



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

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Committee on Enforced Disappearances

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Consideration of reports of States parties to the Convention

**Replies of Mali to the list of issues in relation to its
report submitted under article 29 (1) of the
Convention***

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* The present document is being issued without formal editing.



Replies concerning paragraph 1 of the list of issues (CED/C/MLI/Q/1)

1. The 2018 session of the Interministerial Support Committee for the preparation of initial and periodic reports on the implementation of treaties ratified by Mali was held from 14 to 16 January 2019. The purpose of the session was to consider and adopt the draft report by Mali on its implementation of the International Convention for the Protection of All Persons from Enforced Disappearance.
2. The session brought together representatives of several ministries, the National Human Rights Commission and the Malian Human Rights Association.
3. Under article 116 of the Constitution of 25 February 1992, “treaties or agreements that are duly ratified or approved shall take precedence, upon publication, over other laws, subject in each case to the application of the treaty or agreement by the other party”.
4. Pursuant to this article, the provisions of the Convention can be directly invoked before the courts or other competent authorities.
5. However, some judges are reluctant to apply those provisions directly, because they see the need for them to be incorporated into national law, over and above the ratification of the Convention itself.
6. There are currently no examples of judicial decisions in which provisions of the Convention have been applied or violations of the Convention have been found.
7. However, cases of kidnapping have been reported.

Replies concerning paragraph 2 of the list of issues

8. The allegations of enforced disappearance that the National Human Rights Commission receives in accordance with article 4 of the Act by which it was established can be processed and addressed by the State in several ways. Cases are generally brought to its attention by lawyers, relatives of the victim or the local authorities responsible for the victim.
9. Furthermore, regardless of the manner in which a complaint is submitted to it, the Commission may open a case of its own accord, process the allegations and, ultimately, make recommendations to the State with a view to finding the disappeared persons. When the Commission has reason to believe that a State authority or department is involved, it can directly contact that entity, including by way of confidential letter. Where the authority or department does not react in a prompt manner and the situation warrants it, the Commission can appeal directly, again by way of confidential letter, to the Minister of Justice or the President in the case of individuals presumed disappeared or who may be held in an unlawful place of detention. This process has generally led to the resolution of the cases submitted to the Commission.
10. The Commission also serves as the national mechanism for the prevention of torture. As such, and in accordance with the mandate assigned to it in the establishing legislation, the Commission conducts regular and unannounced visits to places of deprivation of liberty without hindrance. In this regard, the circulars transmitted by the Ministers of Justice and Security to all court and tribunal heads, the prison administration and gendarmerie and police stations should be welcomed.
11. Under its establishing act, the Commission is an independent administrative authority with its own budget and budgetary autonomy. Additionally, Commission members – called Human Rights Commissioners – enjoy immunity with respect to the opinions that they give in that capacity, during and after their term.
12. However, the Commission’s decisions are not binding; they cannot be imposed upon the State, although they can be invoked vis-à-vis the State.

Replies concerning paragraph 3 of the list of issues

13. There currently is no database on disappeared persons.
14. Detention centres keep registers that can be accessed by any interested party.

Replies concerning paragraph 4 of the list of issues

15. There is no database containing updated information disaggregated by sex, age, nationality, ethnic group or any other factor.

Replies concerning paragraph 5 of the list of issues

16. No complaints against law enforcement personnel have been formally lodged.
17. There is no detailed information either on victims.

Replies concerning paragraph 6 of the list of issues

18. As part of the review of the Criminal Code currently under way, the offence of enforced disappearance has been included in article 29 of the draft text, under Title I on crimes against humanity, Chapter 3 on crimes, offences and penalties. This offence is a crime against humanity on par with genocide and war crimes, as defined in the Rome Statute of the International Criminal Court.

19. In a welcome development, the Standing Legislative Commission has been set up and has begun working as part of the National Directorate for Judicial Affairs.

20. Enquiries at the country's three courts of appeal show that no death sentences have been handed down, let alone carried out, in connection with cases of enforced disappearance.

21. In terms of progress, it is worth noting the establishment of the National Coordinating Committee on Trafficking in Persons and Related Practices and the creation of the Anti-Trafficking Unit.

Replies concerning paragraph 7 of the list of issues

22. The action taken to release detainees suspected of or charged with involvement in serious crimes, including enforced disappearances, is compatible with articles 7 and 24 of the Convention, as are Act No. 2012-020 of 18 May 2012, on amnesty for acts committed during the riots that led to the resignation of the President of the Republic, and the Act on National Understanding (No. 2019-042) of 24 July 2019. Indeed, under article 8 (3) of the Code of Criminal Procedure, proceedings can end through settlement or mediation where expressly permitted by law. The same applies to the withdrawal of a complaint where the filing of a complaint is a necessary precondition for prosecution.

Replies concerning paragraph 8 of the list of issues

23. There have been judicial proceedings and rulings.
24. For example, Mr. Souleymane Keita, jihadist leader and emir of Ansar Eddine du Sud, born in Kaolack, was arrested and tried, then sentenced to death on 13 November 2020.
25. Data have been collected but have to be processed in order for statistics to be generated.

Replies concerning paragraph 9 of the list of issues

26. Between 1 January 2021 and 31 December 2021, no cases of disappearance stemming from trafficking or migratory movements were recorded with the Migrant Smuggling and Human Trafficking Unit.

27. During the same period, 46 cases of trafficking in persons and migrant smuggling were recorded, involving 97 suspects, of whom 73 were detained; 700 victims were freed.

Replies concerning paragraph 10 of the list of issues

28. There is a draft bill on the establishment of an agency to combat migrant smuggling and it contains provisions on searching for victims of offences committed in Malian territory and on compensation for migrants.

29. The National Committee for the Coordination of the Fight against Trafficking in Persons and Related Practices, established in 2011, is overseen by the Minister of Justice. One of its primary tasks is to collect and process data on trafficking in persons, including cases of enforced disappearance.

Replies concerning paragraph 11 of the list of issues

30. No measures other than the application of the anti-terrorism framework have been adopted.

Replies concerning paragraph 12 of the list of issues

31. The provisions of article 28 are not an obstacle (see arts. 24 and 25 of the Criminal Code).

32. No statistics are available.

33. Any officer on whom a penalty is imposed may appeal to a higher administrative authority or file an application for reconsideration.

Replies concerning paragraph 13 of the list of issues

34. The courts, by applying the provisions of the Criminal Code on mitigating circumstances and suspended sentences (arts. 18 and 19 of the Criminal Code), 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).

Replies concerning paragraph 14 of the list of issues

35. Enforced disappearance is not an offence under the current Criminal Code; however, offences including kidnapping, false imprisonment and torture, which are associated with enforced disappearance, are serious offences under the Code.

36. In criminal matters, the statute of limitation is 10 years from the date when the offence ceased.

Replies concerning paragraph 15 of the list of issues

37. Where it has been established that an act is an offence in both places, a requesting State may invoke universal jurisdiction in cases of enforced disappearance.

38. Mutual legal assistance and extradition are provided for in the articles of the Criminal Code on war crimes, crimes against humanity, genocide and, more generally, any criminal offence with a foreign element involving at least to States parties to a given instrument.

39. A request for mutual legal assistance or extradition in connection with an enforced disappearance, under a convention to which Mali and the requesting State are parties, can be accepted pursuant to article 29 of the Criminal Code, which, although it does not define enforced disappearance as a standalone offence, nonetheless considers it a component of crimes against humanity.

40. In keeping with its mandate, the specialized judicial unit to combat terrorism and transnational organized crime handles transnational cases on a daily basis.

Replies concerning paragraph 16 of the list of issues

41. As soon as they are discovered, cases of disappearance are taken up by the competent public prosecutor (Director of the Criminal Investigation Police) for investigation, although that official can delegate the investigation to a criminal investigation officer (gendarmerie or police chief of investigation).

42. The investigation involves interviewing of victims and witnesses and, above all, questioning of suspects.

43. On completion of the investigation, the report and all the parties are referred to the Public Prosecution Service, which decides on the next steps in the proceedings.

44. Offences such as kidnapping, false imprisonment and torture, which are related to enforced disappearance, are all criminal offences and therefore require the opening of a criminal investigation. In other words, such cases must be brought to an investigating judge.

45. The bill on the Code of Criminal Procedure envisages the introduction of protective measures for victims and witnesses.

Replies concerning paragraph 17 of the list of issues

46. The management of investigations is the remit of the public prosecutor. Oversight and review are functions carried out by the Attorney General and the Indictment Chamber, respectively.

47. The current Code of Military Justice has been amended to take account of universal standards.

48. In keeping with the principles of traditional justice and the recommendations stemming from the work on the functioning of traditional justice, customary and religious courts cannot under any circumstances hear criminal cases, let alone cases of alleged enforced disappearance.

Replies concerning paragraph 18 of the list of issues

49. The bill on victim and witness protection is still being discussed; therefore, it is not possible to state with certainty which provisions will be retained.

50. The above notwithstanding, the bill takes into consideration paragraph 18 of the list of issues.

Replies concerning paragraph 19 of the list of issues

51. No extradition agreements have been applied in cases of enforced disappearance.

Replies concerning paragraph 20 of the list of issues

52. There is no set frequency; the warden must admit visitors at all times without restriction.

53. The National Human Rights Commission, as well as human rights organizations and associations and civil society organizations operating in Mali conduct frequent visits to places of detention.

54. These are conducted in the presence of the head of the facility.

Replies concerning paragraph 22 of the list of issues

55. The authorization for persons deprived of their liberty to communicate is guaranteed under article 76 (4) of the Code of Criminal Procedure, which reads: “The public prosecutor may, ex officio or at the request of a family member of the person in police custody, designate a doctor to examine that person at any time during the period of police custody.”

56. Article 76 (6) provides that: “During the preliminary investigation, any person who is involved in or who is the victim of an offence shall have the right to be assisted, upon request, by one or more lawyers of his or her choice.”

Replies concerning paragraph 23 of the list of issues

57. The detention registers of short-stay prisons contain all the elements listed in article 17 (3) of the Convention.

58. The question of bodily integrity is addressed in article 85 of the Code of Criminal Procedure.

Replies concerning paragraph 24 of the list of issues

59. There are no statistics in this area; people prefer release.

Replies concerning paragraph 25 of the list of issues

60. The National Human Rights Commission, as well as human rights organizations and associations and civil society organizations operating in Mali have access to information on persons deprived of liberty wherever necessary.

61. Access to such information can be restricted only by the investigating judge (Code of Criminal Procedure, art. 108).

Replies concerning paragraph 26 of the list of issues

62. Compliance is guaranteed through the modalities used to organize the sessions.

63. As the Act is under review, it is not possible to state with certainty which provisions will be retained.

64. The above notwithstanding, the draft bill takes into consideration paragraph 28 of the list of issues.

65. As for progress on the establishment of the General Directorate of the Forensic Police, thanks to the political will expressed by the country’s highest authorities and the leadership

of the Ministry of Security and Civil Defence as the government entity in charge of the General Directorate, Decree No. 2020-0224/PT-RM of 26 November 2020 on the organization and functioning of the General Directorate has been adopted.

66. The General Directorate, which is represented at the central and regional levels, coordinates and plans all criminal investigation and forensics activities nationwide.

67. It should be noted first and foremost that the Ministry of Security and Civil Defence is a firm supporter of the General Directorate's policy and strategic vision. Accordingly, it has been supporting the prompt operationalization of the General Directorate since December 2021, through the appointment of its management (the Director-General and Deputy Director-General). The General Directorate thus has a headquarters and staff to ensure its functioning. The appointment of some assistant directors is a perfect example of the action taken to operationalize the General Directorate.

68. The General Directorate has a mixed staff made up of police and gendarmerie officers, members of the civil defence and public servants who run the service. The staff, who are qualified in forensic policing, have undergone initial and specialist training as part of efforts to streamline skills and procedures and thus provide quality services on a daily basis in keeping with the tasks and challenges at hand. In relation to its short-, medium- and long-term strategic objectives, the General Directorate has achieved the following:

- The establishment and official launch, on 30 September 2021, of the National Fingerprint Database, which is under the exclusive supervision and management of the General Directorate but can be used by all law enforcement and justice entities;
- The establishment of Detection and Response Units within law enforcement and justice entities to collect biometric data on individuals suspected of committing criminal offences;
- The coordination of forensics activities through the design of teaching kits and training plans for other forensics bodies.

69. In support of the General Directorate, the Ministry of Security and Civil Defence included the needs of the General Directorate in the National Security Programming (Phase 2) Act (No. LPSI-2022-2026). In this regard, there are plans to build facilities for the new General Directorate using funds from the national budget.

70. The General Directorate's mandate under its establishing act also includes the roll-out of the National Database of Genetic Profiles, or DNA processing centre. The structure of the General Directorate envisages the creation of this database under the supervision and management of the Laboratories Subdirectorate.

Replies concerning paragraph 28 of the list of issues

71. The National Human Rights Commission has participated actively and consistently in the workshops, seminars and scientific activities run by the Truth, Justice and Reconciliation Commission and in the formulation of the national policy on reparations for victims of all the crises in the country, as well as compensation strategies, bills and draft regulations on behalf of all victims, including victims of enforced disappearances.

Replies concerning paragraph 29 of the list of issues

72. It should be specified that:

- (a) As soon as people are reported as disappeared, investigations are systematically opened to locate them (e.g. Gossi, Diago (proceedings have ended));
- (b) There are no statistics on the number of people found and identified;
- (c) Some of those responsible for disappearances have been identified and prosecuted, but none have been convicted; the identification of victims was done at the American laboratory;

(d) The case of the Red Berets was handled in keeping with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol):

- Some of the perpetrators were identified and prosecuted but none were convicted;
- For the purposes of gathering samples, relatives are kept informed of the progress and results of the investigation;

(e) There is no justice system database.

Replies concerning paragraph 30 of the list of issues

73. Act No. 2012-023 of 12 July 2012 on combating trafficking in persons and related practices deals with this issue through provisions on letters rogatory or mutual legal assistance. The identification and repatriation of remains is facilitated by non-governmental organizations, such as the International Organization for Migration, the International Committee of the Red Cross and Environmental Development Action in the Third World (ENDA).

74. The establishment of the Migrant Smuggling and Human Trafficking Unit in 2019, by order of the Minister of Security and Civil Defence, was motivated by a strong will to punish those who incite unlawful migration (e.g. smugglers, recruiters) and to foster inter-departmental collaboration and international cooperation to effectively combat this serious problem.

Replies concerning paragraph 31 of the list of issues

75. No one can sue for damages in criminal proceedings before a person has been declared missing by a court (see Personal and Family Code).

76. Once a court has declared a person missing, the person's relatives are authorized to sue for damages.

Replies concerning paragraph 32 of the list of issues

77. The relevant documents are the memorandum of understanding between the United Nations Office in Mali and the Government of Mali of 1 July 2013 pertaining to the transfer of children involved in the armed forces or armed groups and the interministerial circular on preventing the recruitment of children into the armed forces or armed groups, providing them with protection and bringing them back to their families.

Replies concerning paragraph 33 of the list of issues

78. Mali has adopted instruments to protect children in all circumstances, particularly in conflict situations. These instruments include:

- The reference manual and guide on the identification, disarming, demobilization and reintegration of children involved with the armed forces or armed groups, which complements the strategic plan on disarming, demobilization and reintegration drawn up by the Ministry for the Advancement of Women, Children and Families in December 2012;
- The interministerial circular on preventing the recruitment of children into the armed forces or armed groups, providing them with protection and bringing them back to their families (7 February 2013);
- The memorandum of understanding between the Government of Mali and the United Nations Office in Mali of 1 July 2013 pertaining to the transfer of children involved in the armed forces or armed groups.

79. In addition, the Department of Children's Affairs has set up Community-Based Child Protection Networks in villages and settlements.

80. The Networks raise awareness among parents, as well as community and religious leaders, about the demobilization of children recruited and used by armed groups and ethnic militias.

81. Identification and document-issuance missions are organized by the Regional Directorates for the Advancement of Women, Children and Families, with the support of local and national non-governmental organizations. Demobilized children are placed with foster families identified by all actors or in Transit and Guidance Centres providing them with comprehensive care.

82. Tracing of and reunification with a child's family is done on an individualized basis through socioeconomic support.

Replies concerning paragraph 34 of the list of issues

83. The adoption system in Mali is governed by the Personal and Family Code.

84. Under the Code, all persons of established good conduct may adopt one or more children either to provide them with the maintenance, education and material or emotional protection they need or to ensure their own posterity (art. 522).

85. The former case is known as "protective adoption", which strengthens or establishes the rights and obligations between the adopter and the adoptee set out in the Code.

86. The latter case is known as "filiation adoption" and creates ties analogous to those arising from biological filiation.

87. All adoptions are decided solely on the basis of the best interests of the child (art. 523).

88. They must be decided by the civil court.

89. Internal adoption requests are submitted to the relevant child welfare department, while international adoption requests are submitted to the competent central authority.

90. Following enquiries, the department or central authority transmits the case to the competent civil court.

91. After the Public Prosecution Service has been consulted and the matter has been considered by the court, the decision is handed down at a public hearing in the presence of the adopter and a representative of the child welfare department.

92. The child welfare department is a party to all adoption decisions. As such, it can lodge all types of appeal.

93. No one may be adopted by more than one person unless those persons are spouses within the meaning of the Personal and Family Code (art. 525).

94. However, in the case of protective adoption, a new adoption can be authorized in the event that one or both adopters passes away.

95. Protective adoption can be revoked at any time in the interest of the child or for serious reasons.

96. Adoption revocations are subject to the same procedural conditions as adoptions.

97. The adoption revocation procedure can be initiated by the following people:

- The adopter (art. 532);
- The adoptee, provided he or she is at least 15 years of age;
- Persons or the institution whose consent is required;
- The Public Prosecution Service;

- Child welfare officials; and
 - Any interested party.
98. Filiation adoptions cannot be revoked (art. 542).
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