



**Convention on the  
Rights of the Child**

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**COMMITTEE ON THE RIGHTS OF THE CHILD**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES  
PARTIES UNDER ARTICLE 12, PARAGRAPH 1, OF THE  
OPTIONAL PROTOCOL TO THE CONVENTION ON THE  
RIGHTS OF THE CHILD ON THE SALE OF CHILDREN,  
CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

**Initial reports of States parties due in 2005**

**FRANCE\* \*\***

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* The annexes may be consulted in the files of the secretariat.

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## I. INTRODUCTION

1. France signed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (hereinafter referred to as “the Protocol”) on 6 September 2000 and ratified it on 26 February 2002 (Act No. 2002-272 of 26 February 2002 authorizing the ratification of the Protocol, published in the Official Journal of the French Republic of 27 February 2002). In accordance with article 14 of the Protocol, it entered into force on 5 March 2003. It was published in the Official Journal of 24 April 2003 (Decree No. 2003-372 of 15 April 2003 on the publication of the Protocol). Under article 55 of the Constitution of 4 October 1958,<sup>1</sup> it is therefore applicable in France and takes precedence over Acts of Parliament.

2. In this initial report, France presents to the Committee on the Rights of the Child the measures it has taken to give effect to the provisions of the Protocol, as required under article 12, paragraph 1, of the Protocol. Any further information with respect to the implementation of the Protocol will be included in the periodic reports that must be submitted every five years pursuant to article 12, paragraph 2, of the Protocol.

3. In order for a treaty provision to be invoked in a domestic court, the provision must be recognized as being directly applicable (or “self-executory”). In view of the recent entry into force of the Protocol, the French courts have not yet had occasion to rule on the direct effect of its provisions. They will not fail to do so as soon as the matter is referred to them, as occurred with the Convention on the Rights of the Child (hereinafter referred to as “the Convention”). The Court of Cassation, which had traditionally refused to acknowledge that the Convention was directly applicable in domestic law, has recently markedly changed its position. In two groundbreaking decisions dated 18 May 2005, which have since been confirmed (see, among others, the judgements of the first civil division dated 14 June 2005, 13 July 2005 and 22 November 2005), it acknowledged the direct applicability of articles 3-1 and 12-2 of the Convention. The Council of State had adopted a more qualified position by declaring certain articles to be directly applicable, according to whether or not the provisions of the Convention were self-executory. There is considerable case law on this point. To date, the Council of State has acknowledged the direct effect on individuals of articles 3-1, 10-2, 16 and 37 (b) and (c) of the Convention.

4. The implementation of the Protocol comes within the remit of several ministries. The Ministry of Justice, which ensures the proper functioning of the system of justice, and the Ministry for the Interior, responsible for public security, including the national police and the gendarmerie, are competent in aspects of the Protocol that concern the criminal law and legal procedures. The Ministry of Justice is also involved in matters of extradition, victim support and adoption. The Ministry of Health and Social Solidarity and the Ministry for the Family have made child protection a priority when implementing both social policy (for example, the medical, psychological and social care of at-risk children) and family policy (such as the

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<sup>1</sup> “Treaties or agreements duly ratified or approved shall, upon publication, take precedence over Acts of Parliament, subject, in regard to each agreement or treaty, to its application by the other party.”

protection of minors on the Internet). The Ministry of Foreign Affairs is more specifically responsible for developing and coordinating international cooperation programmes, apart from certain initiatives which are headed directly by the ministries concerned; for example, the Ministry of Tourism has developed an active policy to combat the sexual exploitation of children in tourism, which aims to raise awareness among those in the industry, as well as the public at large, at the national and international level. Education programmes, which are the primary responsibility of the Ministry of National and Higher Education and Research, are also an important medium for raising pupils' and teachers' awareness of the issues addressed by the Protocol.

5. Local authorities are also involved in the implementation of the Protocol, in particular, the regional councils (*conseils généraux*) responsible for child protection, certain independent agencies (such as the ombudsman for children instituted by Act No. 2000-196 of 6 March 2000 or the National Advisory Commission on Human Rights), non-governmental organizations and the voluntary sector.

6. Conscious of the large number of parties involved and the need for close coordination of their activities; the French Government is paying particular attention to measures to coordinate these entities at different levels. For example, working groups have been established to improve efficiency in outlining and implementing cross-cutting policies in areas that include combating the sexual exploitation of children in tourism on the Internet. In order to improve detection and intervention in cases of vulnerable children, Act No. 2004-1 of 2 January 2004 on the care and protection of children established the National Monitoring Centre for At-risk Children (Observatoire National de l'Enfance en Danger - ONED).<sup>2</sup> Review of provisions for victim support is ensured at the national level by an advisory body, the National Council for Victim Support, and at the local level by a member of the judiciary or public prosecutor appointed by the senior presidents of the Court of Appeal, the judge responsible for voluntary-sector policy and legal access who also plays a coordinating role.

7. Important awareness-raising, information, education and training activities have been undertaken by each of these ministries, most frequently in partnership with professionals, the voluntary sector or the relevant non-governmental organizations. For example, the in-service training programme of the National College of Magistrates for 2006 includes such topics as international adoption, tutelary support, juvenile delinquency and unaccompanied minors.

8. France's second periodic report on the follow-up to the Convention should also be consulted for details of monitoring mechanisms and measures taken to increase awareness of the Convention.

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<sup>2</sup> Its aim is to collect, analyse, assess and disseminate data, studies, research and prevention and intervention practices relating to child protection, the results of which have been found highly positive. Along with the National Child Abuse Hotline, it forms part of the Public-Interest Corporation for Abused Children (Groupement d'Intérêt Public Enfance Maltraitée - GIPEM), which brings together the State, the *départements* and child protection associations.

9. Each of the aforementioned ministries allocates funds from its annual budget to support work relating to the implementation of the Protocol.

10. The present report is based on contributions by the ministries concerned with the implementation of the Protocol. The report has been prepared in the light of the guidelines regarding initial reports to be submitted by States parties in accordance with article 12, paragraph 1, of the Protocol. The Government has also taken into account observations made by the National Advisory Commission on Human Rights and the ombudsman for children.

## **II. PROHIBITION OF THE SALE OF CHILDREN, CHILD PORNOGRAPHY AND CHILD PROSTITUTION**

### **A. Domestic criminal provisions relative to the acts and activities referred to in article 3, paragraph 1, of the Protocol**

#### **1. Age up to which a person is considered to be a child in the definition of each of the offences listed**

11. Act No. 74-631 of 5 July 1974 sets the age of majority at 18, with article 388 of the Civil Code stating “a minor is an individual of either sex who has not yet reached the full age of 18 years of age”. The definition recognized by French law corresponds to the one given in article 1 of the Convention, where the term “minor” is however preferred.

12. French criminal law provides for punishment of the offences referred to in article 1 of the Optional Protocol, that is, the sale of children, child pornography and child prostitution. All these provisions ensure protection for children of whatever age. Specific measures have been put in place for implementation of the law in these various areas.

13. In order to combat child pornography, a central unit for under-age victims was set up in 1997 as part of the Central Directorate of the Criminal Investigation Service. The National Division responsible for combating infractions against people and property has developed a national database index of pornographic images of children, for use by the national police and gendarmerie to facilitate identification of the perpetrators and victims of such offences. The Central Office responsible for combating trafficking in persons regularly participates in workshops with different associations that defend the victims of procuring or trafficking in persons.

14. Act No. 2002-305 of 4 March 2002 establishes the prostitution of minors as an offence (article 225-12-1 of the Criminal Code). It produced the following results in 2004: 52 cases were brought by the police against clients of child prostitutes, 42 men over the age of 18 were prosecuted and 48 victims were identified.

15. Article 225-7 of the Criminal Code also provides that punishment of the offence of procuring is heavier when the offence is committed against a child.

16. Article 227-23 of the Criminal Code makes it a punishable offence to take, record or transmit a picture or representation of a minor with a view to circulating it. Since Act No. 2004-575 of 21 June 2004, it is also an offence to distribute such a picture or representation,



to import or export it, or to cause it to be imported or exported. The criminal law also punishes the possession of such an image or representation. Act No. 2006-399 of 4 April 2006 transposing the European Council Framework Decision 2004/68/JAI of 22 December 2003 on combating the sexual exploitation of children and child pornography amplifies the provisions of article 227-23 of the Criminal Code by making it an offence to make available a picture of a pornographic nature.

17. Other criminal characterizations establish the sale of children as an offence.

18. The offence of trafficking in persons, with the aggravating circumstance of the victim being a minor, is defined under article 225-4-1 of the Criminal Code as the recruitment, transport, transfer, accommodation or reception of a person in exchange for remuneration or any other consideration, or for the promise of remuneration or other consideration, in order to place that person at the disposal of an identified or unidentified third party so as to allow the commission against the latter of the offences of procuring, sexual assault and the exploitation of begging or living or working conditions inconsistent with human dignity, or to compel that person to commit any such offence.

19. Inciting one or both parents to abandon a live or unborn child for remuneration also constitutes the sale of children, as does acting for remuneration as an intermediary between a person wishing to adopt a child and a parent wishing to abandon their live or unborn child, or between persons wishing to have a child and a woman who agrees to bear that child with the aim of giving it up to them. Article 227-12 of the Criminal Code makes these offences punishable in law.

## **2. Penalties applicable to each of the offences and aggravating or attenuating circumstances**

20. A child aged 15 or over being considered less vulnerable, certain offences of a sexual nature or certain aggravating circumstances concern only the protection of children up to the age of 15.

21. The offence of child prostitution is punishable by 3 years' imprisonment and a fine of 45,000 euros (article 225-12-1 of the Criminal Code). If this offence is committed habitually, or against more than one person, or by a person abusing the authority conferred upon him by his or her position, the penalties are increased to 5 years' imprisonment and a fine of 75,000 euros (article 225-12-2 of the Criminal Code). The aforementioned April 2006 Act provides for an additional aggravating circumstance "where the offender deliberately or recklessly endangers the life of the person or is violent towards that person" (article 225-12-2, paragraph 4, of the Criminal Code), which is punishable by the same penalties. The age of the victim is also an aggravating circumstance, since the ordinary offence of prostitution involving a child under the age of 15 is punishable by 7 years' imprisonment and a fine of 100,000 euros (article 225-12-2 of the Criminal Code).

22. The offence of procuring is punishable by 10 years' imprisonment and a fine of 1.5 million euros when committed against a minor (article 225-7 of the Criminal Code). The age of the victim is also an aggravating circumstance: if the child is under 15 years of age, the offence becomes a serious one punishable by a 15-year prison sentence and a fine of 3 million euros (article 225-7-1 of the Criminal Code).

23. Child pornography was formerly punishable by 3 years' imprisonment and a fine of 45,000 euros. The aforementioned April 2006 Act specifies and increases the penalties incurred for this offence to 5 years' imprisonment and a fine of 75,000 euros. Possessing child pornography is punishable by 2 years' imprisonment and a fine of 30,000 euros. The new criminal offence of making available an image of a pornographic nature is punishable by 5 years' imprisonment and a fine of 75,000 euros (article 227-23 of the Criminal Code).

24. Trafficking in children is punishable by 10 years' imprisonment and a fine of 1.5 million euros (article 225-4-2 of the Criminal Code).

25. Inciting the abandonment of a child for remuneration is punishable by 6 months' imprisonment and a fine of 7,500 euros, while acting for remuneration as an intermediary between a person wishing to adopt a child and a parent wishing to abandon their live or unborn child is punishable by 1 year's imprisonment and a fine of 15,000 euros. Acting for remuneration as an intermediary between persons wishing to have a child and a woman who agrees to bear that child with the aim of giving it up to them is punishable by 2 years' imprisonment and a fine of 30,000 euros (article 227-12 of the Criminal Code).

26. Other aggravating circumstances not linked to the age of the victim are common to several offences. These are circumstances where the offence is committed:

- (a) As part of an organized group: procuring, pornography and trafficking in persons;
- (b) Accompanied by torture or barbaric acts: procuring and trafficking in persons;
- (c) Using a telecommunication network: child prostitution, procuring, trafficking in persons and pornography.

27. Child protection is a constant concern in other areas of legislation, such as labour law (under which children under 16 are prohibited from working) or health law. For example, the sale of children may have as its intention the sale of their organs. Under protection of the human body, articles 511-3 and 511-4 of the Criminal Code punish the removal of an organ, tissue or cells from a living child for remuneration or benefit, or without having complied with the restrictive conditions imposed by articles L.1241-2 and L.1241-3 of the Public Health Code.

### **3. Statutory limitation for each of the offences**

28. The standard limitation period is 10 years for serious offences and 3 years for ordinary offences, beginning from the day on which the offence was committed if, during that period, no step in investigation or prosecution has been taken. These time limits are applied generally to all the aforementioned offences (articles 7 and 8 of the Code of Criminal Procedure).

29. However, criminal law has been amended by Act No. 2004-204 of 9 March 2004 bringing the justice system into line with evolving crime patterns so as to increase the possibilities of prosecuting the perpetrators of certain offences of a sexual nature, such as crimes or murder committed against a minor preceded or accompanied by rape, torture or barbaric acts, or lesser offences of a sexual nature. For these serious offences, the 20-year statutory limitation only starts to run from when the victim reaches the age of 18. For lesser or ordinary offences, the time limit is extended to 10 or 20 years according to the nature of the offence, running from when the victim comes of age.

30. Regarding the offences of a sexual nature covered by article 1 of the Protocol, the offences of prostitution of a minor, procuring of a minor (since the aforementioned April 2006 Act) or child pornography, the limitation period is 10 years (articles 8 and 706-47 of the Code of Criminal Procedure), running from when the victim comes of age.

#### **4. Other acts or activities not directly referred to by article 3, paragraph 1, of the Protocol, but punished by French criminal law**

31. French criminal law punishes acts that may precede or be incidental to or concomitant with the sale of children, child prostitution or child pornography.

32. The abandonment of children under the age of 15 by their parents is an offence under article 227-1 of the Criminal Code, punishable by 7 years' imprisonment and a fine of 100,000 euros. Under article 227-2 of the Code, the penalty is increased to 20 years' criminal imprisonment if the minor concerned suffered mutilation or permanent disability as a result, and a 30-year sentence where abandonment caused the death of the minor.

33. Similarly punishable are sexual attacks (rape or sexual assault, for which the punishment is heavier if the offences are committed against a child under the age of 15) and corruption of a minor (article 227-22 of the Criminal Code).

34. Working and living conditions incompatible with human dignity are punishable under articles 225-13 and 225-14 of the Criminal Code by 5 years' imprisonment and a fine of 150,000 euros. Changes made to legislation by Act No. 2003-239 of 18 March 2003 introduce the concept of "vulnerability or dependence [...] obvious to or known by the offender" and increase the corresponding penalty.

35. Finally, the aforementioned April 2006 Act establishes a new offence that punishes the incitement of others to commit certain offences against minors, including procuring a child or child pornography. Even if the offence is not committed or attempted, incitement to do so is punishable by 3 years' imprisonment and a fine of 45,000 euros in the case of an ordinary offence, or 7 years' imprisonment and a fine of 100,000 euros in the case of a serious offence (article 227-28-3 of the Criminal Code).

**5. Liability of legal persons for the acts and activities referred to in article 3, paragraph 1, of the Protocol, including the definition of the concept of a legal person**

36. Article 3, paragraph 4, of the Protocol leaves the establishment of the criminal liability of legal persons optional.

37. The aforementioned March 2004 Act bringing the justice system into line with evolving crime patterns has extended the criminal liability of legal persons to include any offence. This measure, which entered into force on 31 December 2005, applies a fortiori to the above-mentioned offences.

38. Any legal person, with the exception of the State, can be declared criminally liable for offences, on whose behalf or by whose bodies or representatives the offences are alleged to have been committed. The following are therefore affected: for-profit private legal persons (non-commercial partnerships and commercial companies, companies with cooperative or agricultural status and public-interest corporations) or not-for-profit private legal persons (including registered associations, whether recognized or not as being in the public interest, foundations, trade unions and political parties or groupings, etc.); legal persons engaged in activities that are wholly public, for example public bodies and public-interest corporations; hybrid entities (in the case of territorial entities and their groupings, criminal liability is limited to offences committed when performing activities likely to come under delegated public service agreements); and foreign legal persons.

**6. Characterization under French criminal law of attempts to commit and complicity or participation in any of the aforementioned offences**

39. The Criminal Code includes complicity in all the serious and ordinary offences it establishes under French criminal law. Complicity is defined by article 121-7 of the Criminal Code, which sets out two legal categories: complicity by aiding or abetting, and complicity by giving, promising, threatening, ordering or abusing power or authority. Furthermore, article 121-6 of the Code provides that an accomplice to an offence risks the same penalties as the perpetrator. Complicity in the aforementioned offences is therefore systematically penalized.

40. On the other hand, while attempting to commit a serious offence is always criminalized (attempted aggravated procuring or trafficking in persons as part of an organized group, or accompanied by torture or barbaric acts, are therefore punishable), there is a need for a specific provision of the law to cover ordinary or lesser offences.

41. The law does not criminalize the attempted prostitution of a minor. However, attempting to procure a minor is an offence under article 225-11 of the Criminal Code. Article 225-4-7 of the Criminal Code penalizes attempted trafficking in children. Under article 227-12 of the Criminal Code, the following are established as offences: attempting to commit the ordinary offence of acting for remuneration as an intermediary between a person wishing to adopt a child and a parent wishing to abandon their live or unborn child, or between persons wishing to have a child and a woman who agrees to bear that child with the aim of giving it up to them. The aforementioned April 2006 Act henceforth establishes attempted child pornography as an offence.

**B. Bilateral and multilateral agreements applicable in France relating to adoption and measures taken to ensure compliance therewith**

42. To date, France has ratified two conventions relating to international adoption:
- The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 29 May 1993. Ratified by France on 9 March 1998, the Convention entered into force on 1 October 1998;
  - The Cooperation Agreement on child adoption between France and Viet Nam of 1 February 2000. Ratified by France on 29 June 2000, the Agreement entered into force on 1 November 2000.
43. Under its international commitments, France has taken a number of measures to monitor the work of adoption agencies.
44. To ensure closer monitoring of international adoption procedures, the Government created in 1987 the International Adoption Mission, an inter-ministerial organization coming under the Minister of Foreign Affairs. Working alongside adoption agencies accredited by the Minister, the organization is in constant contact with the relevant authorities in the children's countries of origin. Besides providing information and acting as intermediary with the governments of the children's countries of origin, it performs the privileged task of issuing visas to children adopted abroad, as well as monitoring adoption agencies.
45. Act No. 96-604 of 5 July 1996 concerning adoption (amended by Act No. 2002-93 of 22 January 2002 relative to access to personal origins) added a new element to this system by establishing a central international adoption authority responsible for overseeing and coordinating the departments and authorities responsible for international adoption, as provided for in the Hague Convention. It ensures that all those concerned with the adoption procedure comply with the principles of international adoption, as well as helping to combat the sale of children.
46. France provides for strict supervision of adoption agencies. The aforementioned January 2002 Act ended the possibility of an individual acting as an intermediary in adoption and tightened the regulations applicable to adoption agencies. Any agency wishing to play a part in international adoption must first obtain permission from the head of the departmental council in whose *département* it intends to place the children concerned, as well as a permit, which is issued by the Ministry of Foreign Affairs on the recommendation of the central international adoption authority.
47. More recently, Act No. 2005-744 of 4 July 2005 reforming adoption established the French Adoption Agency, which is responsible for providing information and advice and acting as an intermediary in the adoption of foreign children under the age of 15 between all the contracting parties to the Hague Convention and any countries from which the children originate. This public-interest body, inaugurated on 18 May 2006 and comprising representatives of the State, the *départements* and accredited French adoption agencies' federations, takes over the "governmental" functions hitherto exercised by the International Adoption Mission: for example, providing information to persons wishing to adopt and the processing and follow-up of

individual cases. This Act also reforms international adoption institutions by reinforcing the coordinating and advisory role of the central adoption authority. It also modifies the approval procedure by standardizing decisions to grant approval and ensuring applicants are supported throughout the process. Following these reforms, the International Adoption Mission has become the general secretariat for the central international adoption authority.

48. Through strict regulation of international adoption mechanisms and the agencies liable to participate in the process, all these measures contribute to efforts to combat the sale of children, in accordance with France's commitments under the Optional Protocol.

### **III. CRIMINAL PROCEDURE**

#### **A. France's jurisdiction over the offences referred to in article 3, paragraph 1, of the Protocol**

##### **1. Instances where offences are committed in its territory or on board a ship or aircraft registered in France**

49. It must first be noted that any act constituting an offence committed by an individual of any nationality in French territory is liable to criminal prosecution by the French courts, according to the territorial principle of jurisdiction.

50. In addition, under articles 113-3 and 113-4 of the Criminal Code, French criminal law is applicable to offences committed on board or against ships flying the French flag or aircraft registered in France, wherever they may be.

51. Under article 113-11 of the Criminal Code, French criminal law is also applicable to serious or ordinary offences committed on board or against aircraft not registered in France when:

- The perpetrator or the victim is of French nationality;
- The aircraft lands in France after the offence has been committed, whatever the nationality of the perpetrator or the victim;
- The aircraft was leased without crew to a person whose main place of business is in France or, failing that, whose permanent residence is on French territory.

##### **2. Instances where the alleged offender is a French national or a person whose habitual residence is in French territory**

52. Under article 113-6 of the Criminal Code, French criminal law is applicable to any serious offence that is committed by a French national outside the territory of the French Republic. The nationality of the victim is irrelevant.

53. Under the same provisions, French criminal law is applicable to any ordinary offence committed by a French national outside French territory, where the acts are punishable by the legislation of the country in which they were committed, in accordance with the principle of dual criminality.

54. In exception to this principle, if the acts committed constitute the ordinary offence of child prostitution, the French courts are deemed to have jurisdiction not only over French nationals, but also any person who has his habitual residence in France, without dual criminality being required (article 225-12-3 of the Criminal Code).

55. Under the aforementioned April 2006 Act, these two exceptions extend to the ordinary offence of procuring a child abroad (article 225-11-2 of the Criminal Code).

56. It must however be pointed out that these offences committed abroad are increasingly prosecuted in the countries where they were committed.

### **3. Instances where the victim is a French national**

57. Under article 113-7 of the Criminal Code, the criminal law is applicable to any offence punishable by imprisonment committed outside the territory of the French Republic by a French national, or a foreign national, against a victim of French nationality.

### **4. Instances where the alleged offender is present in French territory and France does not extradite him or her to another State party on the ground that the offence has been committed by a French national**

58. The Government refers the reader to the following details relating to France's extradition policy.

#### **B. French extradition policy relating to the offences referred to in article 3, paragraph 1, of the Protocol**

59. The provisions of the Code of Criminal Procedure are consistent with the commitments under articles 4, 5 and 6 of the Protocol.

#### **Extradition between France and the States of the European Union**

60. In extradition measures between European Union member States, the European arrest warrant procedure applies, with the exception of Germany since 18 July 2005.<sup>3</sup>

61. The procedure is purely legal without an administrative phase. It establishes short time limits; the final decision authorizing or refusing the surrender of the person requested must be taken no more than three months after arrest.

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<sup>3</sup> The Karlsruhe Federal Constitutional Court has declared null and void the German Act transposing the framework decision relative to the European arrest warrant of 13 June 2002. German legal authorities had used the procedure until that time.

62. States may issue these warrants for acts punishable under their law by a custodial sentence of at least one year or by a custodial sentence of at least four months where sentence has already been passed.

63. Moreover, in such dealings with European Union member States, trafficking in persons, sexual exploitation of children and child pornography are offences for which dual criminality is not required, in accordance with the provisions of article 695-23 of the Code of Criminal Procedure which reflect the provisions of article 2 of the European Council Framework Decision 2002/584/JAI of 13 June 2002 on the European arrest warrant and surrender procedures between member States and therefore facilitate the execution of the requests made by these States to France.

64. French nationality of the person requested no longer systematically constitutes a reason for non-execution of the warrant, unlike under ordinary extradition law.

65. However, France has been able to impose a time bar on the European arrest warrant system by refusing to apply the system to acts committed before 1 November 1993.

66. For example, between 2004 and 2005, the French judicial authorities issued three European arrest warrants and the German judicial authorities issued one European arrest warrant, all relating to the sexual exploitation of children and child pornography. To date, these have given rise to two instances of surrender.

67. In 2006, two European arrest warrants were issued for similar acts: one by the judicial authorities of the Netherlands and the other by the Italian judicial authorities. To date, only one of these European arrest warrants has been executed.

#### **Extradition between France and States of the Council of Europe (not including States of the European Union)**

68. Extradition is governed by the European Convention on Extradition of 13 December 1957.

69. Under this Convention, the person requested must be the subject of prosecution or have already been sentenced according to the following conditions:

- The matter must concern acts punishable by a custodial sentence of at least one year, or by a custodial sentence of at least four months where sentence has already been passed, under the law of the requesting State;
- The acts must also be punishable under French legislation in accordance with the principle of dual criminality; equally, the acts should not have been committed within French territory or by a French national.

70. In 2004, France received an extradition request from Switzerland relating to child pornography. On 7 September 2004 the person concerned was surrendered to the requesting authorities.



## **Extradition between France and other States of the world**

71. Extradition conditions are set out in articles 696-1 onwards of the Code of Criminal Procedure.

72. The person requested must have been the subject of prosecution or have been sentenced according to the following conditions:

- The acts concerned must either be punishable as serious offences under the law of the requesting State, or as an ordinary offence under the law of the requesting State, for which the penalty is at least two years' imprisonment or, in the case of a person already sentenced, by at least two months' imprisonment;
- These acts must be punishable by French legislation, in accordance with the principle of dual criminality; equally, they must not have been committed on French territory and the alleged offender must not be a French national.

### **C. Measures taken for the seizure and confiscation of goods or proceeds, as well as the closure of premises**

#### **1. Seizure and confiscation of goods or proceeds referred to in article 7 (a) of the Protocol**

##### **(a) Seizure**

73. The Code of Criminal Procedure authorizes the seizure of goods under the following conditions:

##### *(i) During the police investigation*

74. Article 76 of the Code of Criminal Procedure allows for the “seizure of evidence” as part of a preliminary investigation. The seizure must normally be carried out with the express consent of the person on whose premises the operation takes place.

75. Article 54, paragraph 2, of the Code of Criminal Procedure refers expressly to “weapons and instruments that have been used to commit a serious offence or were intended to be used, as well as any item which appears to be the proceeds of the offence” as part of the on-the-spot investigation. The article covers serious offences, as well as flagrant misdemeanours punishable by imprisonment under article 67 of the Code of Criminal Procedure.

##### *(ii) During the pretrial proceedings*

76. The Code of Criminal Procedure does not specifically provide for seizure during the judicial investigation. Article 97 of that Code refers only to “documents or electronic data”.

77. The seizure of the proceeds and instrumentalities of an offence comes under the general powers of the investigating judge, who may take “[...] any steps that he considers useful for the discovery of the truth” (article 81, paragraph 1, of the Code of Criminal Procedure) or delegate these steps by rogatory letter (article 151 of the Code of Criminal Procedure).

**(b) Confiscation**

78. When provided for in law, a serious or ordinary offence can be punished by one or more additional penalties, including the immobilization or confiscation of an item (article 131-10 of the Criminal Code). Confiscation from natural and legal persons is also authorized in cases of procuring a child and trafficking in children (article 225-25 of the Criminal Code). An item or good can be confiscated from a natural person because of its link to a certain offence, such as in cases of child pornography or incitement to abandonment (article 227-29 of the Criminal Code). In cases of child prostitution, a natural person can also be prohibited from managing, being employed in and participating financially in the establishments concerned (article 225-20, paragraph 4, of the Criminal Code).

79. Under article 131-21 of the Criminal Code, confiscation of dangerous or noxious articles directly linked to an offence is mandatory.

80. Under the same article, confiscation can also relate to any moveable defined by legal instruments sanctioning the offence.

**(c) Procedure applicable to requests for international mutual assistance**

81. In the absence of specific conventions, requests for international mutual assistance received by France relating to the seizure and confiscation of assets are executed on the basis of reciprocity and by implementing the ordinary regulations set out in the Code of Criminal Procedure (in particular, article 706-103).

82. In principle, the public prosecutor is responsible for execution, unless the request involves an act that can only be ordered by an investigating judge during pretrial proceedings (article 694-2 of the Code of Criminal Procedure).

83. At the European level, the convention most frequently used in judicial cooperation is the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.

84. Since this Convention does not include specific provisions applicable to seizure and confiscation of assets, the regulations set out in the Code of Criminal Procedure are also applied.

**2. Temporary or definitive closure of premises used to commit the offences referred to in article 3, paragraph 1, of the Protocol**

85. Natural or legal persons sentenced for child procuring may be subject to the additional penalty of the closure, for up to five years provisionally, or definitively, of the establishment used for prostitution (article 225-22 of the Criminal Code).

#### **IV. PROTECTION OF THE RIGHTS OF CHILD VICTIMS**

##### **A. Measures adopted to protect the rights and interests of child victims during the criminal justice process**

##### **1. Taking the best interests of the child into account in domestic legislation**

86. The protection of child victims is a constant concern of the French Government. This is reflected in procedural modifications to take account of the specific nature of children's testimonies and their vulnerability, while ensuring a fair trial for the defendant. The action of the legislator and of the authorities responsible for applying the criminal law is guided by the best interests of the child.

87. Child victims may, through their representatives, institute criminal proceedings as a victim or may find themselves involved as a witness; they benefit, then, throughout the proceedings from the right to legal representation exercised by their parents or legal guardian. Where the child's interests are not fully served or where there is a conflict of interests, an ad hoc administrator may be appointed by the judge to safeguard the child's interests during the proceedings. The ad hoc administrator exercises, if necessary, the rights open to a civil party in the child's name (Code of Criminal Procedure, art. 706-50).

88. Concerning the offences of child prostitution, child procuring (under the aforementioned Act of 4 April 2006) and child pornography (Code of Criminal Procedure, art. 706-47), the exceptions under Act No. 98-468 of 17 June 1998 apply to taking the child's testimony, the police inquiry and judicial investigation and the trial phase.

##### **(a) Taking the child's testimony**

89. In order to avoid repeated hearings, during which the child has to be heard in connection with painful or traumatic events, Act No. 98-468 (17 June 1998) prescribes that an audio-visual recording should be made of the child victim's testimonies during the inquiry and judicial investigation (Code of Criminal Procedure, art. 706-52). The only exception to this requirement is if the child or legal representative does not give consent. The child or legal representative also has the right to request a sound recording only. An implementing circular issued by the Ministry of Justice on 20 April 1999 and an inter-ministerial circular published on 29 October 1999 specified the conditions under which mandatory recourse to this technique apply.

90. The Act of 17 June 1998, through article 706-53 of the Code of Criminal Procedure, provides that hearings for these offences may take place in the presence of a child psychologist or paediatrician, a member of the child's family, the ad hoc administrator or a person mandated by the juvenile court judge.

91. In an effort to promote wider application of the provision made by the aforementioned Act of 17 June 1998, the Ministry of Justice sent a circular to the courts on 2 May 2005 on improving judicial treatment of procedures relating to sexual offences. It draws attention particularly to the need to implement the legal provisions concerning the filmed hearing of child victims of sexual offences (hence viewing by judges). It also requests that the Office of the

Public Prosecutor make it a requirement to view the cassette of the child's statement. In order to avoid a confrontation that is invariably distressing for the child, the Office of the Public Prosecutor must request of the judges concerned that the audio-visual recordings be viewed in the presence of the accused.

92. The training and professionalization of investigators has been developed and improved in this area. Since 1989, 60 police investigators annually have received a training course entitled "Interviewing Children". Since 2001, the national gendarmerie has also introduced a special training course on "Interviewing Minors", which has been followed by some 800 investigators to date.

93. The National College of Magistrates is developing the courses it makes available on child victims - from taking a child's testimony to the judicial treatment of incest.

94. There is an increasing focus on the child's testimony in legal proceedings. French legislators are at pains to adjust mechanisms and procedures to ensure that children's testimonies are taken with the care and professionalism required by their particular nature. The French Government is drawing in particular on the recommendations of the ombudsman for children<sup>4</sup> and the National Consultative Commission of Human Rights (CNCDH), which pays particular attention to these issues.<sup>5</sup> The recommendations of the working group responsible for drawing the lessons from the judicial handling of the "d'Outreau" affair, published in February 2005 (Viout Commission), have also been given careful consideration. The above-mentioned Ministry of Justice circular of 2 May 2005 emphasizes the need to improve the practical implementation of certain existing legislative provisions and lists all the Ministry's recommendations that can be implemented in this way.

#### **(b) Conduct of the inquiry and judicial investigation**

95. An expert medical assessment of the offender is systematically ordered. The expert is asked whether a medical treatment order is appropriate within the framework of socio-judicial supervision (Code of Criminal Procedure, art. 706-47-1).

96. A medical examination and a blood test of the offender may be ordered by the senior law-enforcement officer at the request of the victim or when justified by the victim's interests, with or without the consent of the person concerned, on the instructions of the public prosecutor or the investigating judge (Code of Criminal Procedure, art. 706-47-2).

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<sup>4</sup> See, inter alia: the report for 2005 and opinion of June 2005 on the criminal law response to sexual acts forced upon children.

<sup>5</sup> See, for example: the note of 11 September 1997 concerning the Prevention and Repression of Sexual Offences and Protection of Minors Bill; opinion of 22 September 2005 on the conditions governing the taking of testimonies of victims of child abuse and/or sexual violence, to which the Government replied on 21 December 2005; opinion of 29 June 2006 on the Child Protection Reform Bill.

97. Child victims may undergo a medical and psychological examination designed to evaluate the nature and extent of the harm suffered and whether care or treatment are necessary (Code of Criminal Procedure, article 706-48).

**(c) Conduct of the trial proceedings**

98. The child victim may be represented at the trial as a civil party.

99. Child witness hearings may take place in the presence of the parents or any other authorized person. The court may reject a request for the hearing of a witness duly cited by a defendant, but must give reasons for its decision (see, in particular, Code of Criminal Procedure, article 435).

100. Hearings and dispositions of indictable offences are by nature public (Code of Criminal Procedure, arts. 306 and 400). However, when a public hearing would be prejudicial to public order, the orderly conduct of the hearing, human dignity or the interests of a third party, the court dealing with the case may order the hearing to take place in camera. These provisions often apply in sensitive cases where the victim is a child, particularly in connection with offences covered by article 1 of the Optional Protocol.

**2. Initiating criminal investigations even when the actual age of the victim cannot be established**

101. Criminal investigations are initiated irrespective of the victim's age, when the victim reveals facts or lodges a complaint with the police or the Office of the Public Prosecutor, or when the Office of the Public Prosecutor takes action on its own account. The case of someone of indeterminate age will be treated in the same way as for an adult or child whose civil status is clearly known. An expert assessment may however be ordered if necessary to establish the victim's age.

**3. Adapting procedures to take into account children's vulnerability, in particular the sense of their dignity and value and their background, including procedures for examining, questioning, judging and cross-examining child victims and witnesses; the right of a parent or guardian to be present and the right to legal representation and free legal aid**

**(a) Supporting the child during the legal process**

102. Provision has been made for a number of procedural modifications so that child victims of criminal offences, particularly those who are vulnerable, are supported throughout the criminal justice process.

103. This protection is ensured in the first place through the involvement of associations specialized in combating sexual abuse and ill-treatment.

104. Pursuant to articles 2-2 and 2-3 of the Code of Criminal Procedure, associations lawfully registered for at least five years may exercise the rights granted to a civil party in a criminal trial.

105. Children cannot take legal action alone and cannot themselves exercise their rights as victims. They are in theory represented by their parents. However, when parents are implicated in the case or defend the child's interests inadequately, Act No. 64-1230 of 14 December 1964 provides that a representative, the ad hoc administrator, may be appointed to ensure the child's protection and the management of the child's property. The ad hoc administrator is appointed by a juvenile court judge, a member of the Office of the Public Prosecutor or the judge hearing the case where there is a conflict of interests or if the minor's interests are inadequately taken into account.

106. The ad hoc administrator may be a member of the child's family, a close relative, a professional or an association. Two decrees of 16 September 1999 and 30 April 2002 specify the procedures governing the ad hoc administrator's appointment, responsibilities and remuneration. In 2004, victim support bodies federated by the National Institute for Victim Support and Mediation (Institut National d'Aide aux Victimes et de Médiation - INAVEM) provided ad hoc administration services in 650 cases. Some reports having highlighted difficulties in the way in which the arrangement currently works (Viout Commission, 2005 report of the Ombudsman for Children, CNCDH opinion of 22 September 2005), the Ministry of Justice is considering creating specific regulations for ad hoc administrators.

107. The aforementioned Act No. 2002-305 of 4 March 2002 also makes it the duty of the public prosecutor to appoint an ad hoc administrator for certain foreign children when unaccompanied by their parents.

108. The above-mentioned Ministry of Justice circular of 2 May 2005 stresses the need for more frequent use to be made of ad hoc administrators and for them to be appointed earlier, and proposes that they should pursue their mission even after the court's decision in order to manage victims' claim for damages and see to it that they receive personalized support.

109. Finally, attention is drawn to the role of the child's lawyer. The lawyer advises and defends the child, working closely with the family or ad hoc administrator, whose proxy he or she is. It is important to distinguish between the two roles of the child's lawyer, acting as proxy for the child's representative and as spokesperson for the child. For example, when there is a disagreement between the ad hoc administrator and the child concerning a claim for damages that the administrator wishes to present, the lawyer must be able to bring the matter to the notice of the court.

**(b) Legal aid**

110. Act No. 91-647 of 10 July 1991 provides that, the State may bear the cost, in the form of legal aid, of the court procedures and the remuneration of the judicial officers who help persons of limited means.

111. When aid is sought to provide assistance to a minor, article 5 of the Act provides that neither the parents' resources nor those of persons living in the child's household shall be taken into account where there is a divergence of interest between them regarding the matter at issue: for example, in the case of a child victim of a criminal offence committed by a member of his or her household.

112. Under Act No. 93-22 of 8 January 1993, minors capable of forming their own views enjoy legal aid as a matter of right when they wish to be heard in any procedure involving them, such as proceedings relating to parental authority.

113. More recently, framework Act No. 2002-1138 of 9 September 2002 on planning of the justice system and Implementing Decree No. 2003-300 of 2 April 2003 strengthened victims' rights, including child victims, by providing for:

(a) The victims' right to the appointment of a lawyer by the bar association president (Act of 9 September 2002, art. 63);

(b) The introduction of aid for civil parties under the protocols on improving the rights of defence, agreed between barristers and the courts.

114. Agreements between barristers and the courts regarding the defence of criminal offences and tutelary support were extended by the aforementioned Decree of 2 April 2003 to cover aid for civil parties before a court of first instance and for a criminal investigation. They may now include free pretrial legal consultation and assistance for child victims in the context of criminal investigations and correctional hearings.

115. The process of establishing permanent support services for victims and for minors has been speeded up under these agreements. Provision is systematically made for such services in new agreements.

(c) **Access to non-means-tested legal aid for victims of the most serious offences (article 65 of Act of 9 September 2002, incorporating article 9-2 of the aforementioned Act of 10 July 1991)**

116. The right to non-means-tested legal aid applies to victims of the offences of wilful endangerment of life or wilful attacks on the integrity of the person, as stipulated in articles 221-1 to 221-5, 222-1 to 222-6, 222-8, 222-10, 222-14 (1 and 2), 222-23 to 222-26, 421-1 (1) and 421-3 (1 to 4) of the Criminal Code, as well as their beneficiaries. It also applies to victims of the crimes of intentional homicide, acts of torture or barbarity, assault, rape or aggravated rape and acts of terrorism. This right applies equally to criminal court proceedings and victim compensation boards.

#### *Partnership with the voluntary sector*

117. The Ministry of Justice has developed a victim-support network with the voluntary sector with a view to facilitating the care, counselling and assistance of victims, as well as providing psychological and other forms of support throughout the legal proceedings. This network favours local initiatives, which ensure flexible responses geared to needs. The nature of the involvement of voluntary associations is spelt out in a service charter and a code of practice, which guarantee the assistance to be accessible, confidential and free of charge. Care and follow-up of child victims are given particular attention by the network as a whole.

118. INAVEM, which comprises 144 of the 168 voluntary organizations approved by the Ministry of Justice throughout France and the overseas territories, is committed to promoting

victims' access to the services of all voluntary organizations authorized by the judicial authorities and to developing specialized permanent support services and emergency response facilities.

119. On 25 May 2004, the Ministry of Justice and the Ministry for the Family set up a telephone service called "SOS Missing Children", in partnership with INAVEM and the Childhood Foundation (*Fondation pour l'Enfance*), aimed at providing counselling, guidance and support to families whose children have disappeared or have been victims of parental abduction or disturbing disappearances, offering advice and information to families and professionals, and raising awareness among the public at large. In 2005, this service dealt with 205 runaway cases, 167 cases of parental abduction (60 concerning children taken abroad) and 60 disturbing disappearances (40 settled before the end of the year).

120. In 2005, victim support bodies received grants totalling €6,919,253 from the Ministry of Justice, an increase of 11.3 per cent on the previous year. Grants paid by the Ministry of Justice in 2004 represented 33 per cent of the total aid allocated to these organizations by public and parapublic bodies.

121. Encouragement in this respect is given to the signing of multi-annual target agreements between appeal courts and associations, which should provide for setting up permanent support services in justice and law offices, police stations and hospitals, extending the operating hours of such services, developing a more proactive approach to victims, and employing psychologists to enable each organization to adapt to victims' individual requirements.

122. At the same time, the drawing up of a framework partnership agreement between bar associations and victim support bodies should help to ensure the effective exercise of the victim's right to a lawyer by encouraging the establishment of permanent specialized support services for victims, particularly minors and especially in immediate referral and other such procedures. Several bar associations have already set up such services.

123. Implementing these provisions and guidelines will provide child victims with effective aid at all stages of the legal process.

*Legal consequences for a child who has committed an offence that is directly linked to practices prohibited by the Optional Protocol*

124. The legal consequences for a child who has committed an offence that is directly linked to practices prohibited by the Optional Protocol are no different to those incurred by a minor who has committed any other type of offence. The fundamental principles and recent amendments are set out in an annex to the present report.

#### **4. Keeping the child informed throughout legal proceedings**

125. Working closely with the child's representative, the child victim's lawyer keeps the child informed about the progress of the proceedings and explains the judge's decisions where the child is unable to express himself or herself because of age or is not sufficiently discerning to appreciate the implications and consequences of the judge's decisions. The lawyer is also



allowed to consult and obtain a copy of the file from the commencement of the proceedings. The lawyer's advisory role is essential in appeals against the judge's decisions or requests for additional investigation.

**5. Allowing the views, needs and concerns of the child to be presented and providing appropriate support services to child victims throughout the legal process**

**(a) Police support services**

126. Specific provisions have been introduced to improve the care of minors within the police service.

127. A victim-support officer has been appointed in each *département* and a victim-support office or team may be created in each district. Partnership with victim-defence associations has also been expanded - in particular through the introduction in police stations of permanent support services staffed by their representatives. Twenty-one social workers are currently providing this kind of service in 15 *départements*.

128. The role played by these representatives forms part of the child safety action plan, namely:

- Providing psychological support and assistance for child victims;
- Informing social services about any relevant problems encountered during police actions or unscheduled visits to police stations;
- Preventing reoffending, conducting interviews with child delinquents on their release from police custody and assisting in their rehabilitation;
- Liaising with the bodies responsible for the placement of children in difficulty;
- Acting in cases of child runaways.

**(b) Hospital support services**

129. Hospitals are naturally an integral part of the overall system for protecting children at risk or victims of abuse, as underlined in the Ministry of Health circular of 9 July 1985 and the inter-ministerial directive of 10 January 2001.

130. Hospitals must constantly reconcile two distinct functions: providing victims with medical and psychological care and compiling the forensic medical report for judicial proceedings.

131. On the introduction in 1997 of inter-ministerial coordination in combating ill-treatment and sexual abuse of children, emphasis was placed on the need for special vigilance and interaction of the various parties involved in caring for child victims of sexual violence. Hospitals involved in emergency care were included in the departmental system (article 68 of the

Family Code), under the authority of the president of the departmental council. A focal point has been established in each region, with functions covering child victims of ill-treatment or sexual abuse. The ministerial directive of 10 January 2001 confirmed their role.

132. These regional focal points are responsible for establishing contact between and giving advice to health professionals seeking assistance, as well as providing training and information to freelance and institutional health professionals involved in caring for victims.

133. In the 26 regions (metropolitan France and overseas territories), regional focal points have been set up in forensic medicine, obstetrics and paediatrics services, depending on the hospital concerned.

134. Emergency forensic medical services, which subsequently became Forensic Medical Units (Unités Médico-Judiciaires - UMJ, see below), were set up in 1998 in certain public hospitals. The aim announced in 2005 was to create a UMJ in every *département*.

135. The existing system was updated in 2001 by a circular on emergency care in health facilities for victims of violence. To respond more effectively to the need for psychological support for patients and their relatives, emergency care services were strengthened by the recruitment of 100 psychologists. In addition to psychological care, these professionals are responsible for liaising with other health services, including child protection services and victim-support bodies.

136. Finally, the guidelines recently issued under the regional health-care schemes for children and young people, to be implemented as of 2006, stress the importance of care for abused children and young people, its multidisciplinary nature and the need to improve coordination between the large number of parties involved.

**(c) Forensic medical units (UMJs)**

137. The UMJs, funded by the Ministry of Justice, perform the forensic medical acts ordered by a judge or law-enforcement officer for the purposes of judicial investigations. These units are therefore responsible for caring for victims, examining them and carrying out the necessary forensic medical tests. The procedures for their establishment are set out in the circular of 27 February 1998. There are currently some 50 units operating nationwide.

138. On their reception, minors are heard by a senior law-enforcement officer prior to being medically examined in order to ascertain the reliability of their testimony. Following the hearing, the law-enforcement officer contacts the UMJ physician to specify the forensic medical test required, indicate its degree of urgency and arrange an appointment.

139. The examination of victims includes physical, psychiatric and psychological assessments, blood tests, additional examinations (X-rays, biological tests, etc.) and prophylactic measures (treatment for AIDS, venereal diseases, etc.). The doctor then produces a report.

140. The aforementioned Act of 17 June 1998 requires specific psychiatric and psychological examinations to be carried out: so-called “credibility” tests in connection with sexual offences,<sup>6</sup> and examinations to determine vulnerability and disability and to assess psychological treatment needs.

141. The rights of the victim undergoing the examination are protected by providing information and obtaining the consent of the person concerned to the forensic medical examination and any blood tests required. The consent of parents to the forensic medical procedures is sought in the case of sexual assault.

#### **6. Protecting, as appropriate, the privacy and identity of child victims**

142. Various measures have been taken to protect the privacy of child victims and their identity, particularly in relation to the press.

143. Under criminal law, article 39 bis of the amended Freedom of the Press Act of 29 July 1881 makes it an offence punishable by a fine of up to €15,000 to publish any information in whatever form concerning the identity of a child victim of an offence or that makes it possible to identify the child.

144. Under the Civil Code (art. 9), everyone has the right to respect for his or her private life. Without prejudice to compensation for injury suffered, the court may prescribe any measures, such as the seizure of documents. In case of emergency, those measures may be provided for rapidly by means of an interim order.

145. Since the so-called “d’Outreau” affair, new practices have been tried out in some courts with a view to protecting the anonymity of children. These include issuing to the press - which has been made very much aware of this issue - lists of fictitious children’s names to which reference can be made.

#### **7. Protecting, in appropriate cases, the safety of child victims and that of their families, witnesses on their behalf, persons or organizations involved in the prevention and/or protection and rehabilitation of child victims, by ensuring their freedom from intimidation and retaliation**

146. Several levels of protection exist. Firstly, it is a punishable offence under criminal law to threaten, blackmail or carry out any act of violence or destruction against a victim or a civil party lodging a complaint or providing a testimony. Secondly, specific provisions are applicable concerning elected domicile, anonymous testimony and judicial supervision or pretrial detention.

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<sup>6</sup> The circular of 2 May 2005 prohibits the use of this notion of “credibility” because of a semantic shift which caused confusion between credibility from the forensic medical standpoint and legal truth and recommends the use of a new model of expert assessment.

**(a) Registering elected domicile as the police station or gendarmerie**

147. Article 706-57 of the Code of Criminal Procedure allows certain persons to declare their registered address to be that of the service investigating the complaint.

148. This applies to “persons against whom there is no plausible reason to suspect of having committed or attempted to commit an offence and who are in a position to bring useful pieces of evidence to the proceedings”.

149. This declaration of registered address must be authorized by the public prosecutor or the investigating judge.

**(b) Anonymous testimony**

150. Testimony may be taken anonymously when the hearing is liable to put the victim’s life or health, or that of the victim’s family members or close friends, in serious danger (Code of Criminal Procedure, art. 706-58).

151. Anonymity cannot be granted if knowledge of the witness’s identity is essential to the case for the defence in terms of the circumstances in which the offence was committed or the witness’s personality (Code of Criminal Procedure, art. 706-60).

152. This procedure is applicable to indictable offences punishable by at least three years’ imprisonment, including therefore child prostitution, child procuring, child pornography and child abuse.

153. Anonymous hearings must be requested by the public prosecutor or the investigating judge and be authorized by the liberty and custody judge (*juge de la liberté et des détentions*).

154. The witness is heard anonymously, through a main record signed by the single person taking the anonymous statement (senior law-enforcement officer, investigating judge, liberty and custody judge or public prosecutor). This main record is added to the future case file. At the same time, the statement is placed in a separate record and signed by the witness, confirming his or her request for anonymity and identifying the person concerned.

155. Article 706-61 of the Code of Criminal Procedure provides that confrontation with the witness may be requested by the defendant or person committed to trial (civil parties do not have this right). This meeting must be authorized by the investigating judge or the court. In this case, the anonymity of the witness is protected through the use of a technical device allowing the witness to be heard from a distance and rendering his or her voice unidentifiable.

156. The defendant may contest use of the anonymity procedure to the president of the investigation division of the appeal court uniquely in the case of judicial investigations. If the request appears justified, the president may, solely with the witness’ consent, lift the anonymity. In the absence of the witness’ consent and if the appeal is justified, the hearing is annulled.

157. Revealing the address or the identity of the witness is an offence punishable by five years' imprisonment and a fine of €75,000, under article 706-59 of the Code of Criminal Procedure.

**(c) Pretrial detention or judicial supervision with a prohibition on meeting the victim**

158. The option of placing the presumed offender under judicial supervision with a prohibition on meeting the victim, or exceptionally in pretrial detention, enables the victim to be protected both physically and psychologically (see, in particular, articles 137, 138 and 144 inter alia of the Code of Criminal Procedure).

**8. Ensuring that all child victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible and avoiding unnecessary delay in the disposition of cases and the execution of orders or decisions granting compensation to child victims**

159. Child victims may seek compensation for damages through their legal representative, parents or guardian. In the case of their interests not being served, the claim for compensation may be brought by an ad hoc administrator, appointed by the judge to protect the interests of the child. The ad hoc administrator exercises, if appropriate, the rights open to a civil party in the name and on behalf of the child.

160. The aforementioned Act of 17 June 1998 extended the circumstances in which an ad hoc administrator may intervene (Code of Criminal Procedure, art. 706-50). If the parents cannot ensure the protection of the child victim or if they have no interest in the child's compensation, the public prosecutor may in future appoint an ad hoc administrator from the inception of the investigation. Appointed by the public prosecutor, the investigating judge or the court, the ad hoc administrator may file a civil party action with the investigating judge or the court, choose a lawyer for the child, request certain procedural steps of the judge and appeal against decisions on the child's behalf. The ad hoc administrator must also explain the proceedings to the child and may provide a regular point of contact with the child's lawyer regarding the progress of the proceedings.

161. Compensation of child victims may also be dealt with by a Commission for the Compensation of Victims of Offences (Commission d'Indemnisation des Victimes d'Infractions - CIVI), pursuant to Act No. 77-5 of 3 January 1977, amended by several subsequent reforms and currently regulated by Act No. 90-589 of 6 July 1990.

162. A CIVI exists in each regional court. The procedure has two stages: an amicable settlement stage and, potentially, a contentious stage. The compensation procedure allows victims, including children, to obtain compensation for damages promptly and without discrimination following an offence, even if the perpetrator is not known, a fugitive or insolvent.

**9. Ensuring all appropriate assistance to child victims, including their full social reintegration and their full physical and psychological recovery**

**(a) State public services and departmental councils**

163. It should be noted firstly that protection of child victims in the cases covered by the Optional Protocol depends in the first instance on the parental authority exercised by the father and mother. Parents may make use of the medical, psychological and education care and support services provided by the State and the departmental councils.

164. However, the juvenile court judge may order tutelary support measures, under article 375 of the Civil Code, if “the health, safety or morals of a non-emancipated minor are in danger or if his or her education is seriously at risk”. There are two types of tutelary support. Firstly, the judge may order home-based support, appointing a service or association to provide the family with assistance and advice in order to help it overcome the material and moral difficulties it is experiencing, to monitor the child’s development and to report to the judge periodically. Such support was provided to 132,000 young people in 2004. Alternatively, the judge may order that the child be removed from his or her normal environment and entrusted either to a relative or trustworthy third party, or to a specialized service or institution, or to a departmental social welfare service for young children. Protection of this kind was afforded to 137,000 minors in 2004.

165. Despite these efforts, the time taken for child victims to be admitted into state medico-psychological centres must be reduced, and the number of child psychiatrists remains insufficient.

166. There has been significant progress in child welfare allocations by the *départements*: spending increased twofold between 1984 (€2.3 billion) and 2003 (€4.5 billion), amounting to €5.2 billion in 2005.

*(i) Child-support associations*

167. Nationwide coverage by victim-support associations recognized by the Ministry of Justice means that emphasis can be placed on introducing outreach support services in police stations or gendarmeries, hospitals, and justice and legal centres more closely in touch with needs, including those of child victims.

168. With regard to the allocation of grants, courts of appeal are called upon to ensure that priority is given to associations that make active efforts to extend their operating hours, target the most vulnerable victims, including children, and commit themselves to supporting victims throughout the legal process, all the way to the execution of sentence.

169. Assuming responsibility for the most vulnerable victims such as children implies on the part of associations specially adapted techniques of caring, listening and counselling as well as specialized staff. Projects aimed at ensuring the involvement of psychologists are a priority concern.

(ii) *Specialized judiciary*

170. The judges involved in these civil proceedings are specialized: family court judges and juvenile court judges are given specific initial and in-service training, provided by the National College of Magistrates, which sensitizes them to issues such as detecting sexual violence, the importance of the legal response to the child, and the child's needs in terms of listening, protection and care.

171. The family court judge may intervene at the request of one parent in cases of parental separation to settle the child's place of residence and to rule on the visiting and accommodation rights of the other parent. A parent implicated in a case may in this way be deprived of contact with the child victim. A child who so requests may be heard by the family court judge, unless the judge believes it to be contrary to the child's interest (Civil Code, art. 388-1). A child protection reform bill, submitted to the Senate on 3 May 2006, provides for the removal of this restriction, giving children the right to a hearing if they so request. This amendment will bring French domestic law into line with article 12 of the Convention on the Rights of the Child. The family court judge may also order any psychological examination or social investigation so as to obtain the necessary information from the child while respecting as far as possible the child's vulnerability.

172. The juvenile court judge may intervene at the request of the parents, the public prosecutor or the minor personally to order tutelary support procedures where the health, safety or morals of the child are in danger or if the child's education is seriously compromised (Civil Code, art. 375). Protection measures can thus be taken immediately, outside any criminal investigation.

173. The juvenile court judge is required by law to hear children capable of discernment - a provision that judges interpret very widely in practice, admitting even very young children. Protection always being the primary concern, the juvenile court judge may remove certain documents from the tutelary support file available for consultation by the parents and the child where such consultation would present a serious physical or moral danger to one party or another, not least the child. Moreover, the protection afforded to child victims was strengthened by the aforementioned Act of 17 June 1998, as reflected in Title XIX of the Code of Criminal Procedure entitled "Special procedure applicable to sexual offences and to the protection of child victims", in particular articles 706-49, 706-50 and 706-51.

174. The public prosecutor or the investigating judge immediately informs the juvenile court judge of any proceedings concerning a child victim and passes on any relevant elements of the file where a tutelary support measure has been initiated in respect of the child victim of this offence.

175. The juvenile court judge may order psychological and personality analyses and inquiries into the living conditions not only of the child, but also of the child's parents. The juvenile court judge may also remove children from their family environment, if necessary with immediate effect, in order to protect them from further harm or to give them appropriate care. If placement is not necessary for ensuring the child's protection, the judge may ask a specialist service to intervene at home in support of the parents and child in a range of listening, advisory and

guidance functions. Whatever the nature of the tutelary support measure decided by the juvenile court judge, it is open to review, before taking effect, in the light of any new information that may be brought to the judge's attention. Indeed, one of the characteristics of these measures is their adaptability to changes in the child's personal and family situation.

176. Authorized public or private services that care for children through placement or home-based measures work in partnership with the hospital system (doctors, psychiatrists and psychologists) to ensure that children under judicial protection are cared for in the way most suited to their difficulties. Local partnerships are organized in all *départements* under child protection schemes and attention is given to caring for child victims of sexual offences.

177. Those working in services for the legal protection of young people have been made particularly aware of the issue of dealing with child perpetrators or child victims of sexual violence. Since the aforementioned Act of 17 June 1998, there has been a change in professional practices with regard to listening to and caring for children. Support is available to the child throughout the criminal justice process, including during police hearings.

178. A new health policy on the legal protection of young people was drawn up in 1999. A national seminar and regional activities on professional practices were organized. An epidemiological study was carried out in 2001 on child perpetrators and child victims of sexual violence placed under legal protection with a view to understanding and caring for them better. This study stressed among other things that such acts of violence are often committed within the family and that dealing with these situations turns out to be complex.

179. Concerning child prostitutes, the aforementioned Act of 4 March 2002 clearly recognizes their status as victims and provides for their protection. It establishes that "any child engaged in prostitution, even occasionally, is deemed to be in danger and comes under the protection of the juvenile court judge, in respect of tutelary support", thereby allowing child prostitutes to benefit systematically from the legal procedure for child protection and ensuring that they are cared for educationally, materially and morally under the supervision of the court. Whatever the nature of the tutelary support ordered by the judge, the intention is to ensure that the child recovers physically and psychologically through appropriate care and comprehensive social reintegration. Tutelary support measures make it possible to place the focus on education, professional training and work experience.

180. In addition, France applies the Hague Convention of 5 October 1961 to protect children in cases of a separated parent fleeing with them abroad to escape court rulings granting visiting and accommodation rights to the other parent. According to this Convention, when a French child subject to tutelary support measures is moved to a contracting State, these measures remain applicable and their implementation can be entrusted to the host State, subject to its own terms and conditions.

181. Moreover, since 1 March 2005, EU Regulation 2201/2003 of 27 November 2003, or "Brussels II bis", has been legally applicable in 24 member States, including France, in all procedures relating to the jurisdiction, recognition and enforcement of judgements in matters relating to parental responsibility. This includes innovative rules for devising solutions to the illegal removal of a child, thereby enabling the child to be returned to the State that is his or her normal place of residence.



## **V. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

182. A real effort is being made in many sectors to step up the fight against the sale of children, child prostitution and child pornography. Various measures are being carried out by the ministries concerned, in close cooperation with professionals, NGOs and the voluntary sector.

### **A. Combating child pornography on the Internet and mobile phones**

183. For several years the protection of minors on the Internet has been one of the main thrusts of French family policy, with the accent on the safer use of the Internet in order to prevent the abuse of children to which it can give rise.

184. The inter-ministerial task force on the family has, for example, participated actively in the working group to protect children against unlawful content and behaviour on the Internet in France and Europe, established by the non-profit association Internet Rights Forum. This group, composed of representatives of the economic stakeholders concerned, such as Internet service providers, government authorities and family and user associations, was instructed by the Minister with special responsibility for the family to prepare specific proposals on Internet law, techniques and education. The first recommendation concerning the exposure of minors to harmful content on the Internet was submitted to the Minister on 11 February 2004. Further recommendations on combating child pornography and paedophilia on the Internet were presented on 25 January 2005.

185. As part of preparations for the 2005 Conference on the Family, a working group headed by the chairperson of the National Consultative Commission on Human Rights presented a report on 25 May 2005 concerning the protection of children on the Internet, setting out proposed measures on three main topics: raising the awareness of the general public, parents and children; safe Internet surfing for children; and how to ensure such safety on a permanent basis.

186. Several of the proposed measures were adopted at the closure of the Conference on the Family in September 2005. It was decided to create a family label to indicate to parents the services, tools and information offering the best protection for their children. The Minister with special responsibility for the family entrusted the Internet Rights Forum with the task of drafting specifications for the label. The specifications for this label, and the report of the chairperson of the National Consultative Commission on Human Rights on the body that might be asked to manage the label or “stamp of approval”, were submitted to the Minister on 26 April 2006.

187. A public campaign to raise awareness of the need for better protection of children on the Internet was also launched in the spring of 2006. It consisted of the broadcasting between 15 May and 2 June of 10 television commercials<sup>7</sup> at peak viewing time, and the dissemination in

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<sup>7</sup> Series of 10 episodes dealing with parental control of the Internet, instant messaging, undesirable sites, blogging, payment security, on-line shopping, personal data, undesirable mail, Internet blackmail and Internet game dependency.

family centres of an educational programme on the use of the Internet. This campaign is also available on the Internet sites of the Ministry with special responsibility for social security, the elderly, the disabled and the family as well as those of service providers and their communication tools.

188. In an agreement signed on 16 November 2005 with the Minister with special responsibility for the family, Internet service providers undertook to provide free of charge to their subscribers an effective and simple parental control software program to ensure safer Internet surfing. This software program has been offered free of charge to their subscribers by most Internet service providers since the beginning of April 2006; other providers have undertaken to provide it within a few months. As of November 2006, a similar protection system will be available for mobile telephones, thanks to the charter signed on 10 January 2006 by the seven operators that are members of the French Association of Mobile Phone Operators.

## **B. Combating the sexual exploitation of children in tourism**

189. For many years the French Government has been urging tourism professionals to take action on the question of the sexual exploitation of children in tourism. Education, training, information and communication are the preferred means for implementing this proactive policy, which involves all stakeholders concerned.

### **1. Education and training**

190. In 1993, the National Union of Travel Agents signed the “Charter for Children and Travel Agents” and launched a campaign with travel agents entitled “Knowing about sexual tourism to combat it more effectively: the role of the tourism professional as intermediary with the customer”.

191. In 1997, in cooperation with the French Federation of Tourism Technicians and Scientists, the French branch of the association “End Child Prostitution in Asian Tourism” (ECPAT) set up a training programme on the subject for teachers and students in the tourism sector, in partnership with the Ministry of Education. The main objectives of this programme are:

- To include information on combating child sex tourism in the curriculum of the *brevet de technicien supérieur* (senior technician’s certificate) in tourism/leisure and the hotel and catering business;
- To provide teachers with the resources to inform their students about efforts to combat this problem;
- To create awareness of the problem among students studying tourism so that when they become tourism professionals they will in turn provide information to tourists.

192. Combating child sex tourism is now a compulsory subject for the *brevet de technicien supérieur* in tourism. It is planned to do the same thing for the technical baccalaureate in the

hotel business, the professional baccalaureate in the catering business and the *mentions complémentaires post-baccalauréat* (post-baccalaureate specializations) in remote ticketing and travel services, welcome and reception services, and transport and tour-guide services.

193. An updated version of circular No. 97-264 of 15 December 1997 warning people studying tourism about the sexual exploitation of children in tourism (published in the Official Journal of 25 December 1997), addressed to technical advisers of *recteurs d'académie* (university rectors/chief education officers) and head teachers, is currently being drafted to take account of changes in diplomas in the hotel and catering business and tourism.

194. In September 2003, the inter-ministerial committee on tourism, under the chairmanship of the Prime Minister, decided to step up efforts to promote ethical tourism. The Ministers with special responsibility for tourism and the family established a task force on the theme, sponsored by the comedian Carole Bouquet, who is president of the “Voice of the Children” association.

195. The remit of this task force, which comprises representatives of institutions, tourism professionals, family and humanitarian associations and leading experts in the medical field, was:

- To increase awareness among French people visiting countries affected by the problem;
- To take stock of action already taken;
- To propose action to be taken in France and abroad, in particular as regards law enforcement, so that France is seen as setting an example in the area.

196. The task force submitted its report on 6 September 2004, and proposed that French action should be set in the framework of European and international cooperation through specific initiatives centred on 12 proposals. The Government action programme to combat child sex tourism, presented on 29 March 2006, draws on those conclusions and focuses on four main areas.

197. The first area is prevention through education. Secondary-school pupils will be informed of the problem during statutory sex-education classes, by working on topics such as “money and sex”, and “sex and the law”. Students following professional courses in tourism and the hotel business will also receive training on the dangers of sex tourism. Awareness-raising campaigns for students of the *grandes écoles* (specialized higher education institutions) will consist of travelling exhibitions to campuses, with talks by leading personalities in the field. Tourism professionals will alert French people travelling abroad, for business or leisure, to the problem.

198. The second area focuses on better law enforcement by ensuring that appropriate legal action is taken under French legislation against sex offenders who have committed offences abroad. For the most important provisions in this connection, reference should be made to the information provided in parts II and III above (specifically, article 225-11-2, incorporated by the Act of 4 April 2006, and article 225-12-3). The Act of 4 April 2006 also increased the number of offences that incur a prohibition on leaving the country (amendment to article 227-47

of the Criminal Code) and authorized DNA profiles to be collected from French citizens who have been convicted of sex offences against minors abroad (through the incorporation of article 706-56-1 in the Code of Criminal Procedure).

199. The objective of the third theme is to mobilize professionals. This is done above all in the framework of the Charter for Tourism, which safeguards the rights of the child in France and abroad, signed in May 2005, by 17 of the main tourist operators.

200. The fourth and last theme is intended to strengthen international cooperation (see part VI above, in this connection).

201. Six ministries are particularly involved in the implementation of this programme (Tourism, the Family, the Interior, Justice, Foreign Affairs and National Education).

## **2. Information and communication**

202. France provides moral and financial support to several associations so that they can carry out information and communication campaigns on the sexual exploitation of children in tourism.

203. Since 1991, it has been providing financial support for various awareness-raising campaigns carried out by the ECPAT network, established by members of NGOs and private individuals, and its French branch, *Groupe Développement*. These campaigns targeted at tourists, professionals and the media make use of written and audio-visual material and Internet resources. For example, they have consisted of distributing brochures on prevention, placing publicity inserts in several tourist guidebooks (such as *Guides Visa Hachette*, *Le Petit Futé*, *Le Guide du Routard*, *Peuples du Monde*) and travel brochures of tours operators (such as Nouvelles Frontières, Havas Voyages, Jet Tours, Comptoir Bleu), of editing an information booklet for tourism professionals, and showing video clips on all long-haul flights operated by Air France, Corsair and Star Airlines and in airport buses to remind passengers of the prosecution and penalties to which sex offenders are liable.

204. In addition, since 1998, ECPAT has been present at the Salon Top Résa in Deauville at the stand of the Ministry with special responsibility for tourism, and maintains a stand every year at the World Tourism Fair (Salon Mondial du Tourisme).

205. All these activities have been carried out in close cooperation with tourism professionals, who play a key role in disseminating information. Key partners include: Accor, ADP, AFAT, Air France, Auchan Voyages, Carrefour Vacances, the United Federation of Travel Agents' Associations (UFTAA), Fram Voyages, Nouvelles Frontières, Selectour, the National Trade Union of Travel Agents and Tour Operators and Thomas Cook.

206. Besides ECPAT, the Ministry with special responsibility for tourism also supports two other associations: Tourism for Development and "Voice of the Children". As part of its "Children in danger" campaign, the former is working on two microprojects to combat the sexual exploitation of children in Brazil and Cambodia, which are subsidized by the Ministry with special responsibility for tourism. In November 2005, the latter association organized a special evening with a film show to raise awareness of the sexual exploitation of children, and is monitoring the profiles of children exposed to child prostitution in tourist areas at risk.

### C. Combating abuse and violence against children

207. It is difficult to assess the scale of the problem of child abuse. According to information published by the Monitoring Centre for Decentralized Social Welfare (Observatoire de l'action sociale décentralisée) in 2004, the child welfare services reported 19,000 cases of child abuse (including 6,600 cases of physical violence, 5,500 cases of sexual abuse, 4,400 cases of gross negligence and 2,500 cases of psychological cruelty). Although the number of abused children in France remains about the same (19,000 in 1998), the type of abuse varies: there are fewer reports of sexual abuse, while those of physical violence are on the increase. There are significant disparities in the reports as between the different *départements*. This figure is to be compared with 8,406 reports of telephone calls made to the *départements* in 2004, using the number 119 (Allô Enfance Maltraitée - child-abuse hotline) concerning the physical, psychological or sexual abuse of minors.

208. The 119 number is a free and anonymous public service, which operates 365 days a year around the clock. Its main purpose is:

- To receive telephone calls from children who are the victims of abuse and any person confronted with a dangerous or potentially dangerous situation involving minors;
- To transmit information concerning abused or allegedly abused children to the competent services of the departmental councils or to refer it directly to the public prosecutor when the information in question justifies such action.

209. The hotline receives on average 5,000 telephone calls per day. Along with another public service, the National Monitoring Centre for Children in Danger, established in 2004, it was allocated a budget of 4,355,400 euros in 2005.

210. With a view to stepping up the protection of minors, on 21 June 2006 the Senate passed the bill on the reform of the child protection system, which had been tabled on 3 May 2006. It has three priority objectives:

- To foster prevention and clarify the purposes of the child protection system;
- To strengthen the system for early warning and risk assessment by establishing in each *département* an operational unit for collecting alarming information that is easily identified, familiar to the public and professionals, and guaranteed to assess and deal with situations;
- To improve and diversify ways of helping children so as to be able to respond more effectively to their needs.

211. Minors will henceforth therefore be able to benefit from:

- Day care, during which they will receive daytime psychological and educational support;

- Special or periodic care intended to remove minors from their family during crises or when they are exposed to risks, in situations which nonetheless do not require long-term care;
- Emergency care for minors in danger or at risk of danger, for example adolescents on the run.

212. As the National Consultative Commission on Human Rights observed in its opinion of 29 June 2006, the bill will significantly assist efforts to prevent incidents of abuse.

213. There is one other important aspect of the child protection system that is currently under consideration and has nothing to do with the law. It concerns changing and harmonizing professional practices, improving procedures and strengthening partnerships.

214. The protection of children in danger is thus a public health priority for the French Government. Prevention campaigns concerning the dangers of child abuse were completed recently under the perinatal health-care plan for 2005-2007, entitled “Humanity, proximity, quality, safety”. Pregnancies will be monitored more closely so that problems can be detected at a very early stage: all pregnant women are now systematically offered a consultation in the fourth month of pregnancy with a view to detecting possible risk factors and dealing with them as quickly as possible; they are also provided with a maternity booklet intended as a prevention, information and health education tool.

215. Act No. 2004-806 of 9 August 2004 on the public health policy focuses on the problem of the impact of violence on health and prevention. Five national strategic plans will be implemented, including the National Plan to Minimize the Impact of Violence on Health, Risky Conduct and Addictive Behaviour. This five-year plan will be based on recommendations put forward by the Inter-Ministerial Guidance Committee on Violence and Health, established on 12 May 2004, in its consolidated report of 18 October 2005.

216. The effectiveness of public health programmes also depends on raising the awareness of and providing information to health professionals dealing with the victims of abuse. Particular attention is paid to their start-up and in-service training and to the dissemination of protocols and good practice guides.

217. The topics of abuse and children at risk and maternal and child welfare are included in the curriculum of students following the second part of their degree in medicine so that they will be able to identify and care for children who are victims or at risk. Such subjects may also be covered during seminars exploring the subject in greater depth.

218. They may also be accorded priority under in-service training, following proposals by the national councils of in-service medical training for doctors in the private sector, doctors in the public sector working in the community and doctors, biologists, odontologists and pharmacists working in health-care institutions. This arrangement was introduced on 10 February 2004.

219. In order to mark the entry into force of Act No. 98-468 of 17 June 1998 and the promulgation of two ministerial orders on 7 March 2001,<sup>8</sup> it was decided to improve the skills and practices of professional psychiatrists. Two clinical consensus conferences funded by the Ministry of Health and organized by the French Federation of Psychiatry were held in Paris, on the themes of psychopathology and the current treatment of sex offenders (November 2001) and the consequences of sexual abuse, how to recognize, treat and prevent them (November 2003). As a result of these conferences, an annual national training course for professional psychiatrists was launched in 2002 for a period of at least five years; it is run by the Association for Research into and the Treatment of Sex Offenders. The experts' documents and the jury's conclusions from these conferences may be consulted on the website of the French Federation of Psychiatry, funded by the Department of Health: [www.psydoc-france.com](http://www.psydoc-france.com).

220. The handbook *Le praticien face aux violences sexuelles* (The general practitioner confronted with sexual violence) was updated in 2002. Drawing on the experience of experts in many fields, this training tool proposes a care protocol to help rebuild the identity of minors who are the victims of such violence. More than 30,000 copies of this document have been distributed to the focal points responsible for the reception and care of the victims of sexual violence, the maternal and child welfare services of the departmental councils, public health inspectors employed by the departmental health and welfare offices, and training institutions for health professionals (see information online at the Ministry of Health website: [www.sante.gouv.fr](http://www.sante.gouv.fr)).

#### **D. Information campaigns in schools**

221. Various information campaigns are carried out among schoolchildren as part of their sex education programme or as part of the general curriculum.

222. The topics of pornography and prostitution are dealt with in accordance with article L.312-16 of the Education Code introducing sex education lessons in junior and senior secondary schools, with at least three lessons per year for different age groups.

223. In 2004, the Ministry of National Education, Higher Education and Research published a brochure entitled *Repères: l'éducation à la sexualité dans les collèges et lycées, guide du formateur* (Benchmarks: sex education in junior and senior secondary schools, teacher's guide). In addition to this brochure, a teaching methods guide has recently been published to help staff in secondary schools to prepare, present and structure their lessons (published in *Collection Repères* and available on the following website: [http://eduscol.education.fr/D0060/education\\_sexualite\\_intervention.pdf](http://eduscol.education.fr/D0060/education_sexualite_intervention.pdf)).

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<sup>8</sup> The former pursuant to article R.355-43 of the Public Health Code concerning the salary paid to coordinating physicians; the latter pursuant to article R.355-40 of the Code concerning the maximum number of prisoners that can be followed by the same coordinating physician.

224. The aim of this document is to encourage schoolchildren to think about respect for others and human dignity, and the purpose of legislation relating to the protection of minors. It may also provide guidance for speakers coming from outside to address schoolchildren, such as policemen who deal with crime, and specifically sexual assaults.

225. Decree No. 2006-830 of 11 July 2006 on core knowledge and skills, which amends the Education Code, recalls that one of the objectives is to prepare children from their kindergarten years until the end of compulsory schooling to live in harmony and gradually learn the rules of society. The knowledge and attitudes they should acquire relate among other things to education on sex, health and safety, self-respect, respect for others and for the opposite sex (see the chapter entitled “*Vivre en société*” (Living in society) in the section entitled “*Les compétences sociales et civiques*” (Social and civic skills)).

#### **E. Action taken by the police services focused on particularly vulnerable children**

226. The public security service and juvenile crime teams also play a preventive role in the performance of their duties. They are in direct contact with particularly vulnerable children and thus familiar with the practices referred to in the Protocol: when conducting inquiries among families whose children are at risk or have committed offences (9,640 in 2004, including 8,373 on the orders of judges and 1,267 at their own initiative) or when taking action in cases of truancy (1,077 cases in 2004); when searching for minors who have run away (65,992 in 2004) or carrying out inspections in bars (10,809 inspections in 2004 involving 4,363 minors), game rooms, cinemas or theatres (450 inspections in 2004 involving 2,235 minors); or, more generally, during interviews with parents in distress or minors with family, social or school problems.

#### **F. Special action focused on foreign unaccompanied minors**

227. The arrival, protection, care of and, if necessary, the return of foreign unaccompanied minors raise issues which involve several ministries, in particular the Ministry of Justice, the Ministry of the Interior, the Ministry of Foreign Affairs and the Ministry of Health. Problems very often arise because there is no effective provision to ensure that minors are taken care of in their country of origin.

228. It is often difficult to retrace with certainty the steps of these minors and to find out why they left their country. They may be the victims of practices prohibited by the Protocol, but also children who are fleeing war, poverty, their family or a completely different drama of a personal kind. Whatever the case, children are particularly vulnerable. Such situations call for great vigilance on the part of the authorities in order to prevent these minors falling prey to networks of forced labour or prostitution.

##### **1. General measures**

229. Several reports have provided valuable input for the debate on the problem of foreign unaccompanied minors. They include:

- The report of the prefect of the Ile-de France region submitted in 2003 to the Minister of State on combating economic precariousness and exclusion, based on the findings



of a working party composed of elected representatives, the State services concerned and judges and magistrates;

- The report of the Paris Court of Appeal of June 2003;
- The consolidated report of the Paris Public Prosecutor's Office on trends in the problem of foreign unaccompanied minors in the Paris region in August 2004;
- Report of the National Association for Assisting Foreigners at Frontiers (Association nationale d'assistance aux frontières pour les étrangers - ANAFE) entitled "*La zone des enfants perdus*" (The lost children zone), published in November 2004;
- The public report of the Court of Audit for 2005 on the reception of immigrants and the integration of immigrant populations, which contains a section on unaccompanied minors;
- The report of the General Inspectorate of Social Affairs, presented in January 2005, whose recommendations on justice and legislation relating to foreigners are currently under consideration;
- Reports of the ombudsman for children, which since 2000 have contained information on developments relating to foreign minors.

230. A symposium entitled "Foreign unaccompanied minors: a challenge to be taken up", was held on 28 January 2005 in Paris, chaired by the first President of the Court of Cassation, the president of the Paris Bar Association and the head of the Paris minors' branch.

231. More recently, a working party responsible for considering the legal issues raised by judicial action involving these minors presented its conclusions, on the basis of which a circular will be drafted containing instructions for the public prosecutors' offices with a view to harmonizing judicial practice. At the same time, consideration is being given to the educational content of provision for these children. A seminar of professionals involved is due to take place in 2006 at the training centre for staff concerned with the legal protection of young people. One of its aims is to take stock of the difficulties experienced by institutions in making this educational provision and to discuss the projects and methods adopted, particularly as regards accommodating these children.

## **2. Special measures for minors in holding areas**

232. Under French law unaccompanied minors are persons under the age of 18 years who do not have a legal representative in France. When foreign minors arrive at the border without the documents they require to enter the country, the police services launch inquiries to establish whether they are minors, and if they are accompanied by an adult, whether that person may be considered their legal representative. The situation of unaccompanied minors seeking entry to France at the border raises serious and sensitive issues. Since they are vulnerable individuals, all the necessary guarantees must be provided when dealing with their situation. Moreover, the authorities must be vigilant, as these children risk becoming the victims of forced labour or prostitution networks.

233. In the present state of knowledge, the clinical observation of puberty and bone testing are the only scientific means the Government and judicial authorities have of determining their age. During the sometimes thorough investigations to verify whether the accompanying person is a relative the minors are placed in holding areas. In view of the vulnerability of these children, the procedures for dealing with their situation include numerous guarantees, in particular judicial supervision and the assistance of specialists.

234. According to article 221-1 of the Code of entry and residence of aliens and the right to asylum, the legislative part of which entered into force on 1 March 2005, aliens who have arrived in France by rail, sea or air and who are either not allowed to enter French territory or are seeking entry on the grounds of asylum, may be detained in a holding area for the time required to organize their departure or to examine their asylum application. Their detention in the holding area is an administrative decision by the police services and may not exceed four days (48 hours, renewable once: article L.221-3 of the Code). Thereafter their detention in the holding area may be authorized by the judge responsible for release and detention for a maximum of eight days (article L.221-1 of the Code).

235. Since the entry into force of Act No. 2002-305 of 4 March 2002, the rights of foreign minors who do not have a legal representative are guaranteed by an ad hoc administrator, appointed by the public prosecutor immediately after their arrival in the holding area. The administrators are responsible for ensuring that the minors are represented in all judicial and administrative procedures concerning their detention in the holding area and their entry into the country. They explain the procedures to the minors, listen to them, provide guidance and provide a link with the lawyer chosen or officially appointed. They may also request the assistance of an interpreter.

236. There are similar provisions for unaccompanied minors seeking refugee status (article L.751-1 of the Code). The ad hoc administrators assist and represent the minors in all administrative and judicial procedures concerning the asylum application. According to a circular dated 14 April 2005, pursuant to a decree of 2 September 2003, the names of ad hoc administrators appearing on a list should draw as widely as possible on child-protection associations. A report drafted in the spring of 2005 by the French Red Cross notes that all the current ad hoc administrators received theoretical and practical training before taking up their duties. An ad hoc administrators' hotline has been set up at the headquarters of the French Red Cross in order to respond to requests for assistance.

237. Minors are also given special treatment in terms of accommodation. Accommodation for minors under the age of 13 years is provided in a hotel, on separate premises from the holding area, in rooms that are reserved for this purpose and under the surveillance of a professional. Minors over the age of 13 are provided with accommodation within the holding area. Care is taken to ensure that unaccompanied minors are strictly separated from adults and that special attention is paid to them. Minors accompanied by a member of their family remain in the holding area of Roissy airport, under the protection of the adult accompanying them, who also benefits from the assistance of humanitarian associations and the surveillance of border police.

238. If the unaccompanied minors are allowed to enter the country, they are immediately taken in charge, under the supervision of the judicial authority (public prosecutor's office and juvenile court judge), by a dedicated reception service, which ensures their follow-up and

protection (reception and guidance centre or hostel). If they are not allowed to stay, they may not be returned to their country of origin until the necessary steps have been taken to ensure that a member of their family will take care of them upon their return.

239. The border police registered 743 unaccompanied minors in the holding area of Roissy airport in 2005.

## **VI. INTERNATIONAL ASSISTANCE AND COOPERATION**

### **A. Prevention and victim protection**

#### **1. Combating sexual exploitation of children in tourism in the framework of the World Tourism Organization and the European Union**

240. In the framework of the World Tourism Organization (UNWTO), France actively participated in the drafting of the Global Code of Ethics for Tourism, adopted during the UNWTO General Assembly on 1 October 1999, which provides in article 2.3, that:

“The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism; as such, in accordance with international law, it should be energetically combated with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts, even when they are carried out abroad.”

241. To translate this provision into French law, the French Government has endeavoured to disseminate it very widely among the professionals and various organizations concerned, as well as incorporating it in the drafting of legislative and regulatory instruments. France was the first country to transpose the Code of Ethics by drafting, in consultation with major tour operators, a national charter of ethics for tourism, in which the professionals signing it commit among other things alia to “respect the equality of men and women, protect the rights of children and the most vulnerable groups, and combat all forms of exploitation of human beings, in particular sexual exploitation”. The companies and localities applying this charter will receive, on request, a “tourism and ethics” label.

242. This initiative is being extended to the European Union as a whole. During the meeting of Ministers of Tourism in Malta on 20 October 2005, France presented its charter for tourism that respects the rights of the child in France and abroad, proposing the signature of a European charter modelled upon it, as well as the establishment of a working group to promote the exchange of best practices and to create a restricted-access Internet site intended to monitor the development of sexual tourism in the main countries concerned.

243. The European Commission decided to incorporate this subject in the forthcoming deliberations of the Consultative Committee on Tourism in June 2006, and to propose that the UNWTO task force draw up an inventory based on the contributions of each member State. The task force will also approach European professional travel and accommodation organizations.

244. France also participated in the UNWTO conference for the protection of children against sexual exploitation on 3 and 4 April 2002 in Rome, as well as in the Task Force. This network, established in 1997 as a follow-up to the Stockholm World Congress against Commercial Sexual Exploitation of Children in 1996, is an international child prostitution and tourism watch. Its members include key players from the public and private sectors, the tourist industry, international organizations and NGOs. The Task Force, which meets twice a year in London and Berlin, gathers information on the incidence of sexual tourism around the world, transmits draft procedures to prevent and combat sexual tourism involving children to the tourism authorities in the relevant countries, and urges tour operators to become involved in the campaign. It also assesses the implementation of regulations introduced by States affected by child prostitution.

## **2. Awareness-raising measures taken in the framework of UNICEF**

245. The French Government has contributed actively to child protection with UNICEF, particularly through project No. 2000-149, supported with funding of €2.3 million under the Ministry of Foreign Affairs Priority Solidarity Fund, which ran from April 2003 to January 2006. One part of this project concerned the fight against child sexual exploitation and involved conducting studies and surveys, awareness-raising and media training on children's rights, and support for legislative reforms in Cape Verde, Cameroon, Ghana, Guinea, the Central African Republic and Chad.

## **3. Assistance and reintegration measures for victims**

246. In the context of efforts to combat trafficking in persons, France supports assistance and reinsertion activities for victims in the different regions of the world. Several voluntary contributions have been made to the OSCE since 2003, a significant part of which was donated to the Anti-Trafficking Fund of the Office for Democratic Institutions and Human Rights (ODIHR). Police and judicial cooperation is being strengthened in the countries of the Priority Solidarity Zone,<sup>9</sup> defined by the French Government in February 1998, and composed of countries from the least developed group, and also from Asia, Latin American and Europe.

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<sup>9</sup> The Priority Solidarity Zone (Zone de Solidarité Prioritaire - ZSP) is composed of countries among the least developed in terms of income, without access to financial markets, and with which France intends to forge a strong partnership. Its boundaries can change by decision of the Inter-ministerial Committee for International Co-operation and Development. Since 2002, it has comprised the following countries: Middle East: Lebanon, Autonomous Palestinian Territories, Yemen; North Africa: Algeria, Morocco, Tunisia; Sub-Saharan Africa and Indian Ocean: South Africa, Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Comoros, Congo, Ivory Coast, Djibouti, Eritrea, Ethiopia, Gabon, Ghana, Gambia, Guinea, Guinea-Bissau, Equatorial Guinea, Kenya, Liberia, Madagascar, Mali, Mauritania, Mozambique, Namibia, Niger, Nigeria, Uganda, Democratic Republic of the Congo, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Sudan, Tanzania, Chad, Togo, Zimbabwe; Indochina Peninsula: Cambodia, Laos, Vietnam; Caribbean: Cuba, Haiti, Dominican Republic; Latin America: Suriname; Pacific: Vanuatu.

A network of technical legal assistants (currently 26, comprising magistrates, registrars, lawyers and legal experts) is contributing to, inter alia, the implementation of juvenile justice and activities to assist the reintegration of victims in their countries of origin.

247. In order to facilitate the exchange of experience and best practices in respect of prevention and support for victims, the Ministry of Foreign Affairs organized a seminar in Bucharest, Romania, on 15 and 16 September 2005, on the subject of south-east European countries, bringing together NGOs, legal experts and social workers. In Africa, a seminar on trafficking in West Africa is due to be held in the region in 2006. In view of the increase in prostitution, sexual exploitation of minors and procurement between Indonesia, Malaysia and Singapore, a regional seminar is also planned for the near future, in partnership with Australia and the United States of America, for chiefs of police departments and procurators in the subregion.

248. The French charter on tourism that respects the rights of the child in France and abroad of 17 May 2005 also contains provisions on this issue, since it provides that tour operator signatories should endeavour, through their branches or sub-contracting companies abroad, to re-educate or provide apprenticeships for children who have left prostitution.

## **B. Implementation of laws**

249. The development of judicial and police cooperation is helping to combat more effectively the sexual exploitation of children, to develop criminal legislation on the subject together with specific measures for implementing it, and to assist the police and judiciary of the most affected countries, through training and advice, to establish effective enforcement procedures, including those targeted against French nationals.

250. Regarding policy in the area of cooperation and extradition, the French Government refers to the developments previously reported in part III concerning criminal procedure in respect of territorial jurisdiction and extradition.

251. Cooperation activities are both bilateral and multilateral in character.

252. The bilateral agreement signed on 4 October 2002 between France and Romania has created a specific mechanism in that connection - the operational liaison group. This group is composed of professionals from the justice system, the police and the education sector, who are selected to be operational focal points within their administration in their country for issues concerning unaccompanied Romanian minors. Its tasks are to centralize and share information on the situation of affected minors, to identify them, to obtain information on minors and their families in their country of origin (social investigation) and to prepare for their return to Romania when possible. Furthermore, it is foreseen that the Romanian authorities responsible for child protection should undertake to implement follow-up measures for minors and their families on their return. This agreement, which expired in February 2006, is currently being renegotiated and its renewal seems certain. The proposed changes aim to improve the functioning of the operational liaison group.

253. In the context of multilateral cooperation, developed under the aegis of European institutions, the French Ministry of Justice is project manager of a PHARE twinning programme, which aims to implement a juvenile justice in Romania. The programme has the following main objectives: to improve the legal and institutional structure concerning the overall protection of children's rights in accordance with European standards, establish teams to ensure civil protection of minors, establish training for staff, judges and social workers, and create a resource centre.

254. Furthermore, in the context of the AGIS programmes, which are funded in part by the European Commission, the French Ministry of Justice is piloting a study on five countries: France, Italy, Spain, Romania and Morocco. This study is aimed in particular at improving the factual base for identifying the origin, age, circumstances and movement of these minors from one country to another and analysing the legal and social characteristics of the countries that attract minors and take them in.

255. In order to step up cooperation with countries most affected by child prostitution, the French Government has recently decided to designate a referral agent, who will act as a foreign correspondent for the French as well as the local authorities. This central role is carried out by the police officer who is the internal security attaché to the French Ambassador in the country concerned. This experimental arrangement, eventually to be applied more generally, is scheduled to be established initially in Morocco, Egypt, Indonesia, the Dominican Republic, Cambodia, Thailand and Senegal. As well as monitoring the situation in the country concerned (paying particular attention to the behaviour of French nationals and travellers), this referral agent submits a consolidated half-yearly report on the cases in progress, helps to give effect to French international rogatory letters concerning the criminal characterization of sexual offences involving children, and provides improved information for local services, French associations wishing to report incidents to the French judiciary, as well as victims in their dealings with the authorities and with the French courts. The person concerned can play an important role in the matter of technical cooperation and provide police officers in the countries concerned with specific training on chosen topics, both abroad and in France. Similar training activities are planned in the wider context of bilateral legal cooperation.

256. Regarding the police, France has been involved in the setting up of an international database at Interpol and has participated for a number of years in all the operations coordinated by Interpol and Europol, which have led to the questioning and arrest of paedophile Internet surfers. The central office for the control of trafficking in persons works particularly closely with Europol and Interpol. Its tasks are to identify and prosecute all offences involving procuring, to centralize information that could facilitate research into trafficking in persons for prostitution, and to coordinate all operations for the suppression of such trafficking nationwide. An investigation service in its own right, it operates directly in cases of procuring on a national or international scale to dismantle these networks, and it collaborates with all the ministries, international organizations and NGOs, as well as national associations for prevention and the reintegration of prostituted persons.

## Annex 1

### **THE LEGAL CONSEQUENCES FOR A CHILD WHO HAS COMMITTED AN OFFENCE UNDER THE APPLICABLE LAW THAT IS DIRECTLY RELATED TO THE PRACTICES PROHIBITED BY THE OPTIONAL PROTOCOL**

1. The fundamental principle of the French judicial system consists in prioritizing an educative response and specialization of the juvenile justice system. These two principles were established as fundamental to the laws of the Republic by the Constitutional Council when examining the aforementioned Act of 9 September 2002.
2. The juvenile court judge is therefore a specialized judge who is involved in a case throughout the criminal proceedings. He or she presides over the juvenile court with two non-presiding judges. The juvenile assize court necessarily includes two juvenile court judges as non-presiding judges alongside the president.
3. Educative measures are implemented by the public sector and associations for the legal protection of young people. The public sector concerned with the legal protection of minors is responsible for the application of penalties. Custodial sentences are served in facilities for minors, coming under the prison administration.
4. There is no lower age limit in place for criminal responsibility. It is for the judge to decide whether the offending minor is sufficiently capable of discernment.
5. On the other hand, judicial responses vary according to the minor's age. For those under 10 years of age, educative measures only can be ordered by the juvenile court judge or the juvenile court. For minors aged from 10 to 13, educative measures and educative sanctions can be handed down. The latter can only be ordered by a juvenile court. For minors over 13 years old, educative measures, educative sanctions and sentences are possible.
6. The principle is to conduct investigations into the minor's personality and family situation before passing a judgement so as to ensure the most appropriate criminal justice response, the purpose being to rehabilitate the minor.
7. Imprisonment has to remain an exceptional measure. Minors under the age of 16 years cannot be remanded in custody for ordinary offences, except in the case of a breach of placement in a closed educational centre. Remand in custody is, however, possible for minors of 13 years for serious offences and for those aged 16 for ordinary and serious offences. In all cases, the length of the remand period is limited.
8. In the case of imprisonment, the court passing sentence must give reasoned grounds for its decision. Furthermore, the presence of legal counsel is compulsory at all stages of criminal proceedings.
9. Unless the juvenile court or the assize court decides otherwise on reasoned grounds, a minor receives only half the maximum sentence incurred by an adult. It should also be emphasized that the president of the court cannot grant access to the hearing to anyone except the members of the family, the educational services, the victim and the lawyers.

10. The aforementioned Acts of 9 September 2002 and 9 March 2004 have improved and speeded up the responses of criminal justice to juvenile offenders by streamlining judicial responses and by diversifying criminal case management.
11. The specialization of the juvenile court judge has also been strengthened, resulting in a more appropriate and faster response. In this regard, the aforementioned Act of 9 September 2002 has given juvenile court judges the authority to revoke a suspended sentence with probation in the event of reoffending.
12. The Act of 9 March 2004 on adapting the justice system to evolving crime patterns transferred the competence of the judge responsible for the execution of sentences in closed facilities to the juvenile court judge. The Act has moreover established the general principle of the responsibility for legal protection of minors in respect of the execution of sentences, consistent with ensuring the specialization of services responsible for caring for juvenile offenders, including in the application of sentences involving deprivation of liberty. These provisions have been applicable since 1 January 2005. Legal protection for minors is therefore continuous, including in detention.
13. Furthermore, to ensure an appropriate and rapid response to relatively minor offences, this Act has instituted the possibility of ordering a citizenship-training course, as a possible alternative to prosecution.
14. The civic training course had already been introduced under the aforementioned Act of 9 September 2002, as the third form of sanction that can be decided by the juvenile court or the assize court. As well as educative measures, such as parental supervision, a requirement to make amends, a non-custodial supervision and placement, the court or assize court can order sentences and educative sanctions to minors aged between 10 and 18 years, such as a requirement to make amends or an obligation to attend a citizenship-training course.
15. In specific situations, to ensure greater responsiveness and transparency of the judicial process, the office of the procurator can, under the aforementioned Act of 9 September 2002, use the fast-track procedure to refer a minor to the juvenile court for sentence within a period of 10 days to 1 month.
16. This Act has diversified forms of provision by establishing new facilities in the form of closed educational centres, where minors can only be placed in the context of judicial supervision or suspended sentence with probation. These centres are intended for reoffending minors in particularly vulnerable personal and domestic situations.
17. The aforementioned Act of 9 March 2004 added the possibility of placing minors in closed educational centres in the context of conditional release.
18. The aforementioned Act of 9 September 2002 provides for the involvement of teachers in detention facilities for minors aged 13 to 16, thereby enabling educational activities to take place from the start of imprisonment. Moreover, from the beginning of 2007, prison institutions for



minors will be limited to this category. Each institution with accommodation for 60 inmates is divided into independent 10-cell units. The prison administration and the service for the legal protection of minors will have the overall responsibility for minors. Education and training will be provided by staff forming part of the national education system.

19. Act 2005-1549 of 12 December 2005 concerning the treatment of repeat criminal offenders also applies to minors, particularly regarding the limitation on suspended prison sentences with probation, as well as its provisions on sentence reduction for those found guilty of repeat offences.

**Annex 2**

**ACT NO. 2006-399 OF 4 APRIL 2006 ON STRENGTHENING THE  
PREVENTION AND PUNISHMENT OF CONJUGAL VIOLENCE  
AND VIOLENCE AGAINST MINORS**

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