



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
25 September 2020
English
Original: French
English, French and Spanish only

Committee on Enforced Disappearances

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

I. General information

1. In light of article 116 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 competent authorities for purposes other than providing information. If possible, please give examples of decisions where courts or other competent authorities have applied provisions of the Convention and of judicial decisions where violations of the Convention have been found.

2. Please indicate the measures taken by the State party to bring the National Human Rights Commission into full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Please elaborate on the mandate, role, powers and structure of the Commission and specify the actions that it has taken with respect to enforced disappearance. Please describe the measures that have been adopted to ensure that the Commission has the financial, technical and human resources that it needs to properly carry out its functions throughout the country, including the functions that were assigned to it as the national preventive mechanism following the State party's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Please also specify how the independence and impartiality of the Commission are guaranteed and whether the decisions it adopts in the cases brought to its attention are binding. Finally, please indicate the measures that have been adopted to promote awareness among the general public, civil society organizations and national and local authorities of the Commission's role and mission.

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

3. Please describe the databases on disappeared persons that currently exist and indicate the types of information that are entered into them for each case reported. Please specify whether the information they contain overlaps with that appearing in other databases, such as the registers of persons deprived of liberty, and whether these databases are accessible to all interested persons. Please describe the methodology used to keep the existing databases up-to-date (arts. 1–3, 12 and 24).

4. Please provide updated statistical data, disaggregated by the victims' sex, age, nationality, ethnic origin, religious affiliation and occupation, on the number of persons who have been reported disappeared in the State party since the Convention entered into

* Adopted by the Committee at its nineteenth session (7–25 September 2020).



force and specify the date and place of their disappearance and the number among them who have been found. Please indicate the number of cases in which there may have been State involvement, in any of the forms contemplated in the definition of enforced disappearance contained in article 2 of the Convention. Please describe the methodology used to arrive at the figures presented (arts. 1 and 12).

5. Please indicate whether any complaints have been lodged with respect to acts described in article 2 of the Convention. Please comment on allegations that security forces carry out enforced disappearances. Please also provide detailed data on the investigations conducted into all such cases and their outcomes, including the penalties imposed on the perpetrators and the reparation, including rehabilitation, granted to the victims.

6. In light of reports of disappearances carried out by militias in contexts of intercommunal violence and by Al-Qaida in the Islamic Maghreb, Ansar Eddine, Katiba Macina, Al Mourabitoun, the Group for the Support of Islam and Muslims (Jama'a Nusrat ul-Islam wa al-Muslimin), Islamic State in the Greater Sahara and other similar groups, please provide information on the efforts that have been made to investigate acts contemplated by article 2 of the Convention that have been carried out by these groups or any other groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice. Please indicate the results of these efforts and provide relevant statistical data. In addition, please indicate whether any complaints have been lodged with respect to cases of trafficking in persons that may fall under articles 2 or 3 of the Convention and, if so, specify the measures that have been taken to investigate, punish those responsible and provide the victims with appropriate reparation and rehabilitation (arts. 2–3, 12 and 24).

7. Please indicate whether any measures have been taken or are planned to make enforced disappearance, as defined in article 2 of the Convention, a separate offence under domestic law. If no such offence exists under the legislation in force, please specify the legal provisions that are applied when examining alleged cases of enforced disappearance and the penalties provided for under those provisions and indicate whether any of them provide for the death penalty. Please set out all the measures that have been taken or are planned to define enforced disappearance as a crime against humanity in accordance with article 5 of the Convention. Please indicate how the release of detainees suspected of or charged with involvement in serious crimes, including enforced disappearances, and Act No. 2019-042 of 24 July 2019, the Act on National Understanding, are compatible with articles 7 and 24 of the Convention (arts. 2, 4–5, 7 and 24).

8. Please indicate whether specific legal 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 infringed under any exceptional circumstances, whether a state of war or a threat of war, internal political instability or any other public emergency such as the crisis resulting from the coronavirus disease (COVID-19) pandemic. Please describe any effect that measures taken by the State party in connection with counter-terrorism, emergency situations, national security or other similar matters may have had on the effective implementation of the Convention (art. 1).

9. In light of article 28 of the Criminal Code, which states that no crime or offence will be deemed to have occurred if the accused “has acted pursuant to a requirement of law or on the order of the legitimate authorities”, please clarify whether, in accordance with article 6 of the Convention, the State party holds criminally responsible anyone who commits, orders or solicits or induces the commission of an enforced disappearance. In addition, please indicate whether any legislation or jurisprudence addresses the prohibition on invoking an order or instruction from any public authority to justify an offence of enforced disappearance and whether orders or instructions prescribing, authorizing or encouraging enforced disappearance are expressly prohibited under the domestic legislation. Please also describe how the domestic legislation guarantees that a person who refuses to obey an order to commit an enforced disappearance will not be punished. Lastly, please specify whether all the mitigating and aggravating circumstances referred to in paragraphs (a) and (b), respectively, of article 7 (2) of the Convention are taken into account in cases of enforced disappearance (arts. 6–7 and 23).

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

10. Please indicate whether the State party applies a statute of limitations in respect of enforced disappearance and, if it does, whether the term of limitation for criminal proceedings: (a) is of long duration and is proportionate to the extreme seriousness of this 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 the 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).

11. 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 articles 9 (1) and 9 (2) of the Convention (art. 9).

12. Please describe the procedure and measures put in place to allow allegations of enforced disappearance to be examined promptly and investigated thoroughly and impartially and a determination to be reached as to the fate of the disappeared persons. Please indicate whether the domestic legislation allows the competent authorities to undertake an investigation, even if there has been no formal complaint. Please also provide information on the measures taken to ensure that, in law and in practice, these authorities: (a) have the necessary powers and resources to effectively conduct investigations into alleged cases of enforced disappearance, including access to the documentation and any 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).

13. Please indicate the judicial authority that is competent to review measures taken by the military authorities, including the army's counter-intelligence service, to deprive persons of their liberty and the authorities that are responsible for investigating cases of enforced disappearance committed by members of the armed forces, including those perpetrated against other military personnel. In addition, please indicate whether judges applying customary and religious law may decide cases alleging an enforced disappearance and, if so, please indicate the penalties they may impose (arts. 11–12 and 24).

14. Please specify the mechanisms provided for under domestic law to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation into the enforced disappearance, are effectively protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given. Please also 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 is a mechanism 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 being involved in the commission of the offence (art. 12).

15. As enforced disappearance does not constitute a separate offence, please indicate whether the offences under the Criminal Code that may be invoked for purposes of extradition in cases of enforced disappearance may be regarded as political offences or as offences connected with a political offence or as offences inspired by political motives. Please also indicate whether any extradition agreements with other States parties have been concluded since the entry into force of the Convention and, if so, whether the offence of enforced disappearance has been included in those agreements, in accordance with article 13 (3) of the Convention. In addition, please indicate whether, under the domestic legislation, there are any restrictions or conditions applicable to requests for mutual legal assistance or cooperation, in light of articles 14, 15 and 25 (3) of the Convention. Please specify whether the State party has made or received any new requests for international cooperation in respect of cases of enforced disappearance since the entry into force of the Convention and, if so, indicate the measures taken in those cases (arts. 13–15 and 25).

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

16. Please indicate whether, under the domestic legislation, there is an express prohibition on the expulsion, return (refoulement), surrender or extradition of an individual where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. If there is not, please indicate whether the State party is considering expressly including such a prohibition in its domestic legislation. In either case, please describe the legal framework and procedures that apply to the expulsion, return (refoulement), surrender or extradition of persons. In this regard, please:

(a) Provide detailed information about the mechanisms and criteria applied in the context of procedures of expulsion, return (refoulement), 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 (refoulement), surrender or extradition and, if so, please specify the authority before which and the procedure under which the appeal is to be filed and whether the appeal has suspensive effect (art. 16).

17. Please indicate the authorities, specific institutions and non-governmental organizations that are authorized, in law and in practice, to visit, unannounced, all places where persons are deprived of liberty. Please indicate the domestic legal provisions that expressly prohibit secret or unofficial detention and specify the measures adopted in that regard. Please also describe the measures taken to guarantee 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 counsel, are able to inform their family members or any other person of their choice of their deprivation of liberty and, in the case of foreign nationals, are able to communicate with their consular authorities, including during the COVID-19 pandemic. Please also indicate any conditions or restrictions that may be placed on 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).

18. Please provide detailed information about measures taken to ensure that all official registers and records of persons deprived of liberty, regardless of the nature of the place where they are deprived of liberty, include all the elements listed in article 17 (3) of the Convention and are duly completed and kept up-to-date, without delay. Please indicate whether any complaints have been lodged with respect to delays or failures on the part of officials in recording a deprivation of liberty or any other pertinent information in registers of persons deprived of liberty. If so, please provide information on the proceedings initiated and, if applicable, the sanctions imposed and the measures taken to ensure that such delays or failures do not occur again. 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 the physical integrity of such persons and their ability to exercise fully their rights at the time of release (arts. 17, 21 and 22).

19. Please provide information on the avenues available to persons deprived of liberty and any person with a legitimate interest to challenge the lawfulness of the deprivation of liberty. Please describe the nature and duration of any specific restrictions on the right of any persons with a legitimate interest to access information concerning persons deprived of liberty and, where appropriate, the measures envisaged to remove those restrictions if they are in breach of international law, applicable law or the objectives of the Convention (arts. 17–18 and 22).

20. Please indicate the measures taken to guarantee access to the information described in article 18 (1) of the Convention to any person with a legitimate interest. Please describe the procedures to follow to gain access to the information and indicate whether any restrictions may be imposed on the access. If such restrictions are possible, please specify the length of time they may last and the authorities that may impose them (arts. 18 and 20).

21. Please indicate whether the State party provides or is considering providing training on the Convention, in accordance with 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 persons deprived of liberty, including with respect to the maintenance of registers of persons deprived of liberty, as well as judges, prosecutors

and other officials responsible for the administration of justice. Please indicate the nature and frequency of the training provided or planned and the authorities responsible for organizing it (art. 23).

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

22. Please indicate whether the term “victim” is defined under the domestic legislation in a manner consistent with article 24 (1) of the Convention. Please describe the measures taken to guarantee that victims of enforced disappearance enjoy the right to the truth and the right to take part in proceedings before domestic courts. Please also indicate the progress made in this regard by the Truth, Justice and Reconciliation Commission and the International Commission of Inquiry established under the Agreement on Peace and Reconciliation in Mali. Please provide information on the measures taken by the State party to ensure in its legal system that any person who has suffered harm as a result of enforced disappearance has access to all the forms of reparation listed in article 24 (5) of the Convention and has the right to prompt, fair and adequate compensation. In addition, please indicate who would be responsible for providing compensation and reparation under domestic law in the event of an enforced disappearance, whether access to compensation and reparation is contingent on a criminal conviction and whether there is a time limit for victims of enforced disappearance to access compensation and reparation (art. 24).

23. In light of the reports of mass graves in the State party, please provide information on:

(a) The measures taken, including mechanisms already in place, to ensure that all mass graves are searched for and located, with an indication of the number of mass graves located since the Convention entered into force for the State party;

(b) The efforts undertaken to identify, respect and return the remains of disappeared persons, with an indication of the number of persons who have been located and, of that number, the number who have been identified and the number who remain to be identified;

(c) The investigations carried out and their results, specifying: (i) whether the analysis of the remains of disappeared persons found was carried out in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Minnesota Protocol on the Investigation of Potentially Unlawful Death; (ii) whether those responsible were identified and received penalties proportionate to the seriousness of their acts; and (iii) whether relatives were informed of the progress and results of the investigation and the fate of the disappeared person;

(d) Any databases containing the DNA of family members of the disappeared persons and other ante-mortem information, with a description of how they function;

(e) If there are no such DNA databases, the method used to identify individuals’ remains, with a description of the measures taken to systematically collect ante-mortem data related to disappeared persons and their relatives and to set up national DNA databases to identify victims of enforced disappearance (art. 24).

24. In light of the large number of Malians who have died while attempting to migrate, please specify the measures taken by the State party to encourage and cooperate in: (a) investigations carried out in the States of transit and destination in order to bring those responsible to justice; and (b) the identification and repatriation of the bodies by those States. Please also indicate the measures taken by the State party to help victims’ families.

25. Please describe the measures taken to guarantee that a search for an alleged victim of enforced disappearance is initiated automatically, 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 provide information on the effectiveness of these measures (art. 24).

26. Please provide information on the applicable legislation with respect to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives,

including with respect to social welfare, financial matters, family law and property rights (art. 24).

27. 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 surrounding enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance (art. 24).

28. Please describe the measures adopted to search for children who disappeared after fleeing their villages during attacks by ethnic militias or armed Islamist groups or being recruited as child soldiers as well as for child victims of trafficking in persons.

29. Please provide information on the laws applicable to the wrongful removal of children in the circumstances described in article 25 (1) (a) of the Convention. Please indicate whether any complaints have been lodged regarding such acts and, if so, please specify the measures taken to find the children and prosecute and punish the perpetrators and the results those measures have yielded. Please provide information about the measures taken to improve birth registration so as to eliminate the risk of children being wrongfully removed and the results those measures have yielded. Please describe the system of adoption or other form of placement of children in force in the State party and indicate whether any legal procedures are provided for under the domestic legislation to review and, where appropriate, annul any adoption, placement or guardianship that originated in an enforced disappearance. If no such procedures have yet been established, please indicate whether any steps have been taken to bring the domestic legislation into conformity with article 25 (4) of the Convention (art. 25).
