



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances Twenty-third session

Summary record of the 404th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 13 September 2022, at 10 a.m.

Chair: Ms. Villa Quintana

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention *(continued)*

Initial report of Mali (continued) (CED/C/MLI/QAR/1; CED/C/MLI/1;
CED/C/MLI/Q/1; CED/C/MLI/RQ/1)

1. *At the invitation of the Chair, the delegation of Mali joined the meeting.*
2. **Mr. Ayat** (Country Rapporteur) said that he wished to know, on average, how many visits the National Human Rights Commission had undertaken to places of detention per year over the previous five years; whether during those visits the Commission verified detention registers to ensure that detainees had not been subjected to enforced disappearance; and whether it visited all places where persons could be deprived of their liberty, including migrant detention facilities. In particular, he would welcome information on the visits carried out by the Commission during the coronavirus disease (COVID-19) pandemic. The Committee would also appreciate clarification as to when exactly persons deprived of their liberty could exercise their rights to be assisted by a lawyer, to undergo a medical examination and to inform their families or another person of their choice of their detention, and as to what sanctions could be imposed if those rights were violated.
3. The delegation might also provide details of how registers of persons deprived of their liberty were maintained and updated, including who performed those duties and the sanctions applicable for failure to keep registers up-to-date. The State party's assertion that no statistics were available on the number of appeals challenging the lawfulness of deprivation of liberty was somewhat questionable as, under normal circumstances, an approximate figure could easily be calculated by examining court records.
4. **Mr. de Frouville** (Country Rapporteur) said that he would welcome information on the State party's plans to bring its Code of Military Justice into line with the Convention and other international instruments by excluding the competence of the military courts in cases of enforced disappearance and in cases involving civilian defendants. Turning to article 16 of the Convention, he said that, since the State party's initial report addressed only extradition, he would appreciate clarification as to whether a person could be expelled, returned or surrendered if he or she was at risk of being subjected to enforced disappearance in the country of destination. He understood that a preliminary bill on international cooperation in criminal matters was being drafted; it would be useful to know the current status of the bill and whether it would take into account all the State party's international obligations under article 16.
5. It would be helpful to learn how the General Directorate of the Forensic Police assisted in searches for disappeared persons and to hear more about the National Database of Genetic Profiles, including its purpose, whether the data stored in it could be compared to samples taken from human remains and whether the General Directorate of the Forensic Police might be able to assist in such work. He would also like to know whether the creation of the General Directorate and the National Database had served to increase the State party's capacity to identify the remains found in mass graves and whether the State party intended to exhume and identify those remains in line with international standards. The delegation might indicate whether the State party planned to include in its domestic legislation, including the texts currently being drafted, a definition of a victim of enforced disappearance that was fully in line with that contained in article 24 of the Convention.
6. He would likewise welcome details of the measures in place to enable victims of enforced disappearance to exercise their right to know the truth, including alternatives to legal proceedings, and details of the work carried out by the Truth, Justice and Reconciliation Commission, including the outcomes of its investigations, the documentation of its activities, the recommendations it had made and the initiatives it had undertaken. He understood the Commission's mandate to cover human rights violations that had occurred between 1960 and 2013; it would be useful to know whether future bodies' mandates would cover violations that had occurred since 2013 and address cases of enforced disappearance specifically, and whether there were plans to introduce specific mechanisms to allow reparation to be made to victims, particularly in the light of the Commission's recommendations. He would also welcome information on any mechanisms established under the Act on National

Understanding to address the situation of disappeared persons and assist their beneficiaries, along with details of the action taken to follow up on the recommendations of the International Commission of Inquiry.

7. Although the legal provisions governing the legal status of absent or disappeared persons were comprehensive, he understood that applications for declarations of absence or presumed absence must be lodged with the civil court nearest to the absent person's last place of residence. He wondered whether an alternative procedure existed for internally displaced persons. He would like to receive statistics on the number of applications submitted for such declarations in cases of disappearances that had occurred during periods of conflict and political unrest and to know to what extent the Personal and Family Code was compatible with the Act on National Understanding. He would also be interested to know whether persons wishing to benefit from the Act's provisions on reparation and assistance, and to bring civil action in that connection, first had to obtain a declaration of disappearance or absence from the courts, a process which, he understood, could take up to 10 years. He wondered to what extent the enjoyment of social welfare, financial, family and property rights by such persons was affected by such a lengthy process. Lastly, the delegation might describe how the sexist provisions of the Personal and Family Code affected women whose husbands had been subjected to enforced disappearance and whether the State party had assessed the specific impact of enforced disappearance on women and children.

The meeting was suspended at 10.30 a.m. and resumed at 10.55 a.m.

8. **A representative of Mali** said that public prosecutors were required to visit the investigation units of the police and gendarmerie at least quarterly to monitor custody conditions, and to report their findings to the chief prosecutor. Other bodies, such as the National Human Rights Commission, could also visit those facilities. Migrants were not detained in Mali.

9. **A representative of Mali** said that, from the moment of their arrest, suspects had the right to be assisted by a lawyer and to be examined by a doctor of their choice. The State appointed lawyers to represent persons unable to retain and instruct their own counsel. The officials responsible for upholding those rights had received training from human rights actors. Any person who failed to respect those rights was liable to disciplinary sanctions, which included official warnings, and could face legal proceedings.

10. **A representative of Mali** said that unannounced inspections of gendarmerie and police stations were undertaken to verify compliance with the requirements laid down in the Code of Criminal Procedure. Representatives of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) were also present and reported any violations, which could constitute grounds for dismissal.

11. **A representative of Mali** said that criminal investigation officers were normally required to inform suspects' families of their detention. However, in practice, suspects' lawyers conveyed the necessary information; once a suspect had been charged, proceedings could not continue without a lawyer's being present. In the absence of counsel, investigating judges were obliged to inform defendants' relatives of their detention.

12. **A representative of Mali** said that the release of persons deprived of their liberty could be requested at any time during the proceedings. Committal orders issued by public prosecutors were subject to oversight, and prosecutors or other officials found to be in breach of the applicable procedural rules were liable to disciplinary sanctions, ranging from official reprimands to dismissal without the right to a pension, and could be subject to legal proceedings, which could result in damages being awarded to the victim. The draft revised Code of Criminal Procedure would require challenges to committal orders to be dealt with within eight days.

13. **A representative of Mali** said that detention could be challenged via several avenues if investigating judges failed to respect procedural rules. In one case, an investigating judge had refused to extend the validity of a committal order, in breach of the Code of Criminal Procedure, which had rendered unlawful the detention of several individuals. The case had been referred to the Court of Justice of the Economic Community of West African States, which had awarded substantial damages to the persons involved.

14. **A representative of Mali** said that, in Mali, military courts were not competent to try cases of enforced disappearance because it was not a military offence.
15. **A representative of Mali** said that the military courts could try military personnel only for military crimes; it was the civilian courts that were competent to try military personnel suspected of involvement in acts of enforced disappearance.
16. **A representative of Mali** said that efforts were being made to combat impunity within the army. No one was above the law, regardless of rank.
17. **A representative of Mali** said that the draft revised Criminal Code would classify enforced disappearance as an ordinary crime triable by the civilian courts.
18. **A representative of Mali** said that, if the safety and right to a fair trial of a person subject to extradition proceedings could not be guaranteed, his or her extradition would not be automatic.
19. **A representative of Mali** said that the General Directorate of the Forensic Police was operational and had branches across Mali. Its staff, which comprised civilians, military personnel and police and gendarmerie officers, worked to analyse DNA and other samples in order to support investigations into enforced disappearances. The National Database of Genetic Profiles, set up in cooperation with the personal data protection authorities, would be available for use by judicial officials and any other interested parties in investigations and searches for disappeared persons.
20. **A representative of Mali** said that the draft revised Code of Criminal Procedure would allow any person directly affected by the crime of enforced disappearance to bring civil action. In the case of war crimes and genocide, civil action could be brought by registered organizations that had existed for at least five years and whose main purpose was to defend the collective interests of certain groups, provided that the victim had given their consent. Civil action, which was not subject to a statute of limitations, could be brought at any stage and even in the absence of criminal proceedings.
21. **A representative of Mali** said that the General Directorate of the Forensic Police had replaced the forensic units previously located within individual gendarmerie and police stations and would enable DNA samples to be analysed in Mali, rather than abroad.
22. **A representative of Mali** said that, while the establishment of the General Directorate constituted a significant step forward, more needed to be done to increase its resources.
23. **A representative of Mali** said that applications for declarations of presumed absence could be lodged with the competent civil court and, if the absent person was not heard from for three years, an application could be made for a declaration of absence, which would be treated as definitive after 10 years. In the meantime, interested parties could apply to become administrators of the absent person's assets. Furthermore, the children of a Malian citizen who had died or disappeared in specific circumstances, including during periods of war and armed conflict, could be declared wards of the State and receive, *inter alia*, free education and health care. Civil action could be brought before the 10-year time period had elapsed if a request for urgent measures was submitted.
24. **A representative of Mali** said that separate procedures applied for disappeared and absent persons. Disappeared persons were presumed to have died; requests for declarations of death could be lodged by public prosecutors or interested parties. Once a declaration of death had been issued, the estates of disappeared persons could be administered.
25. **Mr. Ayat**, welcoming the assurances given by the delegation that, in Mali, military courts did not have competence to hear cases involving enforced disappearance, said that many African countries had already expressly recognized that exclusion when updating their codes of military justice. To prevent mistrial and misapplication of the law, the jurisdiction of military courts should be strictly limited to disputes arising in the course of military activity. He welcomed the State party's stated willingness to take steps to align its legal framework with the Committee's jurisprudence on that issue.
26. The State party's response to the Committee's question regarding access to information about persons deprived of their liberty suggested that access was afforded only

to institutions – specifically, the National Human Rights Commission and civil society organizations; there was no indication as to whether individuals, including, notably, relatives, also enjoyed access. He would therefore appreciate details of any mechanisms in place to ensure that the family members and legal representatives of persons reported to have disappeared, and also, where appropriate, journalists, enjoyed the access rights and guarantees recognized in the Convention.

27. Noting that the State party had not yet responded to the Committee's request for information on the human rights training offered to the key stakeholders listed in article 23 (1) of the Convention, he said that the delegation might provide an overview of the content and scope of any human rights training offered. Likewise, since only very general information had been provided by the State party in response to the Committee's request for details of its efforts to identify and repatriate the remains of persons who had lost their lives while attempting to migrate, to support the relatives of victims and to bring those responsible to justice, specific details of any cooperation initiatives with countries of transit and destination and any joint action to those ends would be appreciated, as joint measures and structures were essential to effectively monitor migrant flows and mitigate the inherent risks. The Committee would particularly like to know how the State party ensured that serious human rights violations, including enforced disappearance, reported to have occurred on migration routes were duly investigated and that the perpetrators were duly prosecuted, especially when the investigations and prosecutions in question required the cooperation of one or more neighbouring States.

28. **Mr. de Frouville**, noting that comprehensive responses to a number of questions were outstanding, said that he would particularly appreciate more detailed information about the role and function of the military courts in Mali. That information was especially important in the light of the apparent contradiction between information previously provided by the State party, which indicated that military courts could not exercise jurisdiction in respect of cases of enforced disappearance, and domestic legislation, which gave the military courts jurisdiction to hear all offences imputed to serving members of the armed forces, including serious international human rights offences. He would also like to receive more details about the declarations of death and declarations of absence to which the delegation had referred earlier; in the context of enforced disappearance, it was important to ensure a clear distinction between the two. The delegation should also pay particular attention in its responses to the status of the women who were left behind, unaware of the whereabouts of their male family members and struggling to deal with that situation. He wished to remind the delegation that more comprehensive responses to those and other questions could be provided subsequently in writing.

29. He would like to know whether there were any associations for victims of enforced disappearance active in Mali and, if so, what support, if any, the State provided to facilitate their work. Worrying reports of shrinking civic space had been received from various sources, including the United Nations Independent Expert on the situation of human rights in Mali, Mr. Aloune Tine. After a visit in August 2022, Mr. Tine had expressed particular concern about censorship of the media, the climate of fear and mistrust that forced journalists and other media professionals to self-censor, the barriers to freedom of action and expression encountered by civil society organizations in their everyday work and the risk of reprisals faced by any person or organization that questioned or criticized the State authorities. A further concern was the fact that enforced disappearance appeared to be one of the reprisal measures to have been used against human rights defenders in the past, including against Mr. Clément Dembélé, the director of a non-governmental organization working to combat corruption, and Mr. Birame Touré, a journalist, whose case had already been raised during the dialogue. If the search for disappeared persons, the quest to establish the truth and the related processes of justice were to be effective, and the Convention was to be effectively applied, the unrestricted participation of civil society, victims and members of their families and an uncensored media were essential. He would therefore like to know what steps the State party envisaged taking to ensure that the rights recognized in article 24 (7) of the Convention were upheld in full.

30. While the State party had provided information about the measures in place to support the demobilization and social reintegration of child soldiers and other children used in armed

conflict, it had not responded directly to the Committee's request for details of the measures taken with a view to locating children who had been forcibly displaced or forced to flee their villages as a result of attacks perpetrated by armed ethnic militias or Islamist groups, or had disappeared in other circumstances, including as a result of child trafficking. Noting that, according to the latest report of the Secretary-General of the United Nations on the situation in Mali (S/2022/446), grave violations committed in April and May 2022 had included 13 abductions, he said that the Committee would like to hear more about what was being done to reunite displaced or disappeared children with their families. Especially useful would be details of the identification and documentation initiatives being led by the regional directorates for the promotion of women, children and the family, of the circumstances in which children might be placed with temporary foster families or in processing and referral centres, and of the steps taken to ensure that children were protected against all risk of trafficking or abduction throughout those processes.

31. **Mr. Diop** said that he would like to know more about extradition proceedings and the safeguards in place to ensure that persons subject to extradition did not subsequently disappear. Sufficient safeguards appeared to exist in the case of extraditions prompted by a request from another State, which were generally judicial in nature, but the safeguards were less evident in the case of expulsion and return proceedings initiated internally, which were generally administrative in nature. He wondered whether any avenues of recourse were available to persons facing such proceedings, including, specifically, any procedure for requesting a stay of expulsion or return pending assurances that they would not be subjected to enforced disappearance or other violations in the destination country.

32. **The Chair** said that she would be interested to know whether public officials received training in the application of the Guiding Principles for the Search for Disappeared Persons and whether the Principles had been widely disseminated among judges and other persons with search functions and incorporated into the relevant information and search tools. She would also like to know whether the General Directorate of State Security was a civilian or military institution and what functions it performed.

33. **A representative of Mali** said that access to information about persons deprived of their liberty and victims of enforced disappearance and other violations was open to both individuals and institutions, that there was a clear procedure for requesting access and that requests were granted or refused according to the status of the applicant. Individuals entitled to obtain access in cases of enforced disappearance included suspects and defendants in the legal proceedings and the victim's legal representatives and relatives, who had the right to join the criminal proceedings as civil parties. Moreover, the draft revised Criminal Code would stipulate that relatives must be involved at every stage of the process, on pain of the proceedings being declared null and void. Relevant information about specific cases might be shared with journalists, media representatives and other interested parties through the public prosecution service, provided that its dissemination was not restricted by professional confidentiality requirements.

34. **A representative of Mali** said that, as was the case in most countries, information about cases of enforced disappearance and other serious human rights violations was protected by professional confidentiality requirements and was thus not accessible to all. However, while those confidentiality requirements were usually strictly respected in the preliminary investigation stages, it was recognized that members of the public subsequently had a right to be informed of certain details and that family members should have access at all times.

35. **A representative of Mali** said that human rights modules had been taught at the National Judicial Training Institute for at least 10 years. The Ministry of Justice and Human Rights also offered in-service training modules, which had been approved by the United Nations Development Programme and the United Nations Office on Drugs and Crime (UNODC), for members of the judiciary and prison staff. In the central and northern areas of Mali, MINUSMA, the United Nations Children's Fund, the Office of the United Nations High Commissioner for Human Rights and other United Nations agencies provided capacity-building on a regular basis. As part of a programme supported by the Embassy of the Netherlands, training sessions were held annually on issues including gender-based violence

and enforced disappearance. Certain sections of related protocols had been translated into local languages.

36. **A representative of Mali** said that the Ministry of Defence and Former Combatants had a human rights unit that worked with MINUSMA and other stakeholders to provide members of the defence and security forces with training, including on international humanitarian law and international human rights law, both at the beginning of their career and in the form of regular in-service training. The Alioune Blondin Beye Peacekeeping School of Bamako trained civil and military judges on peacekeeping-related matters. In total, between 5,000 and 10,000 officials had received training on human rights issues.

37. **A representative of Mali** said that the Central Command of the Armed Forces had a human rights division that was responsible for providing relevant training to all units and in all military colleges.

38. **A representative of Mali** said that Mali had signed judicial cooperation agreements with the majority of its neighbouring countries with a view to monitoring migrant flows and supporting migrants. With technical support from UNODC, the agreements had recently been reviewed to improve their flexibility. The most pressing challenges were the porousness of the country's borders and the lack of personnel to patrol large portions of them. A number of terrorist groups operated in Mali, Mauritania and the Niger, in particular in areas where it was difficult for the State authorities to exercise control. Owing to the high level of insecurity and the large number of anti-personnel mines present in many such areas, judges were based in regional centres for their own safety, thus leaving large parts of the country with little oversight.

39. When offences were reported, courts received information from a range of sources, including local officials, investigating authorities and informants. Investigations were often hampered by the difficulties in reaching certain areas and the threat posed by terrorist activity.

40. The International Committee of the Red Cross and the International Organization for Migration were the Government's strategic partners when it came to repatriating migrants. The embassies and diplomatic missions of Mali were closely involved in efforts to return Malian nationals from Algeria, Libya, Morocco and Tunisia. Closer cooperation, in particular with forensic institutions, would be necessary before the bodies of migrants that had washed up on the shores of Libya, Morocco and Tunisia could be identified and repatriated.

41. The Ministry of Justice and Human Rights worked closely with the National Human Rights Commission, the Malian Human Rights Association and Amnesty International. Given the magnitude of the problem of enforced disappearance and its links with security concerns, it would be extremely useful to have a specialized network to deal with the issue, similar to the network that existed to safeguard children. All persons, including the families of disappeared persons, were free to set up associations and to apply for funding from the United Nations Children's Fund or UNODC to support their activities.

42. **A representative of Mali** said that grass-roots organizations often emerged in response to specific cases. For example, in the wake of the case of the journalist Birama Touré, two associations had been created to lobby the judiciary to expedite the proceedings.

43. **A representative of Mali** said that, in 2010 and 2011, work had begun to review domestic legislation with a view to removing any provisions that discriminated against women and were incompatible with the international treaties to which Mali was a party. Although progress had stalled since then as a result of the crisis situation in the country, work had continued at the cabinet level to revise the Criminal Code and the Personal and Family Code.

44. **A representative of Mali** said that he wished to clarify that the 13 cases of child abduction mentioned by Mr. de Frouville should be referred to as alleged cases. The National Coordinating Committee on Trafficking in Persons and Related Practices worked directly with the police and other authorities to search for victims of trafficking, including children. The Government had signed agreements with Burkina Faso, Côte d'Ivoire, Equatorial Guinea and Senegal to tackle cross-border trafficking of children.

45. With regard to child soldiers, Mali had ratified the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict. The Government had signed a number of agreements on the repatriation of child soldiers, as had several armed groups, including the Platform coalition of armed groups.

46. **A representative of Mali** said that, when reports of disappeared children were received, the security forces deployed their specialized units nationwide and liaised with the International Criminal Police Organization, which facilitated communication with neighbouring countries. In many cases, persons who were reported missing or disappeared after having been interviewed by police were found simply to have been transferred to another part of the country for continued questioning. The authorities regularly came across instances in which parents had reported their children missing or disappeared because the latter had decided to leave the country without informing their families.

47. **A representative of Mali** said that cases of wrongful removal of children could be prosecuted under section 9 of the Criminal Code. Article 240 of the Code provided for a sentence of between 5 and 20 years' imprisonment for the offence of unlawfully removing a person from the location in which he or she had been placed by the authorities. Under article 241, if the offence was committed against a child under 15 years of age and without the use of fraud, violence or threats, a sentence of between 5 and 10 years' imprisonment could be imposed.

48. Birth registration was mandatory under article 157 of the Personal and Family Code. Failure to register a live birth was punishable by a fine of between 2,500 and 5,000 CFA francs and/or between 1 and 3 years' imprisonment. Officials who violated the provisions of the Code would be subject to more severe penalties.

49. **A representative of Mali** said that the General Directorate of State Security was a civilian institution. The expulsion or refoulement of an individual could be ordered by an administrative court. The Ministry of Security and Civil Defence was responsible for enforcing such orders. Appeals could be filed through the administrative courts and, if applicable, the Supreme Court.

50. **Mr. Konate** (Mali) said that the Committee's recommendations would be taken into account with a view to establishing a more robust legal framework to combat enforced disappearance. The Government was aiming to mobilize 65 billion CFA francs in support of the national policy on reparations devised by the Truth, Justice and Reconciliation Commission and was seeking financial support from its partners to that end. The creation of the General Directorate of the Forensic Police would help to address the current shortage of qualified forensics personnel and contribute to the National Fingerprint Database and the national DNA database. Bills were being drafted on the protection of victims, witnesses and whistle-blowers, on trafficking in persons and on smuggling of migrants.

51. Although much progress had been made, many challenges remained, particularly in the light of the insecurity that persisted in Mali. He wished to reiterate the Government's commitment to upholding the provisions of the Convention and to strengthening respect for human rights in Mali.

The meeting rose at 1.05 p.m.