



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

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

I. General information

1. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications.
2. In relation to paragraphs 18 and 20 of the State party's report (CED/C/TUN/1), please clarify whether the provisions of the Convention can be directly invoked before and applied by courts or other relevant authorities. Please provide examples of case law, if available, in which any of the provisions of the Convention have been invoked before or applied by courts or other relevant authorities.
3. In relation to paragraphs 35 to 38 of the State party's report, please provide information about progress made to bring the High Committee for Human Rights and Fundamental Freedoms into full compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Please indicate whether the High Committee has received any complaints concerning the rights and obligations contained in the Convention and, if so, please provide information about the action it has taken and the outcomes thereof.

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

4. In relation to paragraph 47 of the State party's report, and while taking note of article 1 of the proposed bill on the crime of enforced disappearance, annexed to the State party's report, please clarify whether, during a state of war or when there is a threat of war, internal political instability or any other public emergency, the national legal framework provides for the possibility of derogating from any of the rights and/or procedural guarantees embodied in domestic law or international human rights instruments to which Tunisia is a party and that might be relevant for preventing and combating enforced disappearances. If so, please enumerate the rights and/or procedural guarantees from which

* Adopted by the Committee at its ninth session (7-18 September 2015).



it is possible to derogate and in which circumstances, under which legal provisions and for how long it is permissible to do so (art. 1).

5. Please provide information about the drafting process of the proposed bill on the crime of enforced disappearance annexed to the State party's report, including the State organs involved and whether relevant civil society stakeholders have been included in this process. Please update the Committee on the current status of this bill, including whether it has already been submitted to or discussed in parliament and when it is likely to be adopted. In relation to the proposed bill on the crime of enforced disappearance annexed to the State party's report, please explain the criteria used to establish the penalties provided for in articles 5 et seq. of the bill, in particular the reasons for providing for the capital punishment under article 12 (arts. 2, 4, 6 and 7).

6. In relation to article 11, paragraph E, of the proposed bill on the crime of enforced disappearance annexed to the State party's report, please explain the reasons for qualifying an enforced disappearance as a crime against humanity, inter alia, if the crime is committed under the same conditions and circumstances as those enumerated in article 6 of the bill, which provides for a system of responsibility of superiors. Please indicate whether the bill relating to crimes against humanity elaborated by the Ministry of Justice, Human Rights and Transitional Justice, referred to in paragraph 67 of the State party's report, provides for a definition of enforced disappearance as a crime against humanity and, if so, please provide such definition (art. 5).

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

7. In relation to paragraph 76 of the State party's report, please clarify whether article 9 of the Organizational Act No. 53 of 24 December 2013 is applicable to any case of enforced disappearance, regardless of the time of its perpetration, or only to those covered by the said Act. In the latter case, please provide detailed information about the system of statute of limitations that currently applies to enforced disappearances perpetrated outside the context of the Act. In relation to article 19 of the proposed bill on the crime of enforced disappearance annexed to the State party's report, please: (a) explain when an enforced disappearance would result from a crime and when from an offence (*délit*); and (b) clarify when it would be considered that the crime has ended (art. 8).

8. While the proposed bill on the crime of enforced disappearance annexed to the State party's report is not adopted, please clarify: (a) in relation to paragraph 82 of the State party's report, whether Tunisian courts would be able to exercise their jurisdiction in accordance with article 9 (1) of the Convention in the case of a Tunisian citizen alleged to have committed an enforced disappearance in another country that has not criminalized enforced disappearance as an autonomous offence; and (b) in relation to paragraph 137 of the State party's report, whether the absence of an autonomous offence of enforced disappearance in domestic law would have an impact on the competence of courts to exercise their jurisdiction in line with the obligations contained in article 9 of the Convention. Furthermore, please provide information about the scope of article 28 of the proposed bill on the crime of enforced disappearance annexed to the State party's report (art. 9).

9. Please indicate whether allegations of enforced disappearances could be investigated and/or tried by military authorities. If so, please provide information about applicable legislation (art. 11).

10. While taking note of article 22 of the proposed bill on the crime of enforced disappearance annexed to the State party's report, please indicate how it is guaranteed that

the authorities in charge of investigating potential cases of enforced disappearance could have immediate access to any place of deprivation of liberty or any other place where there are reasonable grounds to believe that a disappeared person may be present. In this respect, please also indicate whether domestic law provides for any limitations that may restrict such access and, if so, provide detailed information (art. 12).

11. Please indicate: (a) if domestic law provides for suspension from duties during an investigation into a reported enforced disappearance when the alleged offender is a State agent; and (b) if there are any mechanisms in place to exclude a law enforcement or security force, whether civilian or military, from the investigation into a reported enforced disappearance when one or more of its members are accused of committing the offence or of having been involved in the commission of the offence (art. 12).

12. While taking note of articles 23 and 25 of the proposed bill on the crime of enforced disappearance annexed to the State party's report, please indicate whether, outside the context of Organizational Act No. 53 of 24 December 2013, domestic law provides for other mechanisms, in addition to that set out in article 65 of the Code of Criminal Procedure, to ensure that the complainant, witnesses and relatives of the disappeared person, and their defence counsel, as well as persons participating in the investigation into an enforced disappearance are effectively protected against all ill-treatment and intimidation as a consequence of the complaint or any evidence given (art. 12).

13. Please provide additional information about the three cases referred to in paragraph 44 of the State party's report, including their current status; efforts undertaken to ascertain the fate and whereabouts of the disappeared persons; whether any perpetrators have been identified and, if so, punished and under which offences; and reparations provided to the persons who have suffered harm as the direct result of the disappearances. Please clarify whether the cases will be investigated by the Truth and Dignity Commission and, if so, whether the courts that are currently investigating the cases will also continue to do so (arts. 12 and 24).

14. In relation to paragraphs 130 and 134 of the State party's report, please indicate whether the Truth and Dignity Commission has received and investigated any complaints of enforced disappearance and/or transmitted cases of enforced disappearance to the public prosecution service. Please also indicate whether the specialized chambers on transitional justice have started examining any case of enforced disappearance and, if so, please provide information on the progress made. Please provide information about the offences that the specialized chambers shall apply when examining cases of enforced disappearance. Please also provide information about the measures taken to guarantee and facilitate the participation of victims of enforced disappearance in the proceedings carried out by the Truth and Dignity Commission and the specialized chambers (arts. 12 and 24).

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

15. Please provide information about the process for requesting asylum in the State party and indicate how it is guaranteed in practice that all asylum claims are thoroughly examined in order to prevent any risk of enforced disappearance should the person concerned be expelled (art. 16).

16. In relation to paragraphs 98 and 157 of the State party's report, please provide information about the progress made in amending the Code of Criminal Procedure to guarantee that persons deprived of liberty have the right to have access to a lawyer from the outset of their deprivation of liberty and to reduce the custody period to 48 hours. The Committee notes that, according to available information, a new counter-terrorism law was passed on 24 July 2015 (Law No. 2015-22) allowing the police to hold suspects in

incommunicado detention for up to 15 days with a prosecutor's consent, during which time the person has no access to a lawyer and/or his/her relatives. In this respect, please comment on the compatibility of this law with the standards contained in the Convention and other human rights treaties to which Tunisia is a party that might be relevant for preventing and combating enforced disappearances (arts. 17, 18 and 20).

17. Please provide detailed information about the measures taken to guarantee in practice that the family of persons deprived of liberty are notified immediately of the deprivation of liberty or any transfer from one place of deprivation of liberty to another. In addition, please indicate whether there have been any complaints of omissions or delays in the said notifications and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed (art. 17).

18. In relation to paragraph 206 of the State party's report, please provide detailed information about the reasons and the legal conditions under which a judge can prohibit the contact of a person in pretrial detention with the outside world for 10 days, renewable once (art. 17).

19. In relation to the information provided in paragraphs 156, 164, 172 and 175 of the State party's report, please indicate whether other places where persons can be deprived of liberty according to the information provided in paragraph 150 of the State party's report, such as centres for migrants, asylum seekers and refugees, also keep registers and/or records and, if so, whether these contain all the information listed in article 17 (3) of the Convention. Please also indicate whether there have been any complaints concerning delays or the failure by officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of liberty. If so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed and the measures taken to ensure that such omissions are not repeated (arts. 17 and 22).

20. Please indicate whether the National Commission for the Prevention of Torture has already started functioning and whether it possesses sufficient financial, human and technical resources to carry out its functions effectively. In relation to paragraph 195 of the State party's report, please (a) specify who are the "authorities concerned" that may challenge the visit of the National Commission to a place of deprivation of liberty; (b) clarify who would assess the legitimacy of the reasons given by the "authorities concerned" to challenge a visit; and (c) indicate how it is guaranteed that the possibility of the "authorities concerned" to challenge a visit does not compromise the effective performance of the mandate of the National Commission, which could be instrumental in preventing enforced disappearances and other violations of the rights and obligations contained in the Convention (art. 17).

21. In relation to paragraph 208 of the State party's report, please provide information about the procedures to be followed by any person with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, to access the information listed in article 18 (1) of the Convention, and indicate whether any restrictions to such access could be applied, in particular during the period in custody, and, if so, for how long and by which authorities. Please also provide information about the remedies available against a refusal to provide information on persons deprived of liberty (arts. 18 and 20).

V. Measures for reparation and protection of children from enforced disappearance (arts. 24 and 25)

22. While taking note of articles 35 to 37 of the proposed bill on the crime of enforced disappearance annexed to the State party's report, please indicate whether, besides

compensation, domestic law currently provides for other forms of reparation in conformity with article 24 (5) of the Convention in relation to persons who may suffer harm as the direct result of an enforced disappearance not covered by Organizational Act No. 53 of 24 December 2013. Please also indicate whether there will be a time limit for victims of enforced disappearance to access the reparation and compensation provided in articles 36 and 37 of the above-mentioned bill (art. 24).

23. In relation to paragraph 253 of the State party's report, please describe in detail the procedure to recognize the legal status of a disappeared person and to issue legal documents that can allow the relatives of the disappeared person to deal with issues relating to social welfare, financial matters, family law and property rights (art. 24).

24. In relation to paragraph 248 of the State party's report, please inform the Committee whether the Truth and Dignity Commission has already put in place a comprehensive programme of individual and collective reparations and, if so, please provide information about any aspects that may be relevant for addressing the particular situation of victims of enforced disappearance, especially of women and children. In this respect, please indicate whether any compensation and/or reparation have been granted to date to persons who have suffered harm as the direct result of an enforced disappearance and whether a rehabilitation programme for victims of enforced disappearance has been established (art. 24).

25. In relation to the proposed bill on the crime of enforced disappearance annexed to the State party's report, please explain the rationale behind the existence of abduction of children (*enlèvement des enfants*) as an aggravating circumstance (art. 10.F) and as a separate offence (art. 39.A), each carrying different penalties (art. 25).
