



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

Distr.: General  
13 November 2019

Original: English  
English, French and Spanish only

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## Committee on Enforced Disappearances

### List of issues in the absence of the report of Nigeria due under article 29 (1) of the Convention\*

#### I. General information

1. In view of section 12 of the Constitution, please clarify the status of the Convention vis-à-vis domestic law, including the Constitution, and indicate whether the provisions of the Convention can be directly invoked before and applied by courts or other relevant authorities. Please include examples of case law, if any, in which the provisions of the Convention have been invoked before or applied by courts or other relevant authorities.
2. Taking into consideration the federal structure of the State party, please:
  - (a) Clarify whether the provisions of the Convention apply at the federal, state and local levels without any limitations or exceptions, in accordance with article 41 of the Convention;
  - (b) Provide information about measures taken, and the results thereof, to ensure that legislation and practice at the federal, state and local levels are in full compliance with the obligations set forth in the Convention.
3. Please provide information about the activities carried out by the National Human Rights Commission in relation to the Convention, including specific examples. Please also indicate whether the Commission has received any complaints concerning enforced disappearance since the entry into force of the Convention and, if so, please provide detailed information about action taken in considering them and the results thereof. In addition, please clarify whether decisions adopted by the Commission in individual cases are binding and report on measures taken to ensure that it has the necessary financial, technical and staffing resources for the proper discharge of its functions.
4. Please indicate whether the State party envisages making the declarations provided for in articles 31 and 32 of the Convention relating to the Committee's competence to receive and consider individual and inter-State communications.

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

5. Please provide up-to-date statistical information, disaggregated by sex, age, nationality, ethnic origin and religious affiliation of the victim, on the number of persons reported as disappeared in the State party since the entry into force of the Convention, specifying the date and place of disappearance, the number of such persons who have been

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\* Adopted by the Committee at its seventeenth session (30 September–11 October 2019).



located, and the number of cases in which there was some form of State involvement within the meaning of the definition of enforced disappearance contained in article 2 of the Convention. Please describe the methodology used to arrive to the figures. Please also report on the progress made to establish a database of missing persons and indicate the kinds of information that will be entered into the database with regard to each reported case; whether the information contained therein will be crossed-checked with the information in other databases, such as registers of persons deprived of their liberty; whether it will be accessible to all interested parties; and the methodology that is to be used to keep it updated. Please provide information on measures taken to improve the lack of official data on trafficking cases and the identification of trafficking cases among the internally displaced population to ensure that all victims of trafficking are also protected from enforced disappearance (arts. 1, 2, 3, 12 and 24).

6. Please indicate whether specific legal and/or administrative measures have been adopted in the State party to guarantee that the right not to be subjected to enforced disappearance may not be derogated from under exceptional circumstances, whether a state of war or a threat of war, internal political instability or any other public emergency. Please also indicate whether any measures that the State party may have adopted concerning counter-terrorism, emergency situations, national security or other similar grounds have had any impact on the effective implementation of the Convention (art. 1).

7. Please comment on allegations of enforced disappearances perpetrated by security forces, particularly in the context of counter-insurgency operations, and report on measures taken to investigate such allegations, bring perpetrators to justice and provide reparation to victims. In doing so, please include statistical information covering the period that has elapsed since the entry into force of the Convention, disaggregated by sex, age, nationality, ethnic origin and religious affiliation of the victim and year and place of disappearance, regarding: (a) the number of reports of enforced disappearance received by competent authorities; (b) investigations conducted and their outcomes, including the sentences handed down to perpetrators; and (c) reparation awarded to victims. Please also report on activities undertaken and results obtained by the presidential investigation panel in relation to the allegations of enforced disappearance by Nigerian security forces (arts. 1, 12 and 24).

8. In the light of reports of abductions by Boko Haram, please provide information about the efforts made, and the results thereof, to investigate the commission of the acts defined in article 2 of the Convention by this or any other group of persons acting without the authorization, support or acquiescence of the State, and to bring those responsible to justice. In doing so, please include statistical information (art. 3).

9. Please indicate whether any measures have been taken, or are envisaged, to incorporate enforced disappearance as an autonomous crime in domestic legislation in accordance with the definition contained in article 2 of the Convention. In the absence of an autonomous crime, please indicate which provisions are applied when dealing with alleged cases of enforced disappearance and the penalties that such provisions prescribe, including whether any of them carry the death penalty. In addition, please indicate whether any measures have been taken, or are envisaged, to criminalize enforced disappearance as a crime against humanity in accordance with the standards provided for under article 5 of the Convention (arts. 2–7).

10. Please provide information about the applicable law governing the types of conduct enumerated in article 6 (1) (a) of the Convention. Please also indicate whether domestic law specifically provides for a system of responsibility of superiors that is in line with article 6 (1) (b) of the Convention and, if not, whether there are any initiatives to establish such a system. In addition, please indicate whether there is legislation or case law concerning the prohibition of invoking an order or an instruction from any public authority to justify an offence of enforced disappearance; whether domestic law specifically prohibits orders or instructions prescribing, authorizing or encouraging enforced disappearance; and guarantees provided for in the domestic legal order that a person who refuses to obey an order to commit enforced disappearance will not be punished (arts. 6 and 23).

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

11. Please indicate whether the State party applies a statute of limitations in respect of cases of enforced disappearance and, if so, please indicate whether the term of limitation for criminal proceedings: (a) is of long duration and is proportionate to the extreme seriousness of the offence; and (b) commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature. Please also provide information about measures taken by the State party to guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation (art. 8).

12. Please indicate whether the legal framework establishes the State party's competence to exercise jurisdiction over the offence of enforced disappearance in the cases contemplated in article 9 (1) and (2) of the Convention (art. 9).

13. Please provide information about measures taken to guarantee in law and in practice: (a) that any person tried for an offence of enforced disappearance benefits from a fair trial; and (b) the independence and impartiality of the courts. Please indicate whether military authorities are competent under domestic law to investigate and/or prosecute alleged cases of enforced disappearance and, if so, please provide information on the applicable legislation. In addition, please clarify whether customary and Sharia courts can adjudicate alleged cases of enforced disappearance and, if so, please indicate the punishments that they may impose (art. 11).

14. Please indicate whether domestic law provides for the possibility of competent authorities initiating an investigation into an enforced disappearance even if there has been no formal complaint, and report on measures taken to ensure in law and in practice that competent authorities: (a) have the necessary powers and resources to conduct investigations into allegations of enforced disappearance effectively, including access to the documentation and other information relevant to their investigation; and (b) have access to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present (arts. 12 and 24).

15. Please report on measures taken to ensure that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation. In particular, please indicate whether: (a) the law provides for suspension from duties, from the outset and for the duration of an investigation, when the alleged offender is a State official; and (b) there are any mechanisms in place to ensure that law enforcement or security forces do not participate in the investigation into an enforced disappearance when one or more of their officials are suspected of having been involved in committing the offence (art. 12).

16. Please describe the mechanisms and measures available in the domestic legal framework for the protection of complainants, witnesses, relatives of the disappeared person and their defence counsel, as well as of persons participating in the investigation of an enforced disappearance, against all ill-treatment or intimidation as a consequence of the complaint or any evidence given (art. 12).

17. Please indicate whether, in the absence of an autonomous crime of enforced disappearance, the offences under the provisions of the Criminal Code that may be invoked for the purposes of extradition to deal with cases of enforced disappearance may be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Please also indicate whether any extradition agreements have been concluded with other States parties since the entry into force of the Convention and, if so, indicate whether enforced disappearance has been included in such agreements, in accordance with article 13 (3) of the Convention. In addition, please indicate whether, under domestic law, any limitations or conditions may be applied in relation to requests for judicial assistance or cooperation under the terms established by articles 14, 15 and 25 (3) of the Convention. Please also report whether the State party has made or received any requests for international cooperation in respect of cases of enforced disappearance since the entry into force of the Convention (arts. 13–15 and 25).

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

18. Please indicate whether domestic law explicitly prohibits the expulsion, return, surrender or extradition of a person where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance. Please describe the applicable legal framework and procedures relating to the expulsion, return, surrender or extradition of persons. In this respect, please also:

(a) Provide detailed information about the mechanisms and criteria applied in the context of procedures for expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance;

(b) Indicate whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority, under which procedure, and whether the appeal has a suspensive effect (art. 16).

19. Please report on measures taken to guarantee in law and in practice that, from the outset of the deprivation of liberty, all persons deprived of liberty, regardless of the offence of which they are accused, have access to a lawyer, can inform their family or any other person of their choice of their deprivation of liberty, and, in the case of foreign nationals, can communicate with their consular authorities. Please also indicate whether any conditions and/or restrictions may be applied to the right of persons deprived of liberty, including those suspected of terrorism, to communicate with and be visited by family members, counsel, consular representatives in the case of foreign nationals, or any other person of their choice (art. 17).

20. Please provide detailed information about measures taken to ensure that all official registers and/or records of persons deprived of liberty, regardless of the nature of the place in which they are deprived of liberty, include all the elements listed in article 17 (3) of the Convention and are properly and immediately completed and kept up to date. Please indicate whether there have been any complaints concerning delays or failure by officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of liberty and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed and measures taken to ensure that such omissions are not repeated, including training for the personnel concerned. Please also report on measures taken to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released and to assure their physical integrity and their ability to exercise fully their rights at the time of release (arts. 17, 21 and 22).

21. Please provide information about measures taken to guarantee in law and in practice, in accordance with article 17 (2) (f) of the Convention, that any person deprived of liberty or, in the case of suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, are 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 (art. 17).

22. Please provide information about measures taken to guarantee to any person with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the information listed in article 18 (1) of the Convention. In this respect, please provide information about the procedures to be followed to gain access to such information and indicate whether any restrictions to such access may be applied and, if so, for how long and by which authorities (arts. 18 and 20).

23. Please provide information about measures taken to prevent and impose sanctions for the conduct described in article 22 of the Convention (art. 22).

24. Please indicate whether the State party provides, or envisages providing, specific training on the Convention, in the terms set forth in article 23 thereof, to civil or military law enforcement personnel, 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 officials responsible for the administration of justice. In doing so, please also indicate the nature and frequency of the training provided and the authorities in charge of facilitating such training (art. 23).

## **V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)**

25. Please indicate whether domestic law provides for a definition of victim that is line with that contained in article 24 (1) of the Convention. Please provide information about measures taken to ensure in the State party's legal system that any person who has suffered harm as the direct result of an enforced disappearance has the right to obtain prompt, fair and adequate compensation and all forms of reparation as enumerated in article 24 (5) of the Convention. Please also indicate who would be responsible for providing compensation and/or reparation under domestic law in the event of enforced disappearance, whether access to compensation and/or reparation is contingent on a criminal conviction, and whether there is a time limit for access by victims of enforced disappearance to compensation and/or reparation (art. 24).

26. Please report on measures taken to guarantee the right to the truth of victims of enforced disappearance and their participation in proceedings. In view of information concerning the presence of mass graves in the State party, please report on:

- (a) Measures taken, including existing mechanisms, to ensure that all mass graves are searched for and located;
- (b) The number of mass graves located;
- (c) Efforts undertaken to identify, respect and return the remains of the disappeared persons, including the number of persons who have been located and the numbers of those located who have been identified and have yet to be identified;
- (d) Investigations carried out and their results, including whether those responsible have been identified and punished in accordance with the gravity of their acts;
- (e) Efforts made to keep relatives abreast of the progress and results of the investigation and the fate of the disappeared persons. Please also indicate whether a database containing DNA of family members of the disappeared persons and other ante-mortem information has been established and, if so, please provide information about its functioning. If such a database does not exist, please explain how remains are identified (art. 24).

27. Please provide information about measures taken and their effectiveness to guarantee that the search for an alleged victim of enforced disappearance is launched ex officio and as soon as the competent authorities are notified of the disappearance, and to ensure that the search continues until the fate of the disappeared person has been clarified. Please also report on measures undertaken to systematically collect ante-mortem data related to disappeared persons and their relatives, and to set up national databases of DNA to identify victims of enforced disappearance (art. 24).

28. 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 matters such as social welfare, financial matters, family law and property rights (art. 24).

29. Please provide information about measures taken to guarantee in law and in practice the right to form and participate freely in organizations 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 (art. 24).

30. Please provide information about the legislation applicable to the conduct described in article 25 (1) of the Convention and indicate whether any complaints have been made concerning the wrongful removal of children as described in article 25 (1) (a) of the Convention; if so, please provide information on such cases and on measures taken, and the results thereof, to locate the children concerned and prosecute and punish those responsible.

Please provide information about measures taken, and the results thereof, to improve birth registration in order to prevent any risk of wrongful removal of children. Please describe the system of adoption or other form of placement of children in force in the State party, and indicate whether domestic law establishes any legal procedures to review and, where appropriate, annul any adoption, placement or guardianship that originated in an enforced disappearance. If no such procedures have been established yet, please indicate whether any action has been taken to bring the national legislation into conformity with article 25 (4) of the Convention (art. 25).

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