



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

Distr.: General
3 December 2021

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

**Report submitted by Norway under article 29 (1)
of the Convention, due in 2021***

[Date received: 18 November 2021]

* The present document is being issued without formal editing.



Contents

	<i>Page</i>
Introduction	3
I. Preparation of the report and consultations with national human rights institutions.....	3
II. General legal framework under which enforced disappearances are prohibited	3
III. Information in relation to each substantive article of the Convention.....	4
Annex	40

Introduction

1. In accordance with Article 29 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance (hereafter the Convention), Norway hereby submits to the Committee on Enforced Disappearances (hereafter the Committee) a report on the measures Norway has taken to give effect to its obligations under the Convention.
2. The report has been prepared in accordance with the Committee's *Guidelines on the form and content of reports under Article 29 to be submitted by States parties to the Convention*, adopted by the Committee at its second session (26–30 March 2012).
3. The Convention was signed by Norway on 21 December 2007 and ratified on 22 August 2019. It entered into force for Norway on 21 September 2019 pursuant to Article 39 (2) of the Convention. Norway requested an extension for the submission of Norway's report to the Committee on 10 September 2021. The Secretariat of the Committee confirmed on 10 September 2021 that the requested extension until 21 November 2021 was granted.
4. The common core document for Norway, which contains general information about Norway and its legal system for all United Nations committees, should be considered an integral part of the present report in accordance with the Committee's guidelines.

I. Preparation of the report and consultations with national human rights institutions

5. The Ministry of Foreign Affairs has prepared the report in close cooperation with the Ministry of Justice and Public Security, the Ministry of Health and Care Services, the Ministry of Children and Families and the Ministry of Defence. The report has been submitted to the Norwegian National Human Rights Institution and the National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for comment.
6. On 29 June 2017, the Government submitted its proposal to ratify the Convention for open, public consultation. The consultative paper included the Government's assessment of the measures needed to be implemented before ratification of the Convention. The consultative paper was published on the Government's website and was also sent to specific consultative bodies, including relevant human rights organisations and institutions in Norway such as the Norwegian National Human Rights Institution and the National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, established pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, and which is part of the mandate of the Parliamentary Ombud for Scrutiny of the Public Administration. The full list of consultative bodies is included in the Government's proposition to the Norwegian Storting on consent to ratification of the Convention, submitted on 20 December 2018.
7. On 25 April 2019, the Norwegian Storting gave its consent to ratification of the Convention.

II. General legal framework under which enforced disappearances are prohibited

8. According to Article 94 of the Norwegian Constitution, deprivation of liberty shall be based on law and subject to legal safeguards. The provision reads:

“No one may be taken into custody or otherwise be deprived of their liberty except in the cases determined by law and in the manner prescribed by law. Deprivation of liberty must be necessary and must not constitute a disproportionate infringement.

Persons arrested shall as soon as possible be brought before a court. Others who have been deprived of their liberty have the right to bring their deprivation of liberty before a court without unjustified delay.

Those responsible for the unwarranted arrest or illegal detention of a person shall be answerable to the person concerned.”.

9. The Constitution also guarantees other relevant human rights, such as the right to life and the prohibition against torture or other inhuman or degrading treatment or punishment, cf. Article 93 of the Constitution.

10. Enforced disappearance is also contrary to several provisions contained in human rights conventions incorporated into Norwegian law, such as the International Covenant on Civil and Political Rights and the European Convention for the protection of Human Rights and Fundamental Freedoms. It follows from the Norwegian Human Rights Act that the provisions of these conventions take precedence over national legislation in case of conflict.

11. Norway has also ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and established a national preventive mechanism in conformity with the Optional Protocol.

12. Before Norway ratified the Convention, enforced disappearance was made an autonomous criminal offence in Norway, cf. section 175 a of the Norwegian Penal Code concerning enforced disappearance and section 175 b concerning aggravated enforced disappearance (attached). Enforced disappearance was already included in section 102 of the Penal Code as one of the crimes against humanity. Elements of enforced disappearance, as defined in Article 2 of the Convention, is also covered by several other provisions in the Penal Code, including section 254 (deprivation of liberty), 255 (aggravated deprivation of liberty), 256 (conspiracy to commit aggravated deprivation of liberty) and 173, subsection c) (breach of official duty that results in wrongful deprivation of liberty).

13. There are no cases of enforced disappearance in Norway to report. The legal safeguards in place prevent such acts from occurring in Norway.

III. Information in relation to each substantive article of the Convention

Article 1

14. According to Article 1 of the Convention, under no circumstances whatsoever, shall anyone be subjected to enforced disappearance.

15. In Norway, deprivations of liberty may only take place in cases determined by law and in the manner described in law, cf. Article 94 of the Norwegian Constitution. Enforced disappearance, as defined in Article 2 of the Convention, is not allowed in Norway under any circumstances. It is a crime under the Norwegian Penal Code section 175 a (enforced disappearance), section 175 b (aggravated enforced disappearance) and section 102 (enforced disappearance as a crime against humanity). It is punishable by appropriate penalties which take into account the extreme seriousness of the offence. For further details, see the information provided under Articles 2 to 7 below.

Article 2

16. Article 2 of the Convention contains the definition of enforced disappearance for the purposes of the Convention.

17. Norway has enacted domestic legislation criminalising enforced disappearance as an autonomous offence in terms that are consistent with the definition in Article 2 of the Convention.

18. According to the Norwegian Penal Code section 175 a (enforced disappearance) and section 175 b (aggravated enforced disappearance), anyone who contributes to an enforced disappearance on behalf of a State, or with the authorisation, support or acquiescence of a State, shall be subject to imprisonment for a term not exceeding 15 years, or in aggravated cases not exceeding 21 years. According to section 175 a, an enforced disappearance is

“arrest, detention, abduction or other deprivation of liberty, when it is denied that the deprivation of liberty has taken place, or it is kept secret what has happened to the person deprived of his or her liberty or where he or she can be found, so that he or she is deprived of legal protection.”

19. While the Norwegian criminal provisions concerning enforced disappearance are formulated in line with Norwegian criminal law traditions, they fully cover all three constitutive elements of the definition of enforced disappearance as defined in Article 2 of the Convention. The provision includes the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State; the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person; and, as a consequence, the placement of such a person outside the protection of the law.

Article 3

20. According to Article 3 of the Convention, the States Parties shall take appropriate measures to investigate acts defined in Article 2, but which are committed without the authorisation, support or acquiescence of the State, and thus do not include one of the three constitutive elements in the definition of enforced disappearance in Article 2 of the Convention.

21. Several Norwegian criminal provisions are relevant in this regard, including but not limited to the Penal Code section 254 (deprivation of liberty), section 255 (aggravated deprivation of liberty) and section 256 (conspiracy to commit aggravated deprivation of liberty).

Article 4

22. According to Article 4 of the Convention, each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

23. As reported above, Norway has enacted domestic legislation criminalising enforced disappearance as an autonomous offence in terms that are consistent with the definition of enforced disappearance in Article 2 of the Convention.

24. According to the Norwegian Penal Code section 175 a (enforced disappearance), first sentence, anyone who contributes to an enforced disappearance on behalf of a State, or with the permission, support or consent of a State, shall be subject to imprisonment for a term not exceeding 15 years. According to section 175 a, second sentence, an enforced disappearance is ‘the arrest, detention, abduction or other deprivation of liberty, when it is denied that the deprivation of liberty has taken place, or it is kept secret what has happened to the person deprived of his or her liberty or where he or she can be found, so that he or she is deprived of legal protection.’

25. According to the Penal Code section 175 b, aggravated enforced disappearance shall be subject to imprisonment not exceeding 21 years.

Article 5

26. Article 5 of the Convention states that the widespread or systematic practice of enforced disappearance constitutes a crime against humanity, and that it shall attract the consequences defined under applicable international law.

27. Enforced disappearance is punishable in Norway as a crime against humanity pursuant to the Norwegian Penal Code section 102 (crimes against humanity), which reads:

“Any person is liable to punishment for crimes against humanity who as part of a broad or systematic attack on a civilian population

....

i) contributes to the involuntary disappearance of a person on behalf of or with the consent, support or permission of a state or a political organisation, with the intention of depriving the person of legal protection for a prolonged period of time.

...

The penalty for a crime against humanity is imprisonment for a term not exceeding 30 years.”.

Article 6

Article 6 (1), subparagraph (a)

28. According to Article 6 (1), subparagraph (a), of the Convention, each State Party shall take the necessary measures to hold criminally responsible at least any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance.

29. The Norwegian criminal provisions concerning enforced disappearance are directed against anyone ‘*who contributes to*’ an enforced disappearance. The wording ‘contributes to’ covers to a large extent the different alternatives in Article 6 (1), subparagraph (a), of the Convention.

30. Furthermore, the general provisions in the Norwegian Penal Code concerning contribution and attempt also apply. According to the Penal Code section 15, a penal provision also applies to any person who contributes to the violation, unless otherwise provided. According to the Penal Code section 16, any person who intends to commit an offence which may be punishable by imprisonment for a term of one year or more, and performs an action leading directly to its commission, shall be penalised for attempt, unless otherwise provided.

Article 6 (1), subparagraph (b)

31. According to Article 6 (1), subparagraph (b), of the Convention, each State Party shall take the necessary measures to hold, on certain conditions, superiors criminally responsible.

32. Norwegian criminal law is in conformity with Article 6 (1), subparagraph (b).

33. According to the Penal Code section 175 a, second paragraph, a superior is subject to the same sentence as the person who commits or contributes to an enforced disappearance provided that the superior:

“(a) With intent or negligently ignores information that persons under the superior's effective authority and control are committing or preparing to commit a criminal enforced disappearance, and

(b) Fails to take necessary and reasonable measures to prevent or stop a criminal enforced disappearance or fails to report the matter to the competent authorities.”.

34. A similar provision concerning criminal responsibility of superiors is found in the Norwegian Penal Code chapter 16 concerning genocide, crimes against humanity and war crimes. Section 109 (responsibility of superiors) in chapter 16, which apply in cases of enforced disappearance as part of a crime against humanity, reads as follows:

“A military or civilian leader, or any person effectively acting as such, shall be subject to punishment for breach of superior responsibility if persons under his/her effective authority and control commit a crime specified in sections 101 to 107, provided that the crime is a result of the leader's failure to exercise due control over them, and the leader

(a) Knew or should have known that the subordinates had embarked on such a crime or that the crime was imminent, and

(b) Failed to implement necessary and reasonable measures in his/her power to prevent or stop the crime, or to report the offence to a competent authority for prosecution.

The penalty is imprisonment for a term not exceeding 10 years, or up to 30 years if the crime is aggravated. In determining whether the crime is aggravated, weight shall be given to the seriousness and scope of the crimes committed by the subordinates and to what extent the superior can be held to blame.”.

Article 6 (2)

35. Referring to Article 6 (2) of the Convention, it can be confirmed that no order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance in Norway.

36. The Norwegian Military Penal Code sets out rules that apply during time of war. A subordinate who fulfils an order from a superior in good faith that the order was lawfully given, may be exempted for criminal liability pursuant to section 24 of the Military Penal Code. However, this provision may not be invoked to justify an offence of enforced disappearance.

Article 7

37. According to Article 7 of the Convention, each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account the extreme seriousness of the offence. Furthermore, each State Party may establish mitigating and/or aggravating circumstances.

38. According to the Norwegian Penal Code section 175 a, enforced disappearance is subject to imprisonment for a term not exceeding 15 years. According to section 175 b, aggravated enforced disappearance is subject to imprisonment for a term not exceeding 21 years.

39. According to section 175 b, second paragraph, in determining whether a crime of enforced disappearance is aggravated, particular weight shall be given to

“(a) Whether the aggrieved person, on account of the disappearance, dies or sustains considerable harm to his or her body or health,

(b) Whether the aggrieved person was ill or injured, pregnant, was a minor, had a disability or was in some other way particularly vulnerable, or

(c) Whether the aggrieved person suffered a physical assault committed by several people acting together or was raped.”.

40. As reported relating to Article 5 of the Convention, an enforced disappearance which is punishable as a crime against humanity pursuant to the Penal Code section 102 is subject to imprisonment for a term not exceeding 30 years.

41. In addition, chapter 14 of the Penal Code sets out general provisions on determining sanctions, including rules on aggravating circumstances (section 77) and mitigating circumstances (section 78).

Article 8

Article 8 (1)

42. According to Article 8 of the Convention, a State Party which applies a statute of limitations in respect of enforced disappearance, shall take the necessary measures to ensure that the term of limitation for criminal proceedings is of long duration and is proportionate to the extreme seriousness of the offence of enforced disappearance, and that it commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

43. In Norway, for the offence of enforced disappearance, the limitation period for criminal liability is 15 years from the day the enforced disappearance ceased, and 25 years from the same day for aggravated enforced disappearance, cf. section 86 of the Norwegian Penal Code. According to section 86, the limitation period for criminal liability is 15 years when the maximum statutory penalty prescribed is imprisonment for a term not exceeding 15 years and 25 years when the maximum statutory penalty prescribed is imprisonment for a term not exceeding 21 years. According to the Penal Code section 87, the limitation period for criminal liability shall be calculated from the day the offence ceased.

44. In accordance with the Penal Code section 91, criminal liability for aggravated enforced disappearance is not subject to limitation if the offended person as a result of the disappearance has lost his or her life. An unintended consequence is part of the assessment of whether an offence is aggravated if the offender has acted negligently with regard to the consequence or failed to prevent the consequence according to ability after becoming aware that it might occur, cf. section 24 of the Penal Code.

45. For enforced disappearance as a crime against humanity, there is no statute of limitations in Norwegian law. According to the Penal Code section 91, criminal liability for genocide, crimes against humanity, war crimes and terrorist acts are not subject to limitation if the acts are punishable by imprisonment for a term of 15 years or more.

Article 8 (2)

46. According to Article 8 (2) of the Convention, each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

47. Everyone who has knowledge of a criminal act, including the victim of an enforced disappearance, has the right to report such action to the police or the prosecuting authority pursuant to section 223 of the Norwegian Criminal Procedure Act.

48. A criminal investigation shall be carried out when, as a result of a report or other circumstances (*ex officio*), there are reasonable grounds to enquire whether any criminal matter requiring prosecution by the public authorities subsists, cf. section 224 of the Criminal Procedure Act. Criminal investigations shall be carried out as quickly as possible, cf. section 226, last paragraph. The question of preferring an indictment shall be decided as soon as the case is sufficiently prepared for this purpose, cf. section 249, first paragraph. According to section 275, first paragraph, first sentence, the court shall as soon as possible fix the time and place for the main hearing. Unless special circumstances prevent it, the main hearing shall be scheduled to take place not later than two weeks after the case is received in the District Court or an appeal to the Court of Appeal is referred to an appeal hearing, cf. section 275, first paragraph, second sentence. Furthermore, it follows from section 275, second paragraph, first sentence, that the main hearing shall be held as soon as possible. Unless special circumstances prevent it, the main hearing shall be commenced no later than six weeks after the case is received in the District Court, and no later than eight weeks after an appeal to the Court of Appeal is referred to an appeal hearing if the person charged was under 18 years of age when the crime was committed, or if the person charged is remanded in custody when a date is fixed for the case.

49. According to section 59 a of the Criminal Procedure Act, an administrative decision of the prosecuting authority on not to prosecute, a decision to waive prosecution, the issue of an optional penalty writ, the issue of a bill of indictment, or a decision pursuant to section 427, second paragraph, second sentence, to refuse to include in the criminal case claims against the accused from the immediate victim, may be appealed by way of complaint to the immediately superior prosecuting authority. The right to appeal can be exercised by the person to whom the decision is directed, other persons with a legal interest in the complaint, or an administrative body, provided the decision concerns its area of administrative responsibility, cf. section 59 a, second paragraph.

50. According to section 88 of the Penal Code, the limitation period pursuant to section 86, cf. above in relation to Article 8 (1) of the Convention, is interrupted when the suspect acquires the status of a person charged, see the Criminal Procedure Act section 82. If the charge is made by a statement out of court or by issuance of an optional penalty writ, the limitation period is interrupted when the person charged is notified of the charge. According

to the Penal Code section 88, second paragraph, the interruption loses its effect when the prosecution is discontinued without the decision to do so being reversed by the superior prosecuting authority within the time limit given in the Criminal Procedure Act section 75, second paragraph. The same applies when the prosecution is suspended indefinitely. When calculating whether the limitation period has expired, the period of prosecution shall be included. However, this does not apply if the prosecution is suspended because the person charged has evaded prosecution, cf. the Penal Code section 88, second paragraph.

Article 9

51. Article 9 of the Convention concerns jurisdiction over the offence of enforced disappearance.

52. Norway has jurisdiction over the offence of enforced disappearance in accordance with Article 9 of the Convention.

53. Firstly, section 4 of the Norwegian Penal Code establishes territorial jurisdiction over the offence of enforced disappearance in conformity with Article 9 (1), subparagraph (a), of the Convention.

54. According to section 4, the Norwegian criminal legislation applies to acts committed on Norwegian territory. It also applies:

“(a) On installations on the Norwegian continental shelf for exploration for or exploitation or storage of submarine natural resources and on pipelines and other fixed transport facilities connected to such installations, including ones located elsewhere than on the Norwegian continental shelf,

(b) In the area of jurisdiction established pursuant to the Act of 17 December 1976 No. 91 relating to the Economic Zone of Norway, in the case of acts that harm interests that Norwegian jurisdiction is intended to protect, and

(c) On Norwegian vessels, including aircraft, and drilling platforms or similar movable installations. If a vessel or installation is in or above the territory of another state, the criminal legislation applies only to an act committed by a person on board the vessel or installation.”.

55. Secondly, the Penal Code section 5, first paragraph, first subparagraph, establishes personal jurisdiction over the offence of enforced disappearance in conformity with Article 9 (1), subparagraph (b), of the Convention. According to section 5, first paragraph, of the Penal Code, the Norwegian criminal legislation applies to acts committed abroad by a Norwegian national or a person domiciled in Norway when the act is punishable under the law of the country in which it is committed, or it constitutes certain serious crimes, including for instance a war crime, genocide or a crime against humanity or the act is deemed to constitute removal from care (cf. Article 25 (1) of the Convention).

56. Thirdly, the Penal Code section 5, fifth paragraph, establishes protective jurisdiction over the offence of enforced disappearance in accordance with Article 9 (1), subparagraph (c), of the Convention. According to section 5, fifth paragraph, of the Penal Code, the Norwegian criminal legislation applies to acts committed abroad if the act carries a maximum penalty of imprisonment for a term of six years or more and is directed at someone who is a Norwegian national or domiciled in Norway. This provision covers both the offence of enforced disappearance and aggravated enforced disappearance directed at a Norwegian national or person domiciled in Norway.

57. Fourthly, the Penal Code section 5, third paragraph, establishes universal jurisdiction in accordance with Article 9 (2) of the Convention. According to section 5, third paragraph, of the Penal Code, the Norwegian criminal legislation applies to acts committed by foreigners present in Norway if the act carries a maximum penalty of imprisonment for a term of more than one year, provided that the act is also punishable under law of the country in which it was committed or constitutes certain serious crimes, including for instance a war crime, genocide or a crime against humanity or is deemed to constitute removal from care.

58. Finally, according to the Norwegian Penal Code Article 6, the Norwegian criminal legislation applies to any acts that Norway has a right or an obligation to prosecute pursuant to agreements with foreign states or otherwise pursuant to international law.

Article 10

59. According to Article 10 of the Convention, a State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present, shall take measures to investigate the case, including taking the person into custody or taking other legal measures as are necessary to ensure his or her presence.

Article 10 (1) and (2)

60. In Norway, chapter 14 of the Criminal Procedure Act sets out general rules for arrest and remand in custody.

61. Any person who with just cause is suspected of one or more acts punishable pursuant to statute by imprisonment for a term exceeding six months, may be arrested when there is a reason to fear that he will evade prosecution or the execution of a sentence or other precautions, cf. the Criminal Procedure Act section 171, first paragraph, first subparagraph. If the prosecuting authority wishes to detain the arrested person, it must, as soon as possible and not later than on the third day following the arrest, bring him or her before the District Court at the place where it is most appropriate to do so, with an application that he be remanded in custody, cf. section 183, first paragraph. The District Court shall decide whether he shall be remanded in custody, cf. section 184, first paragraph. Remand in custody must not be a disproportionate intervention, cf. section 184, second paragraph, last sentence. If the court decides to remand the person charged in custody, it shall at the same time fix a specific time-limit for such custody if the main hearing has not already begun, cf. section 185, first paragraph, first sentence. According to section 185, first paragraph, second sentence, the time-limit shall be as short as possible and must not exceed four weeks, and it may be extended by order by up to four weeks at a time, cf. third sentence.

62. Prosecution pursuant to the Penal Code section 5, described in further detail below under Article 9, shall only be instituted when in the public interest, cf. the Penal Code section 5, seventh paragraph. In assessing whether public interest calls for prosecution, the prosecuting authority may, according to the preparatory works, take into consideration whether other and perhaps more relevant states have jurisdiction and a well-functioning legal system if the suspect resides in this country or can be extradited there.

63. With regard to an extradition procedure, section 20 of the Norwegian Extradition Act, which regulates the procedure before the formal request for extradition is received, states that if a person in a foreign state is charged, accused or sentenced for a punishable offence that could justify extradition under the Extradition Act, coercive measures may be employed against him or her in accordance with chapters 14, 15, 15 a, 15 b, 16, 16 a, 16 b and 16 d, of the Norwegian Criminal Procedure Act to the same extent as in cases relating to offences of a similar nature prosecuted in Norway, provided that a competent authority in the foreign state so requests before the extradition request is lodged. The same applies if the person in question is wanted for the offence in the foreign state. When the formal request for extradition is received, the Extradition Act section 15 states that to ensure the extradition, coercive measures mentioned in chapters 14, 15, 15 a, 15 b, 16, 16 a, 16 b and 16 d of the Criminal Procedure Act may be used to the same extent as in cases of offences of a similar nature prosecuted in Norway. Unless otherwise determined by the court, its decision to use coercive measures shall apply until the extradition request has been resolved and extradition, if granted, is implemented, cf. the Extradition Act section 19, second paragraph. The subject of the extradition request shall nevertheless be entitled to a re-trial of such a decision if more than 3 weeks have elapsed since it was made or last tried. When the final decision on extradition is made, section 19 of the Extradition Act states that the use of coercive measures shall not exceed 4 weeks from the decision to extradite is final.

64. With regard to Act relating to arrest and surrender to and from Norway for criminal offences on the basis of an arrest warrant, section 13 regulates the arrest, remand and other use of coercive measures in surrender procedures.

Article 10 (3)

65. According to Article 10 (3) of the Convention, any person in custody may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or if he or she is a stateless person, with the representative of the State where he or she usually resides.

66. Norway is a party to the Vienna Convention on Consular Relations of 24 April 1963, which in Article 36 establishes obligations for the States Parties that enable foreign nationals to communicate with representatives of the State of which he or she is a national. See also under Articles 17 and 18 about the right of a foreign national deprived of liberty to communicate with his or her consular authorities.

Article 11

67. Article 11 of the Convention reflects the principle of ‘aut dedere aut judicare’. It follows from the provision that if the competent authorities of a State Party suspect a person on the State’s territory of having committed the offence of enforced disappearance, and the State does not extradite or surrender the person to another State or international criminal tribunal, the State Party is obliged to investigate and, provided there is sufficient evidence, to prosecute the case.

68. As explained in relation to Article 9 of the Convention, Norway has jurisdiction to prosecute the offence of enforced disappearance in conformity with its obligations under the Convention, including its obligations under Article 10, cf. the Norwegian Penal Code sections 5, third paragraph, and 6.

69. It is up to the Office of the Director of Public Prosecutions to decide whether a prosecution shall be brought in a case of enforced disappearance, cf. the Criminal Procedure Act section 65, first paragraph, third subparagraph.

70. It follows from Article 98 of the Norwegian Constitution that all people are equal under the law, and that no human being must be subject to unfair or disproportionate differential treatment. The procedural rights of the suspect will be observed as in any criminal case.

Article 12

71. Article 12 of the Convention concerns the right for any individual to report and the obligation for the competent authorities to investigate enforced disappearance. It follows from Article 12 (1) that any individual has the right to report an enforced disappearance to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. When there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the competent authorities shall undertake an investigation even if there has been no formal complaint (*ex officio*), cf. Article 12 (2). Article 12 (3) and (4) regards the investigation and measures to prevent unlawful influence on the investigation.

72. The rules of criminal investigation are set out in chapter 18 of the Norwegian Criminal Procedure Act. According to section 223, criminal acts shall be reported to the police or the prosecuting authority. A criminal investigation shall be carried out when, as a result of a report or other circumstances (*ex officio*), there are reasonable grounds to enquire whether any criminal matter requiring prosecution by the public authorities subsists, cf. section 224.

73. The criminal investigation shall be carried out as quickly as possible, cf. section 226, last paragraph. It follows from section 249, first paragraph, that the question of preferring an indictment shall be decided as soon as the case is sufficiently prepared for this purpose.

74. The prosecuting authority is independent in the processing of the individual criminal case, and none are authorised to give instructions in individual cases or reverse a prosecution decision, cf. section 55.

75. According to section 59 a, an administrative decision of the prosecuting authority not to prosecute, a decision to waive prosecution, the issue of an optional penalty writ, the issue of a bill of indictment, and a decision pursuant to section 427, second paragraph, second sentence, to refuse to include in the criminal case claims against the accused from the immediate victim, may be appealed by way of complaint to the immediately superior prosecuting authority. The right to appeal can be exercised by the person to whom the decision is directed, other persons with a legal interest in the complaint, or an administrative body, provided the decision concerns its area of administrative responsibility, cf. section 59 a, second paragraph.

76. Norwegian law includes a number of mechanisms to protect the complainants, their representatives, witnesses and other persons participating in the investigation, prosecution and trial, against any kind of intimidation or ill-treatment.

77. The Penal Code section 157 establishes a penal provision that aims to protect participants in the justice system, including the aggrieved party in criminal proceedings, witnesses, the defence counsel or counsel for an aggrieved party, the person who has reported the criminal offence and any person who has given evidence to the police, the prosecuting authority or the court. According to section 157, a penalty of imprisonment for a term not exceeding six years shall be applied to any person who by violence, threats, vandalism or other illegal conduct with respect to a participant in the justice system or any of his/her next-of-kin:

- Acts in a manner that is likely to influence the participant to perform or omit to perform an act, work or a service in connection with criminal proceedings or a civil case; or
- Retaliates for an act, work or a service the participant has performed in connection with criminal proceedings or a civil case.

78. If the offence is aggravated, it is punishable by imprisonment for a term not exceeding 10 years, cf. the Penal Code section 158.

79. The Criminal Procedure Act and the Act relating to the Courts of Justice provide a range of rules to ensure the safety of witnesses. According to the Act relating to the Courts of Justice section 125, the court may decide to close a hearing, e.g. when a witness is being examined. Furthermore, the Criminal Procedure Act section 284 states that the court may decide that a person indicted shall leave the courtroom while a witness is being examined if there is special reason to fear that an unreserved statement will not otherwise be made. According to section 109 a, the court may examine witnesses by distant examination. Furthermore, the Criminal Procedure Act section 242 a limits the defence access to documents in specific situations, for example in situations where the defence access to documents may entail any risk of a serious crime being committed against any person's life, health or liberty.

80. Pursuant to the provisions of the Criminal Procedure Act, the prosecuting authority can impose a ban on visit if there is reason to believe that a person would otherwise commit a criminal act against another person, pursue another person, violate someone's right to peace in some other manner, or commit disturbances of the peace that are especially stressful for another person. Bans on visit can prohibit someone's presence in a specific location or persecuting, visiting, or contacting another person in some other manner.

81. In addition, people who need protection can have their address kept secret. When other protection measures are deemed insufficient, fictional identities can be offered as a protection, cf. the Act relating to the police chapter II a.

82. According to the Norwegian Civil Service Act section 29, a civil servant may be suspended when there is reason to assume that he or she is guilty of an offence that may involve summary dismissal pursuant to the Civil Service Act section 26, and the needs of the undertaking so indicate. It follows from the Civil Service Act section 26 that a civil servant

may be summarily dismissed when he or she has shown gross negligence in the service or is guilty of a gross breach of official duties, has repeatedly breached his or her official duties despite a written warning or by improper behaviour in or outside the service proves himself or herself unworthy of his or her post or damages the respect or confidence that is essential to the post.

Article 13

83. Article 13 of the Convention sets out obligations regarding extradition of persons suspected, accused or convicted of enforced disappearance.

84. Extradition to countries outside EU and the Nordic countries is regulated in the Norwegian Extradition Act (the Extradition Act) of 13 June 1975. Extradition from Norway may take place irrespective of the existence of an extradition treaty between the parties, provided that the conditions of the Extradition Act are met, cf. the Extradition Act section 26, third paragraph. International treaties are not directly binding in Norway, and have to be implemented in Norwegian law. Thus, the Extradition Act should be in line with extradition treaties applicable to Norway. The Extradition Act states the conditions for extradition from Norway to a foreign country in sections 2 to 10.

85. The grounds for refusal in the Extradition Act are:

- Norwegian nationals cannot be extradited (section 2);
- There is a double criminality requirement (section 3), and extradition may only take place if the offence for which extradition is sought is punishable under Norwegian law by imprisonment for more than one year. Regarding extradition for the purpose of serving a sentence, the sentence imposed must entail imprisonment for a period of not less than 4 months;
- Extradition for a breach of military law may only take place if the act is also punishable under non-military law (section 4);
- Extradition may not take place for political offences. The King in Council may enter into treaties with a foreign state so that particular kinds of offence are not regarded as political (section 5);
- Extradition is prohibited if it may be assumed there is a grave danger that the person concerned, for reasons of race, religion, nationality, political convictions or other political circumstances, will be exposed to persecution directed against his or her life or liberty, or that the said persecution is otherwise of a serious nature (section 6);
- According to section 7, extradition may not take place if it would be contrary to fundamental humanitarian considerations, especially on account of the person's age, condition of health or other circumstances of personal nature;
- *Ne bis in idem* is a ground for refusal (section 8);
- Extradition may not take place if the right to prosecute or execute punishment is statute-barred by lapse of time under Norwegian law (section 9);
- According to section 10, extradition will be refused if it is not found that there is just and sufficient cause for suspecting the person concerned of being guilty. Extradition for the purpose of serving a sentence may not take place if there are specific grounds for believing that the judgment was not passed on a correct appraisal of the question of the accused's guilt.

86. As a general rule, extradition is possible in relation to all criminal acts provided that the conditions pursuant to the Extradition Act are met. Enforced disappearance is an extraditable offence, as the offence is punishable under Norwegian law with imprisonment for more than one year. Enforced disappearance would not be considered as a political offence, as the Extradition Act section 5 states that the King in Council may enter into a treaty with a foreign state so that particular kinds of offence are not regarded as political, cf. Article 13 of the Convention.

87. The Norwegian extradition procedure involves both a judicial and an administrative procedure.

88. Requests for extradition received from a foreign state should as a main rule be forwarded by diplomatic channels.

89. The request is firstly formally assessed by the Ministry of Justice and Public Security. If it is clear that the criteria in the Norwegian Extradition Act are not fulfilled, the Ministry will refuse the request at this stage. If the request has not been refused by the Ministry, it will be forwarded to the prosecuting authorities, which shall initiate the necessary investigations. A defence counsel will be appointed. The prosecuting authorities bring the case before the District Court, and the District Court makes a decision on whether the legal requirements in the Extradition Act are fulfilled. The decision may be appealed to the Court of Appeal, and further appealed to the Supreme Court. The time limit for lodging an appeal is three days.

90. If the requesting State is a party to the Schengen Convention, and the person concerned consents to be extradited, a simplified procedure may take place. In this event, it is the Public Prosecutor who decides whether extradition may take place or not.

91. Provided that it is decided by a final court ruling that the criteria of the Extradition Act are fulfilled, the Ministry of Justice and Public Security will decide whether the request for extradition shall be complied with. Before the decision is taken, the defence counsel is given an opportunity to give comments. The decision of the Ministry of Justice and Public Security may be appealed to the King in Council. However, if the Court has found that the criteria for extradition are not fulfilled, extradition is excluded, and the Ministry of Justice and Public Security will deny the request.

92. Between the Nordic countries the Convention on the Nordic Arrest Warrant applies, and in relation to the European Union, the Agreement between the EU, Iceland and Norway on surrender procedure entered into force 1 November 2019. These instruments are regulated by the Act on the Surrender Procedure due to an Arrest Warrant of 20 January 2012. Enforced disappearance is a ground for surrender, as the offence is punishable under Norwegian law with imprisonment for more than one year, and would not be considered a political offence.

93. The surrender procedure is simplified compared the extradition process described above. The grounds for non-execution are reduced and an obligation to execute the arrest warrant is established. Time limits for the decision to execute the arrest warrant are also introduced. The procedure still includes a judicial procedure before the final decision is made by the prosecuting authority. The Ministry of Justice and Public Security is only involved in a few of the cases.

94. There are no official statistics on the number of cases, or for the types of crimes for which extradition or surrender are sought. However, the Norwegian Ministry of Justice and Public Security is not familiar with any request for extradition concerning enforced disappearance.

Article 14

95. According to Article 14, States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance.

96. Norway does not have a specific statutory law regulating mutual legal assistance in criminal matters. Provisions regulating mutual legal assistance are to be found in different laws and regulations, such as chapter V of the Norwegian Extradition Act, and some provisions in the Courts of Justice Act. Norway also has a regulation on International Cooperation in Criminal Matters, which entered into force 1 January 2013.

97. International treaties are not directly binding in Norwegian law, and have to be implemented into Norwegian legislation. According to Norwegian legislation, Norway may provide assistance irrespective of the existence or applicability of a treaty, cf. the Extradition Act, section 26, third paragraph.

98. Norway has two bilateral agreements on mutual legal assistance in criminal matters; with Canada from 1998 and with Thailand from 1999.

99. Requests for mutual legal assistance (MLA requests) are carried out in accordance with Norwegian law. This implies that investigatory steps that can be conducted in a national criminal case may be conducted on the basis of a MLA request, and that the said steps thus are carried out in accordance with Norwegian law. Special formalities and procedures expressly indicated by the requesting State may be complied with, provided that such formalities and procedures are not prohibited pursuant to Norwegian law.

100. The legal framework in relation to mutual legal assistance does not differentiate between categories of offences. Thus, the applicable legal framework is in principle the same in relation to enforced disappearance as to other offences. All requests are dealt with in accordance with the provisions in the Courts of Justice Act, the Extradition Act chapter V and the Regulation on International Cooperation in Criminal Matters.

101. There are no official statistics available on the number of MLA requests nor on the types of crime the request is sought. We therefore do not have any specific examples in this regard. The Norwegian Ministry of Justice and Public Security is not familiar with any MLA requests concerning enforced disappearance.

Article 15

102. According to Article 15 of the Convention, the States Parties shall cooperate and afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

103. Since no mutual legal assistance or extradition requests related to enforced disappearances have been made to or by Norway, we cannot provide specific examples where this kind of cooperation has been granted, and which specific measures have been undertaken in this regard.

Article 16

104. According to Article 16 of the Convention, no State Party shall expel, return ('refouler'), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

105. This *non-refoulement* obligation also follows from Article 3 of the European Convention of Human Rights and Article 7 of the International Covenant on Civil and Political rights, which prohibit torture and inhuman and degrading treatment or punishment. These conventions are incorporated into Norwegian law. The same also follows from Article 93 of the Norwegian Constitution, which states that no one may be subjected to torture or other inhuman or degrading treatment or punishment. According to section 28 of the Norwegian Immigration Act, a foreign national who is in the realm or at the Norwegian border, shall be recognised as a refugee if the foreign national faces a real risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment upon return to the country of origin. According to section 73 of the Immigration Act, a foreign national is guaranteed absolute protection against being sent to an area where he or she would face a risk of being subjected to such treatment.

106. This is also the case in extradition cases. A person cannot be extradited or surrendered to a country where he or she will face a risk of being subject to the death penalty, torture or other inhuman or degrading treatment or punishment. This follows from the Extradition Act combined with the Human Rights Act. With regard to the possibility to appeal an extradition decision, please find more information on the Norwegian extradition procedure in the observations relating to Article 13 above.

Article 17

Article 17 (1)

107. According to Article 17 (1) of the Convention, no one shall be held in secret detention.

108. Secret detention is not allowed under any circumstances in Norway, and no cases of such practices has ever been recorded. According to Article 94 of the Norwegian Constitution, deprivation of liberty may only take place in cases determined by law and in the manner described in law.

Article 17 (2)

109. According to Article 17 (2), subparagraph (a), of the Convention, each State Party shall in its legislation establish the conditions under which orders of deprivation of liberty may be given.

110. In Norway, the conditions under which orders of deprivation of liberty may be given are established in the relevant legislation. The following types of deprivation of liberty may take place in Norway, if the conditions provided for in the relevant legislation is met:

- Short-term detention of persons disturbing peace and order etc. pursuant to section 8 of the Act relating to the Police (the Police Act) or section 3 of the Act relating to police authority in the Armed Forces (the Military Police Act) regarding military personnel;
- Arrest and remand in custody pursuant to chapter 14 of the Criminal Procedure Act;
- Execution of sentences of imprisonment and preventive detention pursuant to the Act relating to the execution of sentences etc. (the Execution of Sentences Act);
- Committal to psychiatric care and committal to care pursuant to the Penal Code sections 62 and 63;
- Compulsory observation and compulsory mental health care in cases where a person is suffering from a serious mental disorder, pursuant to the Act relating to the provision and implementation of mental health care (the Mental Health Care Act) sections 3-2 and 3-3;
- Compulsory medical examination and compulsory isolation in hospital pursuant to the Act relating to control of communicable diseases (the Communicable Diseases Act) sections 5-2 and 5-3;
- Necessary somatic health care to patients who are above 16 years and who are not competent to give consent, pursuant to chapter 4A of the Act relating to Patients' and Users' Rights (Patients' and Users' Rights Act);
- Deprivation of liberty of substance addicts pursuant to the Act relating to health and care services sections 10-2, 10-3 and 10-4;
- Placement and retention in an institution of a child who has shown serious behavioural problems, such as serious or repeated criminality or persistent abuse of intoxicants or drugs, without the child's consent, and with or without the consent of the person with parental responsibility for the child, pursuant to the Act relating to Child Welfare Services (the Child Welfare Act) sections 4-24, 4-25 and 4-26;
- Temporary placement in an institution without consent of a child who is at risk of being exploited for human trafficking, pursuant to section 4-29 of the Child Welfare Act;
- Arrest and detention of a foreign national pursuant to section 106 and of a foreign national minor pursuant to section 106 c of the Act relating to the admission of foreign nationals into the realm and their stay here (the Immigration Act);
- Deprivations of liberty in the Armed Forces in form of arrest as a disciplinary measure pursuant to the Act relating to military discipline, temporary arrest pursuant to the

Military Police Act (also mentioned above) and arrest as punishment pursuant to the Military Penal Code.

111. Deprivations of liberty in international military operations, however, are not currently regulated in formal Norwegian law. In Norway, the rules concerning deprivation of liberty during armed conflict are set out in the Norwegian Armed Forces' Manual of the Law of Armed Conflict and in the rules adopted for each specific operation, including the rules of engagement. The conditions and procedural guarantees that follow from international humanitarian law, including the four Geneva Conventions of 12 August 1949 and two Additional Protocols of 8 June 1977, form part of the rules that must be respected. Norway therefore gave the following declaration and reservation to Article 17 (2) upon ratification of the Convention:

“The Kingdom of Norway declares its understanding that whether and to what extent the various provisions of the Convention apply in situations of armed conflict will depend on an interpretation of the provision in question in the light of international humanitarian law, having regard to general principles of interpretation that apply where several regimes of international law are relevant, such as the principle of harmonisation and the principle of *lex specialis*.”

To the extent that Article 17 (2) of the Convention may be interpreted as requiring each State Party to establish ‘in its legislation’ conditions for and guarantees related to deprivation of liberty that apply in situations of armed conflict, the Kingdom of Norway reserves the right not to apply this provision in such situations. Deprivation of liberty during armed conflict is not currently regulated in formal Norwegian law. In Norway, the rules concerning deprivation of liberty during armed conflict are set out in the Norwegian Armed Forces' *Manual of the Law of Armed Conflict* and in the rules adopted for each specific operation, including the rules of engagement.”.

112. *According to Article 17 (2), subparagraph (b), of the Convention*, each State Party shall, in its legislation, indicate those authorities authorised to order the deprivation of liberty. The relevant Norwegian legislation is in conformity with this requirement.

113. *According to Article 17 (2), subparagraph (c), of the Convention*, each State Party shall, in its legislation, guarantee that any person deprived of liberty shall be held solely in officially recognised and supervised places of deprivation of liberty. In Norway, persons deprived of liberty are only kept in officially recognised and supervised places. Details concerning the supervision of places of deprivation of liberty are described under Article 17 (2), subparagraph (e).

114. *According to Article 17 (2), subparagraph (d), of the Convention*, each State Party shall, in its legislation, guarantee that any person deprived of liberty shall be authorised to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law.

115. Norwegian legislation is in accordance with this provision.

116. According to section 186 of the Criminal Procedure Act, a person who is arrested or remanded in custody is entitled to unrestricted written and oral communication with his or her defence counsel. He or she is also entitled to written and oral communication with his or her family or any other person of his or her choice. Only to the extent that due consideration for the investigation of the case so indicates, may a court by order decide that the person in custody shall not receive visits or send or receive letters or other consignments, or that visits or exchange of letters may only take place under police control.

117. According to the Execution of Sentences Act sections 30 to 32, which apply to the execution of sentences of imprisonment, preventive detention and remand in custody, inmates may send and receive mail, receive visits and use the telephone unless otherwise stipulated in the provisions.

118. According to section 31 of the Execution of Sentences Act, the Norwegian Correctional Service may refuse to allow a visit if there is reason to assume that the visit will

be misused for planning or committing a criminal act, evasion of execution of the sentence, or acts that may disturb peace, order and security. If the visit is of great significance for the inmate and the control is sufficient for preventing the visit from being misused for such purposes as mentioned, the visit should be controlled, but not denied.

119. According to the Execution of Sentences Act section 30, sixth paragraph, section 31, sixth paragraph, and section 32, sixth paragraph, a detained foreigner has the right to communicate with and receive visits from his or her consular authorities in accordance with international law without such a visit being controlled.

120. Under section 107, third paragraph, of the Immigration Act, a foreign national who is arrested and detained pursuant to section 106 of the Act is also entitled to receive visitors, make telephone calls and receive and send mail. The police may control and limit visits, telephone conversations and mail if it is necessary in order to maintain peace, order and security, or to implement an administrative decision pursuant to section 90 of the Immigration Act concerning, for instance, expulsion of the foreign national.

121. In the health and care sector, persons deprived of liberty are also entitled to receive visitors, make and receive phone calls and send and receive letters and parcels. See for instance the Mental Health Care Act section 4-5 concerning contact with the outside world. Under this provision, any person who stays in a mental health care institution on an in-patient basis is entitled to receive visits and use the telephone, as well as send and receive letters and parcels. For persons under compulsory mental health care on an in-patient basis in an institution, the responsible mental health professional may decide to restrict this right for up to 14 days, insofar as this is necessitated by strong considerations related to the treatment or welfare of the patient or strong consideration for a closely related person.

122. When a child is placed in an institution pursuant to the Child Welfare Act sections 4-24 to 4-26 and 4-29, the child has a right to have contact with and to receive visits from his or her family and friends. The institution may restrict visits to the child if necessary due to considerations related to the purpose of the placement or related to the treatment that the child receives at the institution. However, restrictions cannot be imposed if they would be unreasonable to the child, cf. section 23 of the Regulations relating to the rights and use of coercion during stays in child welfare institutions.

123. A person in the Armed Forces who is deprived of liberty as a disciplinary measure pursuant to the Act relating to military discipline, may communicate with his or her relatives and others while serving the arrest. For further details see below under Article 18. When a person in the Armed Forces is serving arrest as punishment pursuant to the Military Penal Code, the Military Arrest Rules will apply. It follows from rule 16 of these rules that the person deprived of liberty may send and receive mail and, when welfare reasons so indicate, use the phone. Pursuant to rule 17, the person deprived of liberty may also at fixed times receive visits, provided that such visits are compatible with good order and do not pose a security risk.

124. *According to Article 17 (2), subparagraph (e), of the Convention*, each State Party shall, in its legislation, guarantee access by the competent and legally authorised authorities and institutions to the places where persons are deprived of liberty, if necessary, with prior authorisation from a judicial authority.

125. In Norway, all places where persons are deprived of liberty are supervised by authorities that by law are guaranteed access to the places of deprivation of liberty.

126. Section 9 of the Execution of Sentences Act states that supervisory councils shall exercise supervision over prisons and probation offices and over the treatment of convicted persons and inmates. The Directorate of Norwegian Correctional Service decides on the geographical division of the areas of responsibility for the supervisory councils. The Ministry of Justice and Public Security appoints the head and deputy head of the supervisory council and at least two of its members together with deputy members. Members are appointed for a two-year period.

127. Members of the supervisory council are entitled to talk to convicted persons and inmates if the convicted person or inmate him- or herself so requests, and without the presence of prison staff.

128. Members of the supervisory council are entitled to take part in meetings concerning convicted persons and inmates and may demand access to case documents if the convicted person or inmate concerned consents to this.

129. When a decision to intern a foreigner has been taken pursuant to the Immigration Act section 106 b, first paragraph, first sentence, the person is kept at the Police holding centre for foreign nationals at Trandum. An independent supervisory board, headed by a judge or a retired judge, with members consisting of professionals working in the field of law or health services and with extensive experience, is authorised according to the Immigration Act section 107, eight paragraph, to oversee the operation of the holding centre for foreign nationals and the treatment of foreign nationals staying there.

130. According to the Health Supervision Act sections 2 and 4, all institutions providing health and care services are under state supervision by the Board of Health Supervision. The places have, among other things, a duty to establish an internal control system and to report in the event of serious incidents, cf. sections 5 and 6 of the Act. In addition, an independent commission of inquiry for the health and care services has been established, cf. the Act on the State Commission of Inquiry into the Health and Care Service. The commission investigates serious incidents and other serious matters.

131. When a child is placed in an institution without consent due to serious behavioural problems, pursuant to sections 4-24 to 4-26 of the Child Welfare Act, the child welfare service shall continuously monitor the placement. In addition, the County Governor shall supervise that every institution is operated in accordance with the Child Welfare Act and regulations, see sections 2-3 and 5-7 of the Child Welfare Act and the Regulations concerning supervision of children in child welfare institutions for care and treatment.

132. The supervision is carried out four times a year for institutions taking care of children with serious behavioural problems. Half of the inspections are to be unannounced. The supervision includes both an inspection of the institutions as such, and an inspection that each child is receiving the necessary care and treatment. Furthermore, the child has a right to a conversation with the inspectors. In advance of announced inspections, children are informed of the inspection and the possibility to talk directly with the inspector.

133. In addition to the supervision stipulated by law, the County Governor may also be contacted and asked to perform inspections in connection with complaints. The objective of the supervision is to ensure that the institution is properly run, and that the child receives proper care and treatment. If there are any records of use of coercion against a child, these will also be reviewed by the County Governor. If the County Governor finds that the institution is not properly run, the County Governor may order the conditions to be corrected, or even close down the institution.

134. When a child is temporary placed in an institution without consent due to risk of being exploited for human trafficking, pursuant to section 4-29 of the Child Welfare Act, the child welfare service shall monitor the placement. In addition, the County Governor shall supervise the institution pursuant to sections 2-3 and 5-7 of the Child Welfare Act and the Regulations concerning supervision of children in child welfare institutions for care and treatment.

135. Short-term detention conducted by the Military Police is regulated under section 4 of the Military Police Act and in the Regulations to the Military Police Act sections 14 to 17. Military arrest as a disciplinary measure is regulated in the Military Disciplinary Act, and the Military Arrest Regulation. These regulations do not describe details regarding the facilities that can be used, or specify details regarding supervision. This is detailed in formal instructions given by the Chief of Defence.

136. Norway has established an independent National Preventive Mechanism for the prevention of torture in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The National Preventive Mechanism (NPM) is part of the mandate of the Parliamentary Ombud for Scrutiny of the Public Administration. The NPM makes regular visits to facilities where people are deprived of their liberty and reports to the Norwegian Storting.

137. Norway is also a Party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, where Article 2 states that each Member

State in accordance with the Convention shall permit visits from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to a place within its jurisdiction where people are deprived of their liberty.

138. *According to Article 17 (2), subparagraph (f), of the Convention, each State Party shall, in its legislation, guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.*

139. According to Article 94 of the Norwegian Constitution, persons arrested shall be brought before a court as soon as possible. Others who have been deprived of their liberty have the right to bring their deprivation of liberty before a court without unjustified delay. The right to access to court is also reflected in the legislation that regulates the different forms of deprivation of liberty in Norway, see for instance the Criminal Procedure Act section 183, first paragraph; Immigration Act section 106 a, last paragraph; Mental Health Care Act section 7-1; Patients and Users' Rights Act section 7-2; Communicable Diseases Act section 5-9; Child Welfare Act section 7-24; Municipal Health and Care Services Act sections 9-11, 9-12 and 10-7; and Act relating to military discipline section 36.

140. The legal safeguards in place prevent acts of enforced disappearance from occurring in Norway. However, in the case of a suspected enforced disappearance, any person who has knowledge of or who suspects such an act, has the right to report to the police or the prosecuting authority pursuant to the Norwegian Criminal Procedure Act section 223. Reference is made to the observations relating to Article 12 of the Convention.

141. Section 1-3 of the Act relating to Mediation and Procedure in Civil Disputes (the Dispute Act) regulates when a case can be brought before the courts. Pursuant to section 1-3, first paragraph, only actions that are considered legal claims are allowed. In additions, it follows from section 1-3, second paragraph, that the claimant must demonstrate a genuine need to have the claim decided against the defendant, and furthermore, that this shall be determined based on an overall assessment of the relevance of the claim and the parties' connection to the claim. Similarly, section 28 of the Public Administration Act regulates appeal of administrative decisions. According to section 28, individual decisions may be appealed by a party or another person having a legal interest in appealing the case.

Article 17 (3)

142. According to Article 17 (3) of the Convention, each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorised for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum the information listed in Article 17 (3).

143. In Norway, the information referred to in Article 17 (3) subparagraphs (a) to (h) may be extracted from different registries and records read together. For persons remanded in custody or serving prison sentences or preventive detention, the information referred to in Article 17 (3) may be extracted from the system of records of inmates kept by the correctional service (called Kompis), combined with the person's patient records, the Norwegian cause of death registry and the Norwegian burial and cremation registry. The last three registries are general registries which are relevant for all deprivations of liberty. This information will be made available promptly to a competent authority that requests it, subject to the law that governs the authority or institution in question. For example, the Parliamentary Ombud for Scrutiny of the Public Administration may, without prejudice to the duty of confidentiality, ask for any information which is necessary to conduct its duties, and the Ombud may set a deadline for complying with such an order, cf. the Act relating to the Parliamentary Ombud for Scrutiny of the Public Administration section 20. For persons arrested and detained pursuant to section 106 of the Immigration Act, it follows from section 107, seventh

paragraph of the Act, that in order to safeguard the purpose of the stay at the holding centre and foreign nationals' rights, the police may keep a register of information about decisions taken, arrivals, implemented control measures, use of force and forcible means, incidents, internal transfers, departures, monitoring times and treatment by health personnel.

144. For interventions by the child welfare services involving the deprivation of liberty of children, the County Social Welfare Boards have a system for processing information (called Sakarias). Furthermore the Office for Children, Youth and Family Affairs has a procedural register for children who are placed in institutions pursuant to the Child Welfare Act (called BIRK). It is presumed that these systems for processing information/registries together with the child's patient records, the cause of death registry and the burial and cremation registry will cover the information referred to in Article 17 (3).

145. According to section 6-7 of the Child Welfare Act, anyone who performs services or work for a public body is subject to a duty of confidentiality under sections 13 to 13e of the Public Administration Act. Information may be disclosed to other bodies of the public administration when necessary to facilitate the functions of the child welfare service or other agencies regulated by the Child Welfare Act, or to prevent material danger to life or serious harm to any person's health. Information may also be provided to health professionals under the provision. A duty to provide information may also follow from other legislation, such as section 4 of the Act Relating to the Ombudsperson for Children (the Ombudsperson for Children Act). According to that, the Ombudsperson shall have unrestricted access to all public and private institutions for children. Public authorities and public and private institutions for children shall, notwithstanding the duty of confidentiality, furnish the Ombudsperson with the information needed for the performance of the Ombudsperson's duties pursuant to the Act, including information that is needed for the performance of the Ombudsperson's duty to monitor that legislation safeguarding the interests of children is observed, including whether or not Norwegian law and administrative practice comply with Norway's obligations pursuant to the UN's Convention on the Rights of the Child. See also above concerning the Parliamentary Ombud for Scrutiny of the Public Administration.

146. For persons deprived of their liberty in the health sector, the information mentioned in Article 17 (3) may be extracted from the person's patient records, the Norwegian cause of death registry and the Norwegian burial and cremation registry. According to the Regulations relating to Patient Records section 4, 6 and 8, all information that is relevant and necessary for health care shall be registered, including information regarding the factual and legal basis for deprivation of liberty and any decisions made by the supervisory commission or the County Governor. Information may also be extracted from the Norwegian Patient Register and the Municipal Patient and User Register. Doctors, health institutions etc. have a duty to provide information to the Cause of Death registry about identity, death cause and death place (among other things). The information in these registers can only be used on a general level, and may not be used for supervision or sanctions against concrete persons or institutions.

Article 18

147. According to Article 18 of the Convention, each State Party shall, subject to Articles 19 and 20 of the Convention, guarantee to any person with a legitimate interest in the information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to the information listed in Article 18 (1) subparagraphs (a) to (g).

148. In the following, a description is given of the Norwegian rules regulating relatives' and other persons' access to the information referred to in Article 18 for the different types of deprivation of liberty that take place in Norway.

Arrest and remand in custody

149. When an arrest is made, the prosecuting authority is under obligation to ensure that the arrested person's household or any other person he or she specifies shall be duly notified, cf. the Criminal Procedure Act section 182, first paragraph. However, if the arrested person does not wish for such notification, it shall not be given unless there are special reasons for doing so. The said notification may also be dispensed with if it is deemed that it would be

substantially detrimental to the investigation, cf. the Criminal Procedure Act section 182, second paragraph. In that event, the question of notification must be submitted to the court the first time the arrested person is brought before it.

150. Furthermore, if a person charged is arrested, he or she shall be given a defence counsel as soon as possible after it is clear that he or she will not be released within 24 hours after the arrest, cf. section 98 of the Criminal Procedure Act. A person who is arrested or remanded in custody is entitled to unrestricted written and oral communication with his or her defence counsel. The defence counsel has a duty of secrecy concerning any information disclosed to him or her in the course of a criminal case concerning 'an individual's personal affairs', cf. the Criminal Procedure Act section 106 a, first paragraph. This also includes the information that a client is arrested or remanded in custody. However, the client can lift the defence counsel's duty of secrecy and give the defence counsel the permission to disclose any personal information about him or her to his or her relatives or other persons of his or her choice.

151. A person remanded in custody is also generally entitled to personally contact his or her relatives by phone or mail pursuant to the rules in the Criminal Procedure Act and the Execution of Sentences Act. For further information see above under Article 17 of the Convention. The Court may restrict the right of a person in custody to have contact with others than his defence counsel if consideration for the investigation of the case so indicates, cf. the Criminal Procedure Act section 186, second paragraph, and section 186 a.

152. If relatives are not notified of the deprivation of liberty pursuant to the Criminal Procedure Act section 182 (because the person deprived of liberty does not wish this, or the relative is not part of the group of persons that was informed), and the relatives are not personally informed of the deprivation of liberty by the person deprived of liberty, the question is to what extent relatives on their own initiative can obtain information from Norwegian authorities about the deprivation of liberty.

153. Any person who is employed in, rendering service to or working for the police or the prosecuting authority, is bound by a duty of confidentiality concerning anything that comes to his or her knowledge in connection with his or her work concerning 'an individual's personal affairs', cf. section 23 of the Act relating to the processing of data by the police and the prosecuting authority (the Police Databases Act). This includes the information that a person is arrested or remanded in custody. For persons employed in the correctional service, the same follows from the Public Administration Act section 13, first paragraph, cf. section 7 of the Execution of Sentences Act. According to section 13 of the Public Administration Act, it is the duty of any person rendering service to, or working for, an administrative agency to prevent others from gaining access to, or obtaining knowledge of, any matter disclosed to him or her in the course of his or her duties concerning 'an individual's personal affairs'. That a person is or has been arrested or remanded in custody, is normally considered 'an individual's personal affairs' 'in the sense of the Public Administration Act.

154. The police, the prosecuting authority and the correctional service may disclose to others the information that a person is or has been arrested or remanded in custody insofar as the person to whom the duty of confidentiality is owed, consents to this, cf. the Public Administration Act section 13 a, first subparagraph, combined with section 7 of the Execution of Sentences Act, and section 24, first paragraph of the Police Databases Act. In practice the person deprived of liberty will be informed that his or her relatives or others have asked for information related to the deprivation of liberty and asked whether he consents to the disclosure of the information. The person deprived of liberty can also choose to personally contact his or her relatives or others who want information about the deprivation of liberty. The police and prosecuting authority cannot, however, disclose data which it is necessary to keep secret in the interests of the investigation of the particular case, the interests of surveillance and intelligence activities or the interests of police operations and the organisation of such operations, cf. the Police Databases Act section 23, second paragraph.

155. The question is then what information can be given to relatives or others if the person arrested or remanded in custody does not consent to the disclosure of information related to the deprivation of liberty.

156. Firstly, the police and prosecuting authority may notify the arrested person's household against the arrested person's will if there are 'special reasons' for doing so, cf. the Criminal Procedure Act section 182, first paragraph, second sentence. In practice, the threshold for notifying relatives or others against the will of the person concerned will be high. In practice, this will normally only be done if the person is a minor or where there are other similar reasons.

157. Secondly, relatives and others can obtain information concerning remand in custody through the rules concerning publicity in the administration of justice. On request, anyone is entitled to information concerning the time and place for a hearing in a case, cf. the Regulations relating to publicity in the administration of justice section 2. It will normally suffice to give the name of the parties. Before the case is scheduled, the court is not under an obligation to give the public information about a case, cf. the Regulations relating to publicity in the administration of justice section 1. The court shall make lists of scheduled hearings, which shall be available at the court. In cases of remand in custody, however, the names of the parties shall not be included on the lists, cf. the Regulations relating to publicity in the administration of justice, section 4, third paragraph, second sentence.

158. Furthermore, hearings are open to the public and proceedings and judicial decisions may be reported publicly, unless otherwise decided by law, or by the court pursuant to the law, cf. the Act relating to the Courts of Justice (Courts of Justice Act), section 124, first paragraph. Relatives may also be present at hearings concerning remand in custody. The court may however decide to hold a hearing, in whole or in part, in camera, if one of the conditions in the Courts of Justice Act section 125 is met. When a hearing is held in camera, the court may nonetheless allow access to parties other than those directly involved in the case, where this may be justified by special circumstances. The pronouncement of a judgment always takes place in public, cf. the Courts of Justice Act, section 124, fourth paragraph. Personal data may be omitted in the interest of protection of privacy.

159. Any person may request a transcript of a judgment in a specific criminal case, or access to the conclusion of the judgment unless a ban applies to the reproduction of the judgment or a transcript is denied. The public, however, does not have a right to access to decisions or conclusions concerning a remand in custody. The court may, however, based on a concrete assessment give a transcript of decisions concerning remand in custody.

160. Thirdly, the police, the prosecuting authority and the correctional service may disclose information to others, even if the person concerned does not consent to this, *when no legitimate interest indicates that it should be kept secret*, for example when it is generally known or generally accessible elsewhere, cf. the Police Databases Act, section 24, third subparagraph, and the Public Administration Act, section 13 a, third subparagraph, combined with the Execution of Sentences Act section 7. The press has a right to access to indictments in criminal cases before the court from the moment the case is scheduled and to the extent that the disclosure of the information would not be contrary to national security or Norway's relations with foreign states, cf. the Regulations relating to publicity in the administration of justice section 7. When the prosecuting authority has served the indictment on the person indicted, the press shall upon request be given a copy of it, unless it is probable that the case will be conducted in camera, cf. the Prosecution Instructions, section 22-7.

161. The situation may also be that no legitimate interest indicates that the information should be kept secret to relatives or other individuals, even if the person concerned has not consented to disclose the information, and the information is neither generally known nor generally accessible elsewhere. Usually, these individuals must then have a special need for the information, and the person concerned has for some reason not been able to make a decision about the matter of consent.

162. In practice, national authorities are very careful about disclosing information that a person is remanded in custody, or where the person is held, if the person concerned has not consented to this.

163. Fourthly, the prosecuting authority may give access to documents in criminal cases if there are 'special reasons' for it, and this is considered 'not to raise concerns for the further conduct of the case', cf. the Prosecution Instructions section 16-5.

164. Finally, persons employed in the police, prosecuting authority or the correctional service have a duty of secrecy concerning information related to a person's health. Health information is considered to concern 'an individual's personal affairs', cf. the Public Administration Act section 13, first paragraph, first subparagraph, combined with the Execution of Sentences Act section 7, and the Police Databases Act section 24, first paragraph. The general exceptions from the duty of secrecy also apply here. Thus, health information can be disclosed to relatives or others if the person detained consents to this, or when no legitimate interest indicates that it should be kept secret, cf. the Police Databases Act section 24, first and third subparagraph, and the Public Administration Act section 13 a, first and third subparagraph, combined with the Execution of Sentences Act section 7.

165. If a person dies under deprivation of liberty, his next-of-kin shall be notified pursuant to Guidelines to the Execution of Sentences Act.

Execution of sentences of imprisonment and preventive detention

166. A person who serves a prison sentence or preventive detention may personally contact his or her next-of-kin or others by phone or mail in accordance with the rules in the Execution of Sentences Act. According to sections 30 to 32 of the Execution of Sentences Act, inmates have the right to send and receive mails, receive visits, and make and receive phone calls unless otherwise stipulated in these provisions. See also above under Article 17 (2), subparagraph (d), of the Convention.

167. The correctional service may refuse to deliver or send a postal item to or from inmates if the said item contains information concerning the planning or committing of a criminal act, evasion of execution of the sentence, or acts that will disturb peace, order and security. The correctional service may likewise refuse to allow inmates to use the telephone if there is reason to assume that the telephone conversation will be misused for planning or committing a criminal act, evasion of execution of the sentence, or acts that will disturb peace, order and security. If the telephone call is of great significance for the inmate, and the control is sufficient to prevent the call being misused for such purposes as are mentioned, the call should be controlled but not denied. An inmate may not be denied telephone calls or mail to or from a public defence counsel or representative of a public authority, including a diplomatic or consular representative, cf. the Execution of Sentences Act sections 30, sixth paragraph and 32, sixth paragraph.

168. If relatives do not receive information about the deprivation of liberty from the inmate personally or from his or her defence counsel, the question is to what extent relatives on their own initiative can obtain information from the Norwegian authorities about the deprivation of liberty.

169. Any person who is employed in or rendering service to the police, the prosecuting authority and the correctional service, is bound by a duty of confidentiality concerning the fact that a person is serving or has served a prison sentence or a preventive detention, since this is considered to be 'an individual's personal affairs', cf. the Police Databases Act section 23 and the Public Administration Act section 13, combined with the Execution of Sentences Act section 7.

170. The police, the prosecuting authority and the correctional service may, however, disclose to others that a person is serving or has served a prison sentence or a preventive detention insofar as the person to whom the duty of confidentiality is owed, consents to this, cf. the Public Administration Act section 13 a, first subparagraph, combined with the Execution of Sentences Act section 7, and the Police Databases Act section 24 first paragraph. In practice, the inmate will be informed that his or her relatives or others have asked for information related to the deprivation of liberty, so that the inmate can consent to the disclosure of the information, or so that the inmate can contact his or relatives or others personally, if that is preferable.

171. The next question is what information relatives can obtain if an inmate does not consent to disclosure of information related to his or her deprivation of liberty and does not want to inform relatives personally.

172. Firstly, relatives and others can gain access to information that a person has been sentenced to prison or preventive detention through the rules relating to publicity in the administration of justice. Relatives may obtain information about time and place of a criminal case from the court. Anyone is entitled to information concerning time and place for a hearing in a case, including a criminal case, from the courts as long as the request relates to 'a specific case', cf. the Regulations relating to publicity in the administration of justice section 2. See also observations above under "Arrest and remand in custody". According to the Regulations relating to publicity in the administration of justice, sections 4 and 5, the Court shall make lists of scheduled hearings, which shall be available at the court. The name of the indicted shall be included on the list unless the hearing concerns matters mentioned in sections 312 to 314 of the Penal Code (certain serious sexual offences against family members). Hearings are generally open to the public, so relatives may be present during the hearing of a criminal case, cf. section 124 of the Courts of Justice Act. The court may under certain conditions decide to hold a hearing, in whole or in part, in camera, cf. sections 125 to 127 of the Courts of Justice Act. When a hearing is held in camera, the court may nonetheless allow access to parties other than those directly involved in the case, where this is justified by special circumstances. The pronouncement of a judgment always takes place in public, cf. the Courts of Justice Act section 124, last paragraph. Personal data may be omitted in the interest of protection of privacy.

173. Any person may request a transcript of judgments in a specific criminal case as long as no ban applies against public reproduction of the judgment, cf. the Criminal Procedure Act section 28, third paragraph. Such a request may be refused if the judgment is more than five years old or the person requesting the transcript identifies the judgment only by the name of the accused person, cf. the Criminal Procedure Act section 28, third paragraph. The court may, however, practise open government and give access to a transcript even if these conditions are not fulfilled. The right to a transcript does not apply if the court has prohibited public disclosure, in whole or in part, of the judicial decision in the interest of protection of privacy or the aggrieved person's posthumous reputation or if considerations in respect of an investigation demand that a decision or a ruling handed down in criminal proceedings, outside the main proceeding, is not publicly disclosed, cf. section 130 of the Courts of Justice Act. In such cases, the court may choose to give individual persons access to the decision. If a ban against reproduction of the judgment applies, or a transcript is denied, access to the conclusion of the judgment shall be granted, cf. the Criminal Procedure Act section 28, third paragraph first sentence. If the court has prohibited public disclosure, in whole or in part, of the judicial decision or the ruling in accordance with section 130 of the Courts of Justice Act, the conclusion can only be reproduced so far as is possible without revealing the identity of the parties, cf. the Courts of Justice Act section 130, first paragraph, third sentence.

174. Secondly, the police, the prosecuting authority and the correctional service may disclose information to others, even if the person concerned does not consent to this, *when no legitimate interest indicates that it should be kept secret*, for example when it is generally known or generally accessible elsewhere, cf. the Police Databases Act section 24, third subparagraph, and the Public Administration Act section 13 a, third subparagraph, combined with the Execution of Sentences Act section 7.

175. As mentioned above, anyone has a right to obtain a transcript of a judgment in a criminal case from the police, the prosecuting authority or the court, provided that public disclosure has not been banned pursuant to section 130 of the Courts of Justice Act. The information in the judgment, including that a person is sentenced to a prison sentence or preventive detention, is therefore information that normally is 'generally accessible elsewhere', cf. the Public Administration Act section 13 a, third subparagraph and the Police Databases Act section 24, third subparagraph. The police, the prosecuting authority and the correctional service may therefore disclose the information, but are not under an obligation to do so in cases where the person deprived of liberty does not consent to this. (See however below about the duty of public authorities to provide guidance.) If such information is found in documents of an administrative body to which the Freedom of Information Act applies, the administrative body has a duty to give access to the documents, unless one of the Act's exemptions to the right to access applies.

176. The information that the person is serving a sentence right now does not necessarily follow from the judgment. It is also generally assumed that the information that a person is serving a sentence right now is information subject to the duty of secrecy. However, it may be argued that this information can be disclosed pursuant to the Public Administration Act section 13 a, third subparagraph, and the Police Databases Act, section 24, third subparagraph, if the judgment is generally available. There may also be other reasons for this exemption to apply. If it is generally known through the media that a person is serving a sentence, it is presumed that the national authorities can normally confirm this and can disclose information where the person is serving the sentence.

177. In practice, national authorities are very careful to disclose the information that a person is serving a sentence or preventive detention, if the person concerned does not consent to this. However, the police, the prosecuting authority and the correctional service have a duty to provide guidance. It must therefore be expected that, if necessary, they offer information to the relatives of the person deprived of liberty about the rules concerning the right to access to judgments in criminal cases from the courts.

178. Thirdly, pursuant to the Police Databases Regulation section 27-2, third paragraph, the police and prosecuting authority may give persons with justifiable reasons access to closed criminal cases. Relatives would be able to find information that a person is serving or has served a prison sentence or preventive detention in these documents. The provision does not give a right to access to information, but access may be given as part of the obligation of the police and prosecuting authorities to consider whether enhanced access to information should be exercised, cf. the Freedom of Information Act section 11 concerning enhanced access to information, which expresses a general principle that applies also outside the field of application of the Freedom of Information Act. (This provision reads: 'Where there is occasion to exempt information from access, an administrative agency shall nonetheless consider allowing full or partial access. The administrative agency should allow access if the interest of public access outweighs the need for exemption.')

179. Persons employed in or rendering service to the police, prosecuting authority or the correctional service have a duty of secrecy concerning information related to a person's health. Health information is considered to be 'an individual's personal affairs', cf. the Public Administration Act section 13, first paragraph, first subparagraph, combined with the Execution of Sentences Act section 7, and the Police Databases Act section 24, first paragraph. The ordinary exceptions from the duty of secrecy apply also here. Thus, health information can be disclosed to relatives or others if the person detained consents to this, or when no legitimate interest indicates that it should be kept secret, cf. the Police Databases Act, section 24, third subparagraph and the Public Administration Act section 13 a, third subparagraph, combined with the Execution of Sentences Act section 7.

180. If a person dies under deprivation of liberty, his next-of-kin shall be notified pursuant to Guidelines to the Execution of Sentences Act.

Deprivations of liberty in the health and care sector

181. Health personnel who are providing services pursuant to the Act relating to Health Personnel etc. (the Health Personnel Act), are bound by a duty of confidentiality in relation to 'information relating to people's health or medical condition or other personal information that they get to know in their capacity as health personnel', cf. the Health Personnel Act section 21.

182. However, the duty of confidentiality pursuant to section 21, does not prevent information from being made known to the person that the information directly relates to, or to others, to the extent to which the person who is entitled to confidentiality consent to this, cf. section 22 of the Health Personnel Act. Nor does the duty of confidentiality pursuant to section 21 prevent information from being made known to a person who already has previous knowledge of the information, the information from being provided when there are no valid interests to indicate secrecy, the information from being passed on if exceptional private or public grounds make it legitimate to pass on the information, or information from being passed on in accordance with rules laid down in or pursuant to law when it has been expressly

stated or clearly presumed that the duty of confidentiality shall not apply, cf. the Health Personnel Act section 23.

183. Furthermore, there are special rules concerning access to information, notification and right to appeal in the health and care sector.

184. Firstly, there are special *rules about notification* concerning deprivations of liberty in the field of health and care. In relation to forced somatic health care pursuant to chapter 4 A of the Patient and User Rights Act, the patient and the patient's closest relatives must be informed as soon as possible of decisions concerning health care to patients without competence to consent who are opposing the health care. When a person is withheld in an institution for treatment of substance abusers, notification of the decision to use force shall be given both to the patient/user and to the patient's/user's next-of-kin if the patient/user consents to this, cf. Regulations on rights and use of coercion in institutions for treatment of substance abusers. The next-of-kin also has a right to be notified if a patient is subjected to compulsory observation pursuant to the Mental Health Care Act section 3-2 or compulsory mental health care pursuant to the Mental Health Care Act section 3-3, cf. the Regulations relating to mental health care section 10, third paragraph.

185. The Patient and User Rights Act regulates when the next-of-kin of patients and users *have a right to access to information*, including information about deprivations of liberty. Pursuant to this Act section 3-3 first paragraph, if the patient or user consents to it or circumstances so dictate, the patient's/user's closest next-of-kin must be informed about the patient's/user's health status and health care provided. Furthermore, pursuant to section 3-3, second paragraph, if the patient or user obviously cannot attend to his or her own interests due to physical or mental disturbances, dementia or mental retardation, both the patient/user and his or her immediate relatives have the right to have the information that is necessary to gain insight into the patient's/user's health status and the content of the health care. Also in connection with the provision and implementation of mental health care, the Patient and User Rights Act shall apply, cf. section 1-5 of the Mental Health Care Act.

186. It is only the closest next-of-kin that has a right to information pursuant to the Patient and User Rights Act section 3-3, third paragraph. The closest next-of-kin is defined in the Patient and User Rights Act section 1-3, first paragraph, subparagraph b. This is in principle the person who the patient or user names as his or her next-of-kin. If the patient or user is incapable of naming his or her next-of-kin, the closest next-of-kin shall be the person who, to the greatest extent, has lasting and continuous contact with the patient or the user, based, however, on the following order: spouse, registered partner, persons who live in with the patient or user in a relationship resembling a marriage or partnership, children over the age of 18, parents or others who have parental responsibility, siblings over the age of 18, grandparents, other family members who are close to the patient or user, guardian or provisional guardian.

187. Persons who are responsible for the care of a person with a communicable disease are also entitled to information about the disease notwithstanding the health personnel's duty of secrecy if the infected person is a minor or if he or she, due to mental illness, other psychological disorders, senile dementia, mental retardation or physical disability, cannot safeguard his or her own interests with regard to the risk of infection, cf. section 2-1 of the Act relating to control of communicable diseases.

188. There are also special rules concerning *right to state one's opinion* and *right to appeal* for relatives in relation to deprivations of liberty in the health and care sector. According to section 3-9 of the Mental Health Care Act, the next-of-kin of the person concerned is entitled to state his or her opinion concerning, inter alia, the question of the application of compulsory observation and compulsory mental health care and of which institution is to be responsible for the compulsory care. Under section 3-3 a of the Mental Health Care Act, the next-of-kin of the patient also has a right to appeal a decision to apply compulsory observation or mental health care. The next-of-kin of a person committed to psychiatric care or to care in accordance with the Penal Code sections 62 and 63, has a right to apply for cessation of the sanction, cf. section 65 of the Penal Code.

189. Under chapter 4 A of the Patient and User Rights Act, the patient's next-of-kin has a right to comment and a right to appeal a decision to provide health care, to patients without

competence to consent and who are opposing such care, cf. sections 4A-6 and 4A-7 of the Patient and User Rights Act. A decision to subject an infected person to hospitalisation or isolation pursuant to the Act relating to control of communicable diseases can be brought before the district or city court both by the person directly concerned and by his or her next-of-kin. When a person with substance abuse problems is deprived of liberty pursuant to the Act relating to health and care services sections 10-2 to 10-4, the person's closest next-of-kind can appeal the decision, cf. the Regulations relating to rights and use of coercion in institutions for substance addicts section 13.

190. According to the Health Personnel Act section 24, first paragraph, the duty of confidentiality pursuant to section 21 is not to prevent information relating to a deceased person from being passed on if weighty grounds so indicate. Upon assessment of whether information shall be provided, consideration is to be given to the assumed will of the deceased, the nature of the information, as well as the interests of his or her next-of-kin and the interests of society. According to the Health Personnel Act section 24, second paragraph, and the Patient and User Rights Act section 5-1, fifth paragraph, a person's next-of-kin is entitled to access to the patient records relating to a deceased person unless special grounds indicate otherwise. It follows from the Patient and User Rights Act section 3-3, third paragraph, that if a patient or user dies and the outcome is unexpected on the basis of foreseeable risk, the patient's or user's next-of-kin has the right to information, so far as the duty of confidentiality does not prevent this.

Placement and retention of a child in an institution

191. The Act relating to Child Welfare Services (the Child Welfare Act) authorises the placement and detention in an institution of a child who has shown serious behavioural problems, such as serious or repeated criminality or persistent abuse of intoxicants or drugs, without the consent of the child, and with or without the consent of the person with parental responsibility for the child, cf. the Child Welfare Act sections 4-24, 4-25 and 4-26. The Child Welfare Act also authorises on certain conditions temporary placement in an institution without consent of a child in danger of being the victim of human trafficking, cf. the Child Welfare Act section 4-29.

192. The parents of the child have a right to information about the placement and retention of the child in an institution. The duty of secrecy of the child welfare services is regulated in section 6-7 of the Child Welfare Act. With certain exceptions, the general rules concerning duty of secrecy in the Public Administration Act sections 13 to 13 e apply.

193. According to the Public Administration Act section 13 b first paragraph, first subparagraph, the duty of secrecy pursuant to section 13 shall not prevent information in a case from being made known to the parties to the case or their representatives. A party is a person to whom a decision is directed or whom the case otherwise directly concerns. A decision to place and retain a child in an institution will normally be considered to directly concern the child's parents. This depends, however, on a concrete assessment of the parent's attachment to the child and what the issue of the case is. Where a child lives permanently with his parent, the parent will be a party to the case. The same normally applies to a parent who has parental responsibility for the child, regardless of where the child lives. A parent who has visiting arrangement with the child, will also normally be considered directly affected by a decision to place and retain a child in an institution. According to the Public Administration Act section 18, a party has in principle the right to acquaint himself or herself with the documents in the case.

Detention pursuant to the Immigration Act

194. A foreign national may on certain conditions be arrested and detained in a holding centre for foreign nationals or some other specially adapted residential centre pursuant to section 106 of the Act relating to the admission of foreign nationals into the realm and their stay here (the Immigration Act). The police may, when strictly necessary, and under certain conditions, also place the foreign national in police arrest or ordinary prison, cf. the Immigration Act section 107.

195. When a foreign national is arrested and detained pursuant to section 106 of the Immigration Act, the police shall ensure that the arrested person's household or any other person he or she specifies are duly notified. According to section 106 a, sixth paragraph, second sentence, such notification may be dispensed with if the arrested person does not want the persons in question to be notified, the persons in question are abroad, or there are other special reasons for not notifying them. When notification is dispensed with against the will of the foreign national and this is not due to the fact that the persons in question are abroad, the question of notification must be submitted to the court the first time the foreign national is brought before it.

196. The court shall appoint a legal counsel when reviewing the question of internment under section 106, cf. the Immigration Act section 94, fourth paragraph, first sentence. Wherever possible, the legal counsel shall be appointed as soon as it becomes clear that the arrested foreign national will not be released, removed or presented for imprisonment under section 106 by the end of the second day after arrest, cf. the Immigration Act section 94, fourth paragraph, second sentence. In practice, outside the working hours of the court, the police appoints the legal counsel. A foreign national who is arrested or interned has the right to uncontrolled written and oral contact with his or her appointed legal counsel, cf. the Immigration Act section 94, fourth paragraph, fourth sentence. The lawyer has a duty of secrecy concerning the arrest or detention of his client. The client can however lift the duty of secrecy, so that the legal counsel can inform the client's relatives about the deprivation of liberty.

197. A person who is interned is also generally entitled to make phone calls, receive and send mail and receive visitors in accordance with the Immigration Act, and if the foreign national is interned in ordinary prison, in accordance with the Execution of Sentences Act. For further details, see above under Article 17 (2), subparagraph (d), of the Convention. The foreign national can therefore personally notify his or her relatives.

198. If relatives are not notified of the deprivation of liberty by the authorities or by the person deprived of liberty, or by the person's legal counsel, the question is to what extent relatives on their own initiative can obtain information from the Norwegian authorities about the deprivation of liberty.

199. Any person working for the immigration authorities or the police is bound by a duty of confidentiality regarding the internment of a foreign national, since the detention is considered 'an individual's personal affairs', cf. the Public Administration Act section 13, first paragraph, first subparagraph, combined with the Immigration Act section 80 and the Immigration Regulations section 11, and the Police Databases Act section 23. People working for the immigration authorities and the police may disclose to others the information that a person is arrested or interned, insofar as the person to whom the duty of confidentiality is owed, consents to this, cf. the Public Administration Act section 13 a, first paragraph, first subparagraph, and the Police Databases Act section 24, first paragraph.

200. The question is then what information can be given to relatives or others if the person arrested or detained *does not consent* to the disclosure of information regarding his or her deprivation of liberty.

201. Firstly, as mentioned above, pursuant to the Immigration Act section 106 a, sixth paragraph, second sentence, the next-of-kin may be informed about the arrest even if the foreign national does not consent to this.

202. Secondly, relatives will also be able to obtain some information about the internment pursuant to the rules regulating publicity in the administration of justice.

203. Thirdly, both the immigration authorities and the police may disclose information to others even if the person concerned does not consent to this, *when no legitimate interest indicates that it should be kept secret*, for example when it is generally known or generally accessible elsewhere, cf. the Police Databases Act section 24, third paragraph, and the Public Administration Act section 13 a, third subparagraph.

204. In practice, however, national authorities are very careful about disclosing information that a foreign national is interned if the person concerned does not consent to this.

205. Regarding access to information concerning the health of a detained foreign national and information about deaths occurring during detention, reference is made to the last paragraph under the heading “Deprivations of liberty in the health and care sector” above. The Health Personnel Act section 24 and the Patient and User Rights Act section 5-1, fifth paragraph, referred to there, also apply in cases of arrest and detention pursuant to the Immigration Act.

Deprivations of liberty in the Armed Forces

206. Three types of deprivations of liberty occur in the Armed Forces’ detention barracks: arrest as disciplinary action pursuant to the Act relating to military discipline (the Disciplinary Act), short-term detention pursuant to the Act relating to police authority in the Armed Forces and military arrest as punishment pursuant to the Military Penal Code. Execution of military arrest is regulated in the *Regulations relating to disciplinary rules for the Armed Forces and military arrest rules*.

207. Arrest may be used as a disciplinary measure for a period not exceeding 20 days against a conscript or a military employee ‘who violates or neglects military service duties’, who ‘acts contrary to military custom and order’, or who ‘is guilty of civil criminal acts 1) in a military area 2) against conscripts in service or military employees or 3) against or by use of military material’, cf. the Disciplinary Act section 1, combined with section 5.

208. When arrest is used as a disciplinary measure, the person deprived of liberty will continue his or her daily service and will not be subject to significant restrictions regarding communication with others. According to the Disciplinary Act section 49, the Public Administration Act does not apply. Thus, the duty of secrecy in the Public Administration Act does not apply to deprivations of liberty within the Armed Forces pursuant to the Disciplinary Act. Neither does the Disciplinary Act contain any special provision concerning duty of confidentiality. Furthermore, in 2017 the Norwegian Chief of Defence decided that arrest shall not be used as a disciplinary measure until further notice, due to inconsistencies in access to detention barracks in the country.

209. Short-term detention may be used for up to 24 hours against the same group of people that is subject to the Disciplinary Act, provided that the person has disturbed the general peace and order, has committed serious breaches of his duties or has committed acts contrary to disciplinary rules and there are special reasons to believe that the person will commit violence or vandalism or continued disciplinary breaches, cf. the Act relating to police authority in the Armed Forces section 3, combined with section 4. The short-term detained person’s possibility to communicate with others during the 24-hour arrest will be limited. The military superior of the arrested person will be notified as soon as possible. If it is considered necessary to keep the person for more than 24 hours, the arrested person will be handed over to the police, and will be treated in accordance with the rules that apply for persons arrested or remanded in custody pursuant to the Criminal Procedure Act. For further information, see above under ”Arrest and remand in custody”.

210. For these two types of arrest, it is important to be aware that the arrested person is in the service of the Armed Forces and thus is under the control of military authorities. The person’s military superiors may inform relatives upon request that the person is accounted for and that he or she is doing military service in their department. Such information may be given even if the person concerned does not consent to this. The arrested person may also freely communicate with his or her relatives while serving an arrest as a disciplinary measure and immediately after a temporary arrest.

211. Regarding arrest as punishment, the rules in the Criminal Procedure Act will apply during the investigation and prosecution of the case. Thus, for further information see under “Arrest and remand in custody”. When serving the arrest as punishment, the Military Arrest Rules will apply. It follows from rule 16 of the Military Arrest Rules that a person serving arrest as punishment may send and receive mail and, if reasons of welfare so indicate, use a phone. According to rule 17 of the Military Arrest Rules, the person serving arrest as punishment may also at fixed times receive visits, provided that such visits are compatible with good order and do not pose a security risk.

212. The Armed Forces only uses short-term detention since arrest as disciplinary measure in peace time has been suspended by the Chief of Defence. Sentences served for breaches of the Military Penal Code take place in civilian, not military, facilities.

Article 19

213. Article 19 of the Convention regulates the use of personal data collected for or transmitted in connection with the search for a disappeared person, in order to prevent use of the data for purposes other than the search.

214. According to the Norwegian Constitution Article 102, everyone has the right to the respect of, among other things, their privacy and family life. The authorities of the state shall ensure the protection of personal integrity.

215. The Norwegian Act relating to the processing of personal data (the Personal Data Act) lays down the general legal framework for the processing and the protection of personal data. The Personal Data Act section 1 implements Regulation (EU) 2016/679, the General Data Protection Regulation (GDPR), in Norway. GDPR applies as Norwegian law.

216. The Act relating to the processing of data by the police and the prosecuting authority (the Police Databases Act) applies to the processing of data by the police and the prosecuting authority for police purposes, and lays down the general legal framework for processing and protection of personal data for police purposes. The act transposes into national law EU Directive 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data. As regards the processing of special categories of personal data, for instance genetic and biometric data to uniquely identify a natural person, or data concerning health, such processing shall only take place if 'strictly necessary' for the purpose of the processing, cf. section 7.

217. According to the Police Databases Act section 12, first paragraph, the police shall keep a DNA database consisting of a convicted offenders database, a known suspects database and a crime-scene samples database. The data in the database shall only be used for 'criminal justice purposes', cf. section 12, sixth paragraph. More detailed provisions on DNA registration are set in chapter 45 of the Regulations relating to the processing of personal data by the police and the prosecuting authority.

218. Furthermore, the Police Databases Act section 13 states that the police shall keep a database of fingerprints and photographs that have been collected in accordance with section 160 of the Criminal Procedure Act and the provisions of the Prosecution Regulations, that is of persons who are suspected of or convicted for an offense punishable by imprisonment. More detailed provisions on the database of fingerprints and photographs are set out in chapter 46 of the Police Databases Regulations.

219. The Police Databases Regulations chapter 50 regulates the police register of missing persons. Only information that may help identify the person can be registered. This includes, among other things, general information about the missing person and circumstances surrounding the disappearance, information about the person's external physique, information about the person's health obtained from health personnel or health institution, DNA information and dental information. Disclosure of the registered information can only take place for identification purposes.

220. Since no cases of enforced disappearance have occurred in Norway, we cannot provide examples regarding the collection, use and storage of the relevant data in relation to such cases.

Article 20

Article 20 (1)

221. According to Article 20 (1) of the Convention, where a person is under the protection of the law and the deprivation of liberty is subject to judicial control, the right to information in Article 18 may be restricted, on an exceptional basis, where strictly necessary and provided for by law, if the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons, and provided that the restrictions are not contrary to applicable international law or the objectives of the Convention.

222. As described in more detail above under Article 18 “Arrest and remand in custody”, access to information about a deprivation of liberty may be refused in Norway if it is deemed that such access would be substantially detrimental to the investigation of a criminal case, cf. the Criminal Procedure Act section 182, second paragraph. Such restrictions are clearly in conformity with Article 20 of the Convention, which allows for restrictions if this is strictly necessary and provided for by law, and the transmission of the information would hinder a criminal investigation.

223. If access to information concerning a deprivation of liberty would not be detrimental to a criminal investigation, relatives of the person deprived of liberty will according to Norwegian law be granted access to the information referred to in Article 18 of the Convention insofar as the person concerned consents to this. If the person deprived of liberty does not consent to this, a distinction must be made between deprivations of liberty in the health and care sector on the one hand and the criminal and immigration field on the other.

224. The closest next-of-kin of a person deprived of liberty due to health or care reasons will generally have a right to notification or access to information about the deprivation of liberty in accordance with Article 18 of the Convention. This is the case even if the person deprived of liberty does not consent to this. For further details, see above under Article 18, “Deprivations of liberty in the health and care sector”. However, other relatives are not entitled to information about deprivations of liberty if the person concerned does not consent to this. It is in principle for the person deprived of liberty to define who should be considered his or her closest next-of-kin, unless the person deprived of liberty is a child or is not able to assess the question. Limitation of the group of persons that is entitled to access to information about a deprivation of liberty in the health and care sector is considered to be permitted pursuant to Article 20 of the Convention, since the information in question is of a very sensitive personal nature.

225. In the criminal and immigration field, the general rule is that relatives will be notified or given access to information about deprivations of liberty in accordance with Article 18 of the Convention insofar as the person deprived of liberty consents to this. The person deprived of liberty may also inform his or her relatives personally or through his or her lawyer. It is presumed that a person deprived of liberty will usually consent to the information referred to in Article 18 of the Convention being given to his or her closest relatives. If the person concerned does not want his or her relatives to be notified or given access to information relating to the deprivation of liberty, it is mainly through the rules concerning publicity in the administration of justice that relatives may obtain information about the deprivation of liberty. For remand in custody pursuant to the Criminal Procedure Act and internment pursuant to the Immigration Act, the public, and thus also relatives, have only to a limited extent a right to information about the deprivation of liberty pursuant to the rules concerning publicity in the administration of justice. The court may however exercise enhanced access to information. The rules relating to publicity in the administration of justice do not give the public access to information concerning arrests pursuant to the Criminal Procedure Act or the Immigration Act, since in such cases there is still no court decision concerning deprivation of liberty. However, the public, and therefore also relatives, have more extensive access to information about execution of prison sentences and preventive detention pursuant to the rules relating to publicity in the administration of justice.

226. It is the Norwegian Government's opinion that the restrictions in the Norwegian legislation on the right to access to information about deprivations of liberty in the criminal and immigration field are permitted under Article 20 (1) of the Convention.

227. Firstly, the conditions in Article 20 (1) that the person deprived of liberty must be under the protection of the law and subject to judicial control are clearly fulfilled. As guaranteed in the Norwegian Constitution, no one may be taken into custody or otherwise deprived of their liberty except in the cases determined by law and in the manner prescribed by law. Furthermore, as also guaranteed by the Constitution, persons deprived of their liberty have a right to have the lawfulness of the deprivation of liberty decided by independent courts. Norway has also established an independent preventive mechanism in conformity with Article 3 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The preventive mechanism has access to all places in the country where people are, or may be, deprived of their liberty, and is also entitled to access to information about any person deprived of liberty.

228. Secondly, the conditions that the right to access to information in accordance with Article 18 may only be restricted *exceptionally* where *strictly necessary* due to a *legitimate reason*, are also fulfilled. It is important to underline that the general rule pursuant to Norwegian law is that relatives will be notified or given access upon request to information about deprivations of liberty insofar as this is in accordance with the wishes of the person deprived of liberty, and when access to information will not hinder the investigation of a criminal case. In practice, there is reason to believe that persons deprived of liberty will usually consent to the information referred to in Article 18 of the Convention being disclosed to their closest relatives. Where the person deprived of liberty opposes that the information in Article 18 of the Convention is revealed to his relatives, and none of the rules allowing for disclosure of the information without the consent of the person concerned described above apply, it is the Government's view that it would adversely affect the privacy of the person to disclose the information against the person's will. It is the Norwegian Government's view that Article 20 must be interpreted in a way that does not infringe unnecessarily on the privacy of the person deprived of liberty in situations where all the legal safeguards against enforced disappearances are in place, and there is therefore no reason to suspect that an enforced disappearance has taken place, and there are independent mechanisms to verify that the person has not been subjected to an enforced disappearance.

229. That a person has been deprived of his or her liberty pursuant to the criminal, immigration or health and care legislation is information that a person may have good reason to want to keep private, and not wish to share even with close relatives, for instance due to the sensitivity of the information or in order to protect the person's reputation. In the criminal field, the presumption of innocence also applies during the investigation, and a person who has served his or her sentence may want to conceal this fact to leave the past behind.

230. Against this background, Norway made the following declaration concerning the interpretation of Article 20 (1), in conjunction with Article 18, upon ratification of the Convention:

“The Kingdom of Norway declares its understanding that Article 20 (1) of the Convention, which permits restrictions on the right to information referred to in Article 18 on an exceptional basis, where ‘strictly necessary’ and ‘if the transmission of the information would adversely affect the privacy’ of the person deprived of liberty, allows for weight to be given to an assessment by the person concerned of whether these conditions are met. This applies provided that the information, viewed objectively, is of a sensitive personal nature, that the person concerned is under the protection of the law and that the deprivation of liberty is subject to judicial control. Thus, it is the understanding of the Kingdom of Norway that, depending on the circumstances, access to information may be denied if the person deprived of liberty does not consent to the disclosure of sensitive personal information on grounds of privacy.”.

Article 20 (2)

231. According to Article 20 (2) of the Convention, States Parties shall guarantee to any person with a legitimate interest in the information referred to in Article 18, such as relatives of the person deprived of liberty, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in Article 18 (1).

232. Norwegian law does not provide for a specific judicial remedy for third parties seeking information referred to in Article 18 (1) of the Convention. Reference is made to the observations under Article 17 (2), subparagraph (f).

Article 21

233. According to Article 21 of the Convention, each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released, assuring their physical integrity and their ability to exercise fully their rights at the time of release.

234. In Norway, the release data of prisoners are collected in the system of records of inmates kept by the correctional service (called Kompis).

235. In the case of coerced deprivation of liberty in the health sector, the health institution must make a decision regarding the duration of the deprivation of liberty. A deprivation of liberty shall be terminated when the conditions for the deprivation of liberty are no longer fulfilled. Prolongation and termination of the deprivation of liberty are regulated for instance in the Mental Health Care Act section 3-7 and 3-8 and the Patient and Users Act section 4A-5. According to the Mental Health Care Act section 3-8, the deprivation of liberty shall be terminated after maximum one year unless the supervisory commission consents to the care being prolonged. The supervisory commission may prolong the duration of the compulsory care by up to one year at a time. According to the Regulations relating to Patient Records section 8, subparagraph (f), it may also be relevant and necessary for the patient records to contain information about whether the patient is declared ready to be discharged.

236. The Child Welfare act authorises the placement and detention in an institution of a child who has shown serious behavioural problems, such as serious or repeated criminality or persistent abuse of intoxicants or drugs, without the consent of the child, and with or without the consent of the person with parental responsibility for the child, cf. the Child Welfare Act sections 4-24 to 4-26. The Child Welfare Act also authorises on certain conditions temporary placement in an institution without consent of a child in danger of being the victim of human trafficking, cf. the Child Welfare Act section 4-29. The Child Welfare Act regulates the length of detention of placements made in accordance with the Child Welfare Act sections 4-24 to 4-26 and section 4-29.

Article 22

237. According to Article 22, State Parties shall take the necessary measures to prevent and 'impose sanctions' for delaying or obstructing that a person deprived of his or her liberty or any other person with a legitimate interest is entitled to take proceedings before a court to determine the lawfulness of the deprivation of liberty; failure to record the deprivation of liberty of a person; and refusal to provide information on the deprivation of liberty or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

238. It is Norway's understanding that 'sanctions' in this regard does not necessarily mean criminal sanctions, but could also be disciplinary measures, as opposed to Article 6 of the Convention where the wording is 'hold criminally responsible' and Article 25 of the Convention where the wording is 'prevent and punish under its criminal law'.

239. A person who exercises or assists with the exercise of public authority and commits a gross breach of his or her official duty, shall face a penalty of a fine or imprisonment for a term not exceeding two years, cf. the Norwegian Penal Code section 171 (professional

misconduct). Grossly negligent professional misconduct (section 172) shall be punished with a fine or imprisonment for a term not exceeding one year.

240. According to the Penal Code section 173 (misuse of public authority), a penalty of imprisonment for a term not exceeding six years shall be applied to any person who, when exercising public authority, against his or her better judgment commits a gross breach of official duty (subparagraph a), commits a breach of official duty with the intent of making a gain personally or for other persons (subparagraph b), commits a breach of official duty that results in serious disadvantage, harm or wrongful deprivation of liberty (subparagraph c), or otherwise misuses public authority (subparagraph d).

241. The Norwegian Bureau for the Investigation of Police Affairs shall investigate cases where employees of the police or prosecuting authority are suspected of committing criminal offences in the course of duty, cf. the Criminal Procedure Act 67, sixth paragraph, and Regulations on Prosecution Instructions (Prosecution Instructions) chapter 34.

242. Health personnel responsible for such actions or omissions as mentioned in Article 22 subparagraph a, b or c of the Convention, may be sanctioned according to the Health Personnel Act chapter 11, which includes both administrative and criminal sanctions.

243. According to the Child Welfare Act section 2-3, the County Governor is the central government child welfare authority at county level. The County Governor has a duty to supervise child welfare activities in the municipalities. The County Governor shall also ensure that the municipalities receive advice and guidance. The Child Welfare Act does not regulate sanctions against child welfare personnel who commit acts or omissions as mentioned in Article 22 of the Convention. The general criminal provisions mentioned above will, however, apply.

Article 23

244. According to Article 23 of the Convention, each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to prevent the involvement of such officials in enforced disappearances, emphasise the importance of prevention and investigations in relation to enforced disappearances and ensure that the urgent need to resolve cases of enforced disappearance is recognised.

245. In Norway, prison officers and other law enforcement personnel, medical personnel, public officials and other persons who are involved in the custody or treatment of persons deprived of liberty, receive proper instruction in the legal provisions relevant to their respective field of work as part of their professional training. The procedural guarantees described in this report, reflected in the Constitution and in the relevant legislation, are part of this training and serve to prevent enforced disappearances.

246. The University College of Norwegian Correctional Service (KRUS) offers the only primary education for prison officers in Norway through an accredited two-year programme leading to the degree University College Graduate in Correctional Studies. KRUS also hosts a number of courses and conferences for employees of the correctional service.

247. The Norwegian Directorate of Health has prepared guidelines, supervisors and courses, including e-learning courses, which include training on human rights in the health sector. An example is an e-learning course designed by the Directorate of Health on coercion in mental health care with themes such as consent competence and use of coercion.

248. There are separate regulations to the Child Welfare Act on the rights of the child and the use of coercion in child welfare institutions. Good knowledge of the rights and regulations is important to ensure proper care and treatment and to safeguard the child's personal integrity and other rights. It is the responsibility of the manager of each institution to ensure that all employees complete the necessary training and that this competence is maintained. The Directorate of Children, Youth and Family Affairs has developed guidelines and e-

learning material, and provides training for employees. The training course has recently been upgraded and improved.

249. On 1 January 2023 a new Child Welfare Act will enter into force. The act stipulates that all new employees in institutions must have relevant education at the bachelor's degree level. This will further strengthen the competency of the institutions and legal safeguards for children.

250. Military personnel also receive training in relevant international law obligations.

Article 24

Article 24 (1)

251. Article 24 of the Convention grants specific rights to a 'victim' of enforced disappearance. Pursuant to Article 24 (1) of the Convention, 'victim' means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

252. There have been no cases of enforced disappearance in Norway. However, if a case of an enforced disappearance should occur, the term 'victim' will be applied in conformity with the Convention. Under Norwegian law, the position of victims is regulated in, for instance, the Criminal Procedure Act.

Article 24 (2)

253. According to Article 24 (2) of the Convention, each victim of an enforced disappearance has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.

254. Under domestic law, the police and the prosecuting authority must inform victims (in a statutory order) about the development and progress of the criminal case, unless this is inadvisable due to the investigation, cf. section 93 e of the Criminal Procedure Act and section 7-6 of the Prosecution Regulations. This would also apply to the crime of enforced disappearance, despite the fact that no such cases exist. The provisions concern information which must be provided by the police and the prosecuting authority on their own initiative. In practice, information will also often be provided on the basis of enquiries from victims.

255. Pursuant to the Police Databases Act section 25, first paragraph, the duty of confidentiality does not preclude the data in a case being made known to the parties to the case, to aggrieved parties or surviving relatives, or to their representatives, and otherwise to those whom the data directly concern.

Article 24 (3)

256. According to Article 24 (3) of the Convention, each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

257. There have been no cases of enforced disappearance in Norway.

Article 24 (4) and (5)

258. According to Article 24 (4) and (5) of the Convention, each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation, which covers material and moral damages and, where appropriate, other forms of reparation, such as restitution, rehabilitation, satisfaction, including restoration of dignity and reputation and guarantees of non-repetition.

259. A victim of an enforced disappearance can file a claim for compensation and reparation against the State in accordance with the general principles of tort law.

Article 24 (6)

260. According to Article 24 (6) of the Convention, each State Party shall, without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

261. In Norway, there are no special provisions governing the legal status of persons who are victims of an enforced disappearance. The general Act relating to persons who have disappeared (the Disappeared Persons Act) would therefore apply.

262. The Disappeared Persons Act provides rules on how to proceed to decide whether a missing person is to be declared dead, the effect of such a decision and rules on the seizure of the person's property if the person later recovers, and on the management of the estate of a disappeared person.

263. Chapter 2 of the Disappeared Persons Act concerns the management of the estate of a disappeared person, chapter 4 regulates the effects of a judgment stating that a person shall be considered dead, including division of estate and effects on marriage, and chapter 5 set out rules of restitution if the disappeared person returns.

264. Notification that a person has disappeared shall be sent to the District Court at the place where the missing person was domiciled, cf. the Disappeared Persons Act section 4. It follows from section 5, second paragraph, that the County Governor, if it is needed to safeguard the interests of the missing person, shall appoint a guardian for the missing person. If the disappeared person has a spouse, a common-law spouse or a legal representative suitable to safeguard the interests of the missing person, one of these should normally be appointed. The Act relating to guardianship for persons who are legally incapable (the Guardianship Act) applies as far as it is appropriate, cf. the Disappeared Persons Act section 5, fourth paragraph.

265. If a person is missing under such circumstances that there is no reason to doubt that the person is dead, the District Court may immediately decide that the person shall be considered dead, cf. the Disappeared Persons Act section 8, first paragraph. A request for a decision pursuant to section 8, first paragraph, can be made by the spouse or the common-law spouse of the missing person, the heir of the missing person or other persons that can indicate that they have a genuine need for such a decision.

266. Furthermore, if a person has disappeared under such circumstances that the person is most likely dead, a case may be brought that the missing person shall be presumed dead, when one year has elapsed after the last time when one knew that the person was alive, cf. the Disappeared Persons Act section 9, first paragraph. In other cases, the case that a person is to be presumed dead may be raised when five years have elapsed after the last time when one knew that the person was alive, cf. section 9, second paragraph. A request pursuant to section 9 may be submitted by the spouse, the common-law spouse or the heir of the missing person, or by others that can show that they have a genuine need for a decision that the person shall be presumed dead, cf. section 10.

Article 24 (7)

267. According to Article 24 (7) of the Convention, each State Party shall guarantee the right to form and participate freely in organisations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

268. Under Norwegian law, everyone has the right to form, join and leave associations, cf. the Norwegian Constitution Article 101, first paragraph.

269. Beyond the aforementioned, the Instructions for Official Studies of Central Government Measures (Instructions for Official Studies) set out guidelines for ensuring a sound basis for making decisions on central government measures, including the drafting of legislation. The instructions include guidelines on early involvement, presentation and consultation. It follows from the Instructions for Official Studies section 3-3 that proposed

laws and regulations shall normally be circulated for consultation. Such consultations shall be open to input from anyone. In this manner, consultations are in place to ensure everyone a role in the process of drafting legislation.

Article 25

Article 25 (1)

270. According to Article 25 (1) of the Convention, each State Party shall take the necessary measures to prevent and punish under its criminal law the following acts: (a) the wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance, and (b) the falsification, concealment or destruction of documents attesting to the true identity of the children referred to under (a).

271. Norwegian criminal law is in conformity with the requirements in Article 25 (1) of the Convention, cf. *inter alia* the Penal Code section 261 concerning removal from care of a minor, sections 361 and 362 concerning document forgery and section 363 concerning destruction of a document etc.

Article 25 (2) and (3)

272. According to Article 25 (2) of the Convention, each State Party shall take the necessary measures to search for and identify the children referred to in first paragraph, subparagraph (a), of Article 25 and to return them to their families of origin, in accordance with legal procedures and applicable international agreements. It follows from Article 25 (3) that States Parties shall assist one another in searching for, identifying and locating the children referred to in Article 25 (1), subparagraph (a).

273. In this regard, reference is made to the general observations in this report relating to criminal investigation and cooperation.

Article 25 (4)

274. According to Article 25 (4) of the Convention, States Parties which recognise a system of adoption or other form of placement of children, shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

275. It is the Norwegian Government's understanding that this provision does not require the automatic annulment of an adoption which stems from an enforced disappearance, but that the States Parties are required to have a procedure or procedures in place that allow for a review of the adoption, taking into the consideration the best interests of the child.

276. According to the Act relating to Adoption (the Adoption Act) section 48, if the adoptive child or one of the parents is habitually resident in Norway and a foreign authority or court revokes or reverses a foreign adoption, this decision will be recognised in Norway if the Norwegian adoption authority so consents and no agreement with another state provides otherwise. This provision would apply in a case where an adoption that originated in an enforced disappearance has been decided by foreign authorities, and where a foreign authority or court decides to annul the adoption. When reviewing the adoption, the best interests of the child will be the primary consideration, cf. the Adoption Act section 4.

277. If the adoption decision is taken by Norwegian authorities, the decision may be reversed if it must be deemed invalid, cf. the Adoption Act section 35 and the Public Administration Act section 35. An adoption decision may not be reversed later than ten years after the date of the decision, cf. the Adoption Act section 40. The legality of the adoption decision may however still be brought before the courts.

278. It is considered that the above-mentioned rules comply with the obligation in Article 25 (4) of the Convention concerning the possibility of review of any adoption or placement of children that originated in an enforced disappearance.

Article 25 (5)

279. For actions and decisions that affect children, the best interests of the child shall be a fundamental consideration, cf. the Norwegian Constitution Article 104, second paragraph. Furthermore, according to the Constitution Article 104, third paragraph, second sentence, the authorities of the state shall create conditions that facilitate the child's development, including ensuring that the child is provided with the necessary economic, social and health security, preferably within their own family.

Annex

Unofficial translation of the Norwegian Penal Code sections 175 a and 175 b

§ 175 a. Enforced disappearance

A penalty of imprisonment for a term not exceeding 15 years shall be applied to any person who on behalf of a state or with the state's permission, support or consent contributes to an enforced disappearance. 'Enforced disappearance' shall mean arrest, detention, abduction or other deprivation of liberty, when it is denied that the deprivation of liberty has taken place, or it is kept secret what has happened to the person deprived of his or her liberty or where he or she can be found, so that he or she is deprived of legal protection.

The same penalty applies to a superior who:

(a) With intent or negligently ignores information that persons under the superior's effective authority and control are committing or preparing to commit a criminal enforced disappearance, and

(b) Fails to take necessary and reasonable measures to prevent or stop a criminal enforced disappearance or fails to report the matter to the competent authorities.

§ 175 b. Aggravated enforced disappearance

The penalty for aggravated enforced disappearance is a term of imprisonment not exceeding 21 years.

In determining whether an enforced disappearance is aggravated, particular weight shall be given to:

(a) Whether the aggrieved person, on account of the disappearance, dies or sustains considerable harm to his or her body or health;

(b) Whether the aggrieved person was ill or injured, pregnant, was a minor, had a disability or was in some other way particularly vulnerable, or

(c) Whether the aggrieved person suffered a physical assault committed by several people acting together or was raped.
