



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
4 October 2021
English
Original: French
English, French and Spanish only

Committee on Enforced Disappearances

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

I. General information

1. Please describe the process followed to prepare the State party's report¹ and any consultations that were held, including with civil society. In addition, in light of article 116 of the Constitution, please 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. Please give examples of judicial decisions in which provisions of the Convention have been applied or violations of the Convention have been found.

2. Please give details on how allegations of enforced disappearance received by the National Human Rights Commission under article 4 of Act No. 2016-036 of 7 July 2016 on the creation of the Commission are processed and addressed by the State party. 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 those related to its role as national mechanism for the prevention of torture. Please also indicate the role that the Commission plays in the search for disappeared persons or, if it plays no such role, the national entity that is responsible for such searches. Please specify how the independence and impartiality of the Commission are guaranteed and the extent to which its decisions are binding. Please indicate the measures that have been taken to promote awareness of the Commission among the general public and national and local authorities.

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

3. Please describe the databases on disappeared persons that currently exist and indicate the type of information that is entered into them. Please specify whether this information 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 sex, age, nationality, ethnic group and occupation, on persons who have been reported disappeared in the State party since the Convention entered into force. Please 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 or participation as described in the definition of enforced disappearance contained in article 2 of the Convention (arts. 1–2).

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

¹ CED/C/MLI/1.



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 provide detailed data on the investigations conducted into such cases and their outcomes, including the penalties imposed and the reparation, including rehabilitation, granted to the victims (arts. 2, 4, 12 and 24).

6. Regarding paragraph 20 of the State party's report, please describe any steps that have been taken or are planned to establish enforced disappearance as a separate offence under domestic law, in line with article 2 of the Convention. With respect to paragraph 34 of the report, please indicate the number of cases where allegations of enforced disappearance have resulted in prosecution under articles 237 to 244 of the Criminal Code or, where the offence could be categorized as a crime against humanity, under article 29. Please state the penalties that were handed down, specifying the number of cases in which the death penalty was imposed and the sentences that were carried out in such cases (arts. 2, 4–5, 7 and 24).

7. Please indicate how the release of detainees suspected of or charged with involvement in serious crimes, including enforced disappearances, Act No. 2012-020 of 18 May 2012, on the amnesty for acts committed during the riots that led to the resignation of the President of the Republic, 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. 7 and 24).

8. In light of reports of disappearances carried out by militias in contexts of intercommunal violence and by the Organization of 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 describe the steps taken 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 specify the number of persons who have been charged, arrested and found guilty by domestic courts (arts. 3, 12 and 24).

9. Please indicate whether any complaints have been lodged regarding disappearances occurring in connection with acts of trafficking in persons or during migratory movements. If they have, please specify the measures that have been taken to investigate, punish those responsible and provide the victims with appropriate protection, reparation and rehabilitation (arts. 2–3, 12 and 24).

10. Please indicate the measures taken to strengthen the National Coordinating Committee on Combating Trafficking in Persons and Similar Practices and ensure that it considers the possibility that victims may have been disappeared. As Mali has become a main thoroughfare for migrants and refugees, please provide information on the measures taken to facilitate the search for migrants who have been disappeared in Mali and to provide support to their families in line with article 24 of the Convention (arts. 2–3, 12 and 24).

11. With respect to paragraph 29 of the State party's report, please specify the laws that have been adopted and the measures that have been taken to ensure that no 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 – can justify an infringement of the right not to be subjected to enforced disappearance. Please describe how the State party ensures that any counter-terrorism measures taken have no impact on the effective application of the Convention. In this regard, please comment on the allegations made that persons suspected of collaborating with terrorist groups have been arbitrarily detained and subjected to enforced disappearance (art. 1).

12. In light of article 28 of the Criminal Code, please clarify how the State party ensures that anyone who commits, orders, solicits or induces the commission of an enforced disappearance is held criminally responsible or describe the measures that are planned to bring domestic laws into line with article 6 of the Convention. Please provide further information on the appeals mentioned in paragraph 46 of the State party's report – appeals to a higher authority and appeals to the same authority to reconsider its decision – that are available to anyone who refuses to obey an order to commit an enforced disappearance.

Please provide any statistics available on cases where, as a result of such an appeal, the penalty initially imposed was set aside (arts. 6–7 and 23).

13. With respect to paragraphs 49 and 50 of the State party's report, please explain how courts ensure that all the mitigating and aggravating circumstances referred to in 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)

14. With respect to paragraphs 51 and 52 of the State party's report, please specify the statute of limitations that is applicable when an enforced disappearance cannot be classified as a crime against humanity. Please indicate the length of the period of limitation and specify whether it starts to run before or after the enforced disappearance ceases. Please provide information about the measures taken to guarantee the right of victims of enforced disappearance to an effective remedy after the statute of limitations expires (art. 8).

15. Regarding paragraph 56 of the State party's report, please specify the conditions under which the judicial authorities of the State party may invoke universal jurisdiction under articles 29 and 32 of the Criminal Code in order to hear cases of enforced disappearance. Please provide the number of cases in which universal jurisdiction has been invoked, exercised or rejected and, of that number, indicate those that could be classified as enforced disappearances (art. 9).

16. Please describe the procedures followed and the measures taken to allow for allegations of enforced disappearance to be examined promptly and investigated thoroughly and impartially and for a determination to be reached as to the fate of the disappeared persons. With respect to paragraph 67 of the State party's report, please indicate how often searches for victims of enforced disappearance are automatically initiated as soon as the competent authorities are notified of the disappearance, and describe the measures taken to ensure that the searches continue until the fate of the disappeared person has been clarified. Please describe the measures taken to ensure that the competent authorities (a) have the necessary powers and resources to effectively conduct investigations into alleged cases of enforced disappearance; and (b) have access to all relevant documentation and all places of detention and all other places where there are reasonable grounds to believe that a disappeared person is present (arts. 12 and 24).

17. 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. Regarding paragraph 64 of the State party's report, please indicate which military authorities are responsible for investigating cases of enforced disappearance "involving the defence and security forces", including disappearances perpetrated against other military personnel. In addition, please indicate whether judges applying customary and religious law may decide cases alleging an enforced disappearance. If so, please specify the procedure they follow and the penalties they may impose (arts. 11–12 and 24).

18. Please provide an update on the preliminary bill on victim and witness protection referred to in paragraph 70 of the State party's report. Please describe the mechanisms provided for under the bill to ensure the effective protection of the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation into the enforced disappearance. Please specify (a) whether the bill 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) whether there is a mechanism in place to ensure that law enforcement and security forces do not participate in the investigation into an enforced disappearance when one or more of their members are suspected of being involved in the commission of the offence. Pending the adoption of the bill in question, please describe the protection mechanisms that are already in place (art. 12).

19. Regarding paragraphs 71 to 73 of the State party's report, please specify whether the offences under the Criminal Code that may be invoked for purposes of extradition in cases

not amounting to crimes against humanity may be regarded as political offences, offences connected with a political offence or offences inspired by political motives. Please indicate whether the extradition agreements concluded with other States parties since the entry into force of the Convention have been applied in cases of enforced disappearance. If so, please specify how often they have been applied and the outcome in each case. In addition, please indicate whether, under domestic law, any restrictions or conditions apply to requests for mutual legal assistance or cooperation, in light of articles 14, 15 and 25 (3) of the Convention. Regarding paragraph 76 of the State party's report, please indicate the measures of mutual assistance adopted by the State party with a view to assisting all victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains. Please also specify how situations are handled where foreign forces carry out enforced disappearances in Mali (arts. 13–15 and 25).

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

20. Please indicate whether the State party plans to include in its domestic legislation 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. Please describe the legal framework and procedures that apply to the expulsion, return (refoulement), surrender and 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) Please indicate whether the information provided in paragraph 81 of the State party's report regarding the impossibility of appealing against decisions to grant extradition requests also applies to decisions authorizing expulsions, returns (refoulements) or surrenders. If it does not, please specify the authority before which and the procedure under which appeals are to be filed and indicate whether the appeals have suspensive effect (art. 16).

21. In light of the information provided in paragraphs 83 to 90 of the State party's report, please specify how often and under what conditions the authorities mentioned are able to obtain authorization to visit places of deprivation of liberty, including migrant holding centres, including during the COVID-19 pandemic. Please indicate the average number of visits made annually by each of those authorities over the last five years and specify the places visited. Please indicate whether registers and the identity of persons deprived of their liberty are checked systematically in connection with these visits in order to locate persons declared disappeared. If they are, please specify how the checks are carried out and the results of those checks (art. 17).

22. Regarding paragraph 88 of the State party's report, please 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 (art. 17).

23. With respect to paragraph 93 of the State party's report, please specify the 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 promptly and duly completed and kept up to date. Please indicate whether any complaints have been lodged with respect to delays in recording or failures to record a deprivation of liberty or any other pertinent information in the registers. 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. With respect to paragraphs 100 to 103 of the State party's report, please describe the 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 and 21–22).

24. In light of paragraphs 104 to 114 of the State party's report, please indicate the number of appeals lodged by persons deprived of liberty or any person with a legitimate interest in order to challenge the lawfulness of a deprivation of liberty and the outcome of the proceedings initiated. Please describe any relevant measures being considered in connection with the review of the Code of Criminal Procedure mentioned in paragraph 107 of the State party's report and provide an update on the status of the review (arts. 17–18 and 22).

25. Please indicate the measures taken to guarantee access to information on persons deprived of liberty to anyone with a legitimate interest. Please describe the procedures that must be followed to gain access to such information and indicate the restrictions that may be imposed on such access, specifying the authorities that may impose them and the length of time they may last (arts. 18 and 20).

26. With respect to paragraphs 95 to 97 of the State party's report, please provide updates on the implementation of Act No. 2018-002 of 12 January 2018 on the establishment of the General Directorate of the Forensic Police and the project to put into operation a DNA processing centre, including with respect to the budget allocated and the staff assigned to the centre (art. 19).

27. Please indicate how the State party ensures that the human rights training programme mentioned in paragraphs 115 and 116 of the State party's report is aligned with the objectives set out in article 23 of the Convention. In particular, please describe the content of training sessions relating to enforced disappearance and the Convention and indicate how often they are offered to civil or military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the registration or custody of persons deprived of liberty, as well as judges, prosecutors and other officials responsible for the administration of justice (art. 23).

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

28. Please indicate whether there are any plans to amend the domestic legislation so as to define "victim" in a manner consistent with the definition set out in 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 investigations and search operations. Please 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 to ensure that anyone who has suffered harm as a result of enforced disappearance is provided prompt, fair and adequate access to all the forms of reparation listed in article 24 (5) of the Convention. Please identify the authorities that are responsible for providing compensation and reparation in the event of an enforced disappearance and indicate whether access to compensation and reparation is contingent on a criminal conviction and whether it is subject to a time limit (art. 24).

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

(a) The measures taken 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 number of persons found and the number of persons identified;

(c) The efforts undertaken to identify, respect and return the remains of disappeared persons;

(d) The investigations carried out and their results, specifying: (i) whether the analysis of remains 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 (Istanbul Protocol) and the Minnesota Protocol on the Investigation

of Potentially Unlawful Death; (ii) whether those responsible were identified, prosecuted and given penalties proportionate to the seriousness of their acts; and (iii) how relatives were informed of the progress and results of the investigation;

(e) Any database that is in place or planned for the collection of all available ante-mortem information, including the DNA of disappeared persons and their families, with a description of the content of the database and how it functions;

(f) The method used to identify individuals' remains (art. 24).

30. 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; (b) the identification and repatriation of the bodies by those States; and (c) efforts to provide support to victims' relatives (art. 24).

31. Regarding paragraphs 117 to 121 of the State party's report, please indicate the laws that govern the legal situation of relatives of disappeared persons whose fate has not been clarified in terms of social welfare, financial matters, family law and property rights, both before and after a declaration of absence is issued (art. 24).

32. With respect to paragraph 121 (d) of the State party's report, please indicate how the State party guarantees, in law and in practice, the right to form and participate freely in organizations and associations that seek to help establish the circumstances surrounding enforced disappearances, clarify the fate of disappeared persons and assist victims of enforced disappearance (art. 24).

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

33. 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 (art. 25).

34. Please provide information on the laws applicable to the wrongful removal of children in the circumstances described in article 25 (1) of the Convention. Please indicate whether any complaints have been lodged regarding such acts, specifying the measures taken to find the children and prosecute and punish the perpetrators and the results those measures have yielded. Please specify 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 are yet in place, please indicate whether any steps have been taken in this regard (art. 25).
