



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Mauritania under article 29 (1) of the Convention*

I. General information

1. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications (arts. 31 and 32).
2. Please provide information, including specific examples, on the powers of the National Human Rights Commission with respect to cases of enforced disappearance and on the activities of the Commission as they relate to the Convention. Please also indicate whether the Commission has received any complaints concerning rights and obligations under the Convention; if it has, please describe the action taken and the results thereof. Please clarify why the Commission does not have access to information on Mauritians who have been subjected to enforced disappearance abroad.
3. With reference to paragraphs 69 and 87–89 of the State party's report, please provide information on the preparation of the report, in particular with regard to consultations held with civil society representatives.¹
4. With reference to paragraph 56 of the report, please clarify whether the Convention is directly applicable in national law and provide examples of judicial decisions in which the provisions of the Convention were applied or violations of the Convention were established.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

5. Please provide updated statistical data, disaggregated by sex, age, nationality, ethnicity, religious affiliation, occupation and any other relevant criteria in Mauritania, on the number of persons who have disappeared in the State party, specifying the date and place of their disappearance, the number of persons who have subsequently been found and the number of cases in which there was some form of State involvement within the meaning of article 2 of the Convention. In this regard, please indicate the number of cases of alleged enforced disappearance that occurred before the Convention entered into force and in which the fate of the disappeared persons has not been clarified, including during the period of unresolved humanitarian issues (*passif humanitaire*) (arts. 1–2).
6. Please explain how articles 39 and 71 of the Constitution ensure that no exceptional circumstances may be invoked to justify an enforced disappearance. Please also provide

* Adopted by the Committee at its twenty-first session (13–24 September 2021).

¹ CED/C/MRT/1.



information on the rights that may not be derogated from in a state of alert and the relevant legislation (art. 1).

7. Please provide further information on the initiative mentioned in paragraph 122 of the report relating to the adoption of a specific criminal law on enforced disappearance and indicate whether this initiative will involve the establishment of enforced disappearance as an offence under the Criminal Code in accordance with the definition set out in article 2 of the Convention, both as a separate offence and as a crime against humanity, in accordance with articles 4 and 5 of the Convention (arts. 2, 4 and 5).

8. With reference to paragraphs 111–114, 118, 121 and 126 of the report, please clarify which provisions of national legislation are invoked to handle cases of enforced disappearance as defined in article 2 of the Convention. In that regard, please indicate how “the arrest, detention, abduction or any other form of deprivation of liberty” followed by the “refusal to acknowledge the deprivation of liberty” or the “concealment of the fate or whereabouts of the disappeared person” would be punished under national legislation (art. 2).

9. Please indicate whether any complaints have been lodged regarding acts defined in article 2 of the Convention that were carried out by persons or groups of persons acting without the authorization, support or acquiescence of the State, including disappearances occurring in the context of migration and trafficking in persons. If so, please provide disaggregated data, including by sex, age and nationality of the victim, on the investigations carried out and their outcome, and on the sanctions imposed on the perpetrators (art. 3).

10. With reference to paragraphs 124 and 131–138 of the report, please specify: (a) the maximum and minimum penalties provided for in the Criminal Code for offences that could be invoked to handle cases of enforced disappearance and explain how the extreme seriousness of the crime is taken into account; (b) the possible mitigating or aggravating circumstances applicable to these offences, indicating the maximum and minimum penalties that would apply in such cases; and (c) the maximum and minimum penalties for enforced disappearance when it constitutes a crime against humanity (arts. 2, 5 and 7).

11. With reference to paragraph 129 of the report, please explain how article 111 of the Criminal Code is compatible with article 6 (2) of the Convention. In this regard, please specify the domestic provisions that expressly prohibit orders or instructions prescribing, authorizing or encouraging enforced disappearance. With reference to paragraph 223 of the report, please explain how article 15 of Act No. 2015-033 of 10 September 2015 on Combating Torture would be applied in cases of enforced disappearance in order to guarantee that a person who refuses to obey such an order is not punished (arts. 6 and 23).

12. With reference to paragraphs 125, 127, 128 and 130 of the report, please indicate whether the State party envisages explicitly incorporating into domestic law the criminal responsibility of: (a) any person referred to in article 6 (1) of the Convention; and (b) superiors in accordance with article 6 (1) (b) of the Convention (art. 6).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

13. With reference to paragraphs 140–144 of the report, please indicate whether statutory limitations apply to the offences that may be invoked to deal with cases of enforced disappearance. If so, please clarify the applicable term of limitation and indicate whether it begins to run before or after the crime of enforced disappearance has ceased. Please also specify the measures taken to guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation (art. 8).

14. With reference to paragraphs 147, 149 and 151 of the report, please provide additional information, including the text of relevant legislation, on: (a) how the State party ensures its competence to exercise jurisdiction over the crime of enforced disappearance in the cases contemplated under article 9 (1) of the Convention; (b) the conditions under which the Mauritanian courts would have jurisdiction over a case of enforced disappearance committed abroad in which the victim or perpetrator is a national of Mauritania, in accordance with

article 9 (1) (b) and (c) of the Convention; (c) how the State establishes its competence to exercise jurisdiction over the crime of enforced disappearance regardless of the nationality of the perpetrator or victim and the place where the crime was committed, in accordance with article 9 (2) of the Convention (art. 9).

15. With regard to paragraph 142 of the report, please clarify the conditions under which the victim's waiver of a claim may suspend a prosecution. With reference to paragraph 118, please clarify how the State party ensures that all cases of enforced disappearance are automatically investigated in cases where no formal complaint has been lodged, taking into account that enforced disappearance is not classified as an offence in national law (art. 12).

16. Please indicate, giving details of applicable legislation: (a) who can report the fact that a person has been subjected to enforced disappearance; (b) how the State party ensures the protection of the persons referred to in article 12 (1) of the Convention; (c) the steps that victims must take to gain access to protection measures, indicating whether any persons affected by enforced disappearance have benefited from such measures since the entry into force of the Convention (art. 12).

17. With reference to paragraph 120 of the report, please provide statistical information, disaggregated by sex, age, nationality, ethnicity, religious affiliation, occupation and other relevant criteria in the State party, on: (a) the number of complaints received concerning acts defined in article 2 of the Convention committed during the period of *passif humanitaire*; (b) the number of complaints received regarding the acts defined in article 2 of the Convention that occurred before the Convention entered into force and in which the fate of the disappeared person has not been clarified; (c) the number of complaints received regarding the acts defined in article 2 of the Convention that occurred after the Convention entered into force; and (d) the number of investigations carried out, their legal basis and their outcome, including penalties imposed on perpetrators and reparations provided to victims (arts. 2, 12 and 24).

18. Please clarify how the amnesty decree established pursuant to Act No. 93-23 of 1993 regarding violations committed during the period of *passif humanitaire* is compatible with the State party's obligation under article 12 of the Convention to ensure the right to report cases of enforced disappearance and to investigate such reports. In this regard, please specify the remedies available to persons who report an enforced disappearance to the competent authorities in the event that the authorities refuse to investigate the case (art. 12).

19. With reference to paragraph 119 of the report, please indicate which State authorities are responsible for investigating cases of enforced disappearance and whether such cases may be investigated by military authorities or tried by military courts. Please provide information on the measures provided for in domestic law to prevent the alleged perpetrators of an enforced disappearance from influencing the investigations, including suspension from duty. Please also provide information on the safeguards in place to ensure the independence and impartiality of the judicial authorities, and on the provisions guaranteeing the competent authorities access to all information relevant to the investigation and to any place where there are reasonable grounds to believe that a disappeared person may be present (arts. 2, 11 and 12).

20. With reference to paragraph 187 of the report, and taking into account the fact that the offence of enforced disappearance is not established in the Criminal Code, please indicate the measures taken to ensure that enforced disappearance is an extraditable crime in all treaties with other States, whether or not they are parties to the Convention. Please also describe any potential obstacles to extradition that might exist under national legislation, extradition treaties or agreements with third countries with regard to enforced disappearance (art. 13).

21. With reference to paragraphs 153 and 178 of the report, please provide information on the national legislation applicable to requests for mutual legal assistance or judicial cooperation within the meaning of articles 14, 15 and 25 (3) of the Convention, as well as any limitations or conditions that may be imposed on such requests (arts. 14, 15 and 25).

IV. Measures to prevent enforced disappearances (arts. 16–23)

22. Please explain how the two acts mentioned in paragraphs 184 and 185 of the report regulate the ban on the expulsion, return, surrender or extradition of a person when there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. Please also specify how article 16 of the Convention is applied, and in particular: (a) the criteria used to assess this risk and how the information provided by both the receiving State and the person subject to expulsion, return, surrender or extradition is verified in practice; (b) the conditions under which the State party accepts diplomatic assurances where there are substantial grounds for believing that the person concerned would be in danger of being subjected to enforced disappearance; (c) whether an appeal may be lodged against a decision authorizing expulsion, return, surrender or extradition and, if so, by whom and before which authorities, what steps are involved and whether such an appeal has a suspensive effect; and (d) cases in which article 16 of the Convention has been applied in practice by the State party. In the light of reports of collective expulsions of undocumented migrants and refugees, please provide information on the status of the asylum bill (art. 16).

23. Please respond to allegations of the use of incommunicado detention, in particular for persons suspected of terrorism. Please explain how article 58 of the Code of Criminal Procedure and the laws on terrorism, corruption and narcotics are compatible with article 4 of Act No. 2015-033 on Combating Torture and article 17 (2) (d) and (f) of the Convention. In this respect, please indicate whether the State party intends to review its national legislation to ensure that all persons deprived of their liberty, including those held in solitary confinement or incommunicado detention, or for offences against the security of the State and terrorism, are able, upon arrest or transfer from one place of deprivation of liberty to another: (a) to communicate with and be visited by their relatives, whether immediate family members or not, by a lawyer or any other person of their choice, and, in the case of foreign nationals, by their consular authorities; and (b) to challenge the legality of the deprivation of liberty. Please indicate the measures taken to safeguard these rights during the coronavirus disease (COVID-19) pandemic. Please also indicate whether there have been complaints or allegations regarding failures to observe these safeguards and, if so, please provide information on action taken and its outcome, including sanctions imposed (art. 17).

24. Please clarify the responsibilities of each of the entities mentioned in paragraphs 206, 207 and 212 of the report with regard to visits to places of deprivation of liberty, and specify: (a) the average number of visits they have made to places of deprivation of liberty over the past five years and the frequency of such visits; (b) whether they are authorized to visit all places where persons are deprived of their liberty, whatever their nature, including detention centres for migrants and mental health institutions; (c) the safeguards in place to ensure their independence and immediate and unrestricted access to all places of deprivation of liberty throughout the country and to allow them to conduct unannounced visits, including during the COVID-19 pandemic. Please clarify whether other national or international entities or organizations have access to places of deprivation of liberty and under what conditions (art. 17).

25. With reference to paragraphs 190–192, 194, 195, 206 and 214 of the report, please provide details on the existing registers of persons deprived of liberty, the applicable legislation, the information contained in the registers and the places of deprivation of liberty where they are kept. Please explain how the registers are linked to each other, or to other registers, in order to facilitate the search for persons who could be considered as disappeared. Please describe the measures taken, including during the COVID-19 pandemic, to ensure that all persons deprived of liberty are registered and that all registers are immediately updated and monitored. Please clarify how the State party ensures access by any person with a legitimate interest to the information referred to in article 18 (1) of the Convention, including during the COVID-19 pandemic; please also indicate the measures taken to prevent and impose sanctions for the conduct described in article 22 of the Convention (arts. 17–20 and 22).

26. Please describe the programmes for specific training on the Convention that are provided to law enforcement personnel, whether 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, including judges, prosecutors and other law officials (art. 23).

V. Measures to protect and ensure the rights of victims of enforced disappearance (art. 24)

27. Please indicate whether there is a mechanism for launching an immediate search when a disappearance is reported, and provide information on the protocols and procedures for searching for, locating and releasing disappeared persons and the applicable time frames. Please describe the search processes implemented in order to find persons presumed to have been subjected to enforced disappearance during the period of the *passif humanitaire* and their outcome. Please also provide information on DNA databases established in the State party for the purpose of searching for disappeared persons (arts. 12, 19 and 24).

28. Please clarify the definition of “victim” in national legislation and explain how it is consistent with the definition contained in article 24 (1) of the Convention. Please (a) provide information on the procedures available to victims of enforced disappearance for obtaining compensation and reparation and indicate whether there are any applicable time limits; and (b) indicate whether access to compensation and reparation depends on the existence of a criminal judgment. Please specify which authorities are responsible for granting compensation and reparation and describe the type of reparation provided to victims of enforced disappearance. In this regard, please describe the reparations granted to victims of enforced disappearance during the period of the *passif humanitaire*, including those who did not have identification documents (art. 24).

29. Please provide information about applicable law 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. In this regard, please indicate the measures that are taken to ensure that the gender perspective and the needs of women and children who are relatives of a disappeared person are systematically taken into account (art. 24).

30. Please comment on allegations that the State party obstructs and retaliates against civil society organizations working on enforced disappearances, including by denying permits to hold demonstrations, using force to disperse demonstrations and detaining the members of such organizations (arts. 12 and 24).

VI. Measures to protect children against enforced disappearance (art. 25)

31. With reference to paragraphs 232 and 235 of the report, please provide information on the legislation applicable to the conduct described in article 25 (1) of the Convention and indicate whether there are plans to incorporate such conduct into the Criminal Code in the form of specific offences. Please also indicate whether there are any procedures in place to review and, where appropriate, annul any adoption or placement of children that originated in an enforced disappearance and describe any applicable limitations (art. 25).