstances in which it was obtained. Reference should be made here to articles 427, paragraph 2, and 428 of the Code of Criminal Procedure, which state:

Article 427 (para. 2): “The court may base its decision only on the evidence produced and discussed adversarially before it during the hearings.”

Article 428: “The courts may form their own opinion of confessions, as of any item of evidence.”

224. Hence a statement that could be shown to have been obtained under torture would have been obtained unlawfully, and the court could not hold it against the defendant. The defendant, on the other hand, would be able to avail himself/herself of the means described under article 13 to bring proceedings against the perpetrators of the act of torture.

Article 16

Paragraph 1

225. Other acts of cruel, inhuman or degrading treatment or punishment are covered in France by the charges applicable to torture. The information given above relating to torture generally thus also applies to them. The obligations set forth in connection with articles 10, 11, 12 and 13, in particular, are valid under the same conditions.

226. Furthermore, it should be noted that acts of wilful violence committed by persons vested with public authority are also subject to punishment and sanctions.

227. There are two types of offences: criminal and ordinary.

(a) Criminal offences

228. These are acts of wilful violence committed by a person vested with public authority that result in permanent disability (article 222-10 of the Criminal Code) and acts of wilful violence that unintentionally cause death (ibid., art. 222-8). They are punishable by 20 and 15 years' rigorous imprisonment respectively.

229. These offences are the least numerous in terms of convictions. Between 1994 and 2001, there were only three convictions for them (in 1999, 2000 and 2001) and in two of the cases the penalty imposed was imprisonment, for 5 and 10 years respectively. No fines were imposed since these offences are not subject to monetary penalties.

(b) Ordinary offences

230. These are the offences that have resulted in the most convictions.

231. The law prescribes for them penalties ranging from three to five years' imprisonment and fines of between 45,000 euros and 75,000 euros, depending on the injuries sustained (articles 222-12 and 222-13 of the Criminal Code, and article 42-11 of the Act of 16 July 1984).

232. Between 1994 and 2001, the number of convictions for acts of wilful violence committed by persons vested with public authority, that resulted in complete incapacity to work were 3 in 1994, 20 in 1995, 34 in 1996, 59 in 1997, 47 in 1998, 52 in 1999, 49 in 2000 and 41 in 2001 (provisional data for 2001). Most of the convictions were for acts of wilful violence resulting in total incapacity to work for a period of less than eight days. In general the penalties imposed are prison sentences, most of them partly suspended. This is explained by the fact that the persons prosecuted are virtually all first-time offenders, for whom the warning implicit in the passing of a suspended sentence seems appropriate. Fines are not a form of punishment favoured by criminal courts and they are light.

Paragraph 2

233. The fact that the Convention is without prejudice to any other international instrument or national law prohibiting cruel, inhuman or degrading treatment or punishment poses no problem either of interpretation or of application. It is also normal that the Convention should not affect the application of other provisions in agreements or national laws on extradition or expulsion.
