



International Convention for the Protection of All Persons from Enforced Disappearance

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

Committee on Enforced Disappearances

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

I. General information

1. Please indicate whether the State party is considering declaring, in accordance with articles 31 and 32 of the Convention, that it recognizes the Committee's competence to receive and consider individual and inter-State communications.
2. In the light of the information provided in paragraph 24 of the State party's report (CED/C/NER/1), please clarify which provisions of the Convention are considered to be directly applicable and which require incorporation into domestic legislation. Please provide, if possible, examples of court decisions or administrative measures taken by courts or other competent authorities in which the provisions of the Convention have been applied and of court decisions in which violations of the Convention have been established.
3. Please provide detailed information on the mandate, role, scope of activities and structure of the National Human Rights Commission, specifying the actions it has taken in cases of enforced disappearance and indicating whether the decisions adopted in cases brought to its attention are binding. Please describe the measures adopted to ensure that the Commission has the necessary financial, technical and human resources to adequately perform its functions throughout the territory of the State party. Lastly, please outline 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)

4. Based on the information provided in paragraphs 31–37 of the State party's report, please indicate whether specific legal or administrative measures have been adopted in the State party to guarantee that no derogation from the right not to be subjected to enforced disappearance is permitted under 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 explain how the State party ensures that measures taken in the context of the fight against terrorism, including the declared state of emergency in the regions of Agadez, Diffa, Tahoua and Tillabéri, do not have an impact on the effective enforcement of this prohibition (art. 1).
5. In the absence of a definition of enforced disappearance in domestic law, please explain how the legal provisions of the Criminal Code, the Code of Criminal Procedure and

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



the Code of Military Justice mentioned in the State party's report are applied in cases of enforced disappearance. Please provide specific examples of their application (art. 2).

6. Please provide updated statistical data, disaggregated by sex, age, nationality, ethnic origin, religious affiliation and occupation of the victim, on the number of persons reported as missing in the State party since the entry into force of the Convention, specifying the date and place of their disappearance and the number of persons who have subsequently been found. Please indicate the number of cases in which there was some form of State involvement within the meaning of article 2 of the Convention. Please describe the methodology used to arrive at these figures (arts. 1 and 12).

7. In the light of the information provided in paragraphs 52 and 53 of the State party's report, please indicate whether any complaints have been lodged regarding acts within the meaning of article 2 of the Convention that were carried out by persons or groups of persons acting without the authorization, support or acquiescence of the State. If so, please provide disaggregated data on the investigations conducted and their outcome, in particular any penalties imposed on the perpetrators and any redress, including rehabilitation, provided to the victims. Please also indicate whether there have been any complaints of cases of human trafficking that may fall under articles 2 and 3 of the Convention and, if so, what measures have been taken to investigate and punish the perpetrators and to provide adequate compensation and rehabilitation to the victims (arts. 2, 3, 12 and 24).

8. Please provide information on the progress made on the bill on enforced disappearance, indicating the time frame envisaged for its adoption and entry into force. Please also provide information on the content of this bill, in particular with regard to the inclusion of enforced disappearance as a separate offence in accordance with articles 2 and 4 of the Convention, and on the penalties and aggravating and mitigating circumstances provided for in the bill (arts. 2, 4 and 7).

9. Please provide information on the specific measures taken to hold criminally responsible any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance, including a superior under the circumstances described in article 6 (1) (b) of the Convention. In addition, please specify whether there is legislation or case law concerning the prohibition against invoking an order or an instruction from any public authority to justify an offence of enforced disappearance and whether domestic law specifically prohibits orders or instructions prescribing, authorizing or encouraging enforced disappearance. Furthermore, please provide information on the safeguards in place under domestic legislation to ensure that a person who refuses to obey an order to commit an act of enforced disappearance will not be punished (art. 6).

10. Please indicate whether all the mitigating circumstances referred to in article 7 (2) (a) of the Convention and the aggravating circumstances referred to in article 7 (2) (b) are taken into account in cases of enforced disappearance (art. 7).

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

11. In view of the fact that enforced disappearance is not yet provided for in the Criminal Code as a separate crime, please provide information on how the State party intends to ensure that the statute of limitations for criminal prosecution and punishment in cases of enforced disappearance is of long duration and is proportionate to the seriousness of this offence and that the continuous nature of the offence is taken into account. Please also specify what safeguards are in place to ensure that statutory limitations are not applied to criminal, civil or administrative actions brought by victims in exercise of their right to an effective remedy (art. 8).

12. In the light of the information provided in paragraph 88 of the State party's report, please provide information on the competent authorities and procedures for dealing with the crime of enforced disappearance, in accordance with the obligations arising from article 9 of the Convention. If possible, please give examples of specific cases (art. 9).

13. In the light of the information provided in paragraph 90 of the State party's report, please specify whether, in cases where the criminal offence of enforced disappearance is

not covered by domestic law, the exercise of jurisdiction could be based on the Convention. Please also specify which legal provisions would allow national courts to exercise extraterritorial jurisdiction in cases of enforced disappearance. Furthermore, please indicate whether a refusal of extradition could be based on any provision relating to the immunity granted to certain categories of persons or officials (arts. 9, 10, 11 and 13).

14. Please provide further information on the procedure and measures that have been introduced in order to ensure that allegations of enforced disappearance are examined promptly and investigated thoroughly and impartially, and that a determination is reached as to the fate of the disappeared persons. Please indicate whether there is any possibility for criminal investigation officers to open *ex officio* investigations into cases of enforced disappearance and, if so, please explain the procedure provided for (art. 12).

15. Please specify if domestic law provides for mechanisms to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation into an enforced disappearance, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given. Please also specify whether procedural mechanisms have been put in place to exclude from an investigation into an enforced disappearance any civilian or military force responsible for the maintenance of law and order if one or more of its members are implicated in the case (art. 12).

16. With reference to the allegations received by the Committee that enforced disappearances were committed by law enforcement officers of the Niger in the context of Operation Almahou, conducted between 27 March and 2 April 2020, please provide information on the measures taken to clarify the fate of those who were arrested and the disappeared persons. Please also specify whether a judicial or administrative investigation has been undertaken into these events and whether liability has been established and, if so, indicate what penalties, if any, have been imposed (art. 12).

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

17. Please provide information on the procedures for refoulement and expulsion, including information on the authorities authorized to order the expulsion or refoulement of persons. Please indicate whether it is possible to appeal against an expulsion or refoulement decision. Please also provide detailed information about the mechanisms and criteria used in the context of procedures of expulsion, return, surrender and extradition to evaluate and verify the risk of being subjected to enforced disappearance. Lastly, please indicate whether the State party is considering explicitly incorporating into its domestic legislation a prohibition on the expulsion, refoulement, surrender or extradition of a person in the event that there are substantial grounds for believing that he or she is in danger of being subjected to enforced disappearance (art. 16).

18. Please clarify, in practice, how the State party ensures that secret or unofficial detention is not used, including in the context of the crisis resulting from the COVID-19 pandemic. In the light of the information provided in paragraph 148 of the State party's report, please provide further information on the content and status of the bill on the establishment of a national mechanism for the prevention of torture (art. 17).

19. Please describe measures taken to ensure that all persons deprived of their liberty, from the outset of their deprivation of liberty and regardless of the offence with which they are charged, 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, including in the context of the COVID-19 pandemic. In this context, in view of reports of arrests of journalists, human rights defenders and persons, including children, suspected of belonging to terrorist organizations, please provide information on concrete measures adopted to ensure that such arrests or detentions are not arbitrary and that detained persons have access to all the guarantees provided for in articles 17, 18 and 20 of the Convention. Please also provide information on the status of investigations, if any, into these allegations and on any prosecutions and disciplinary action taken.

20. In the light of the information in paragraph 136 of the State party's report on combating terrorism, please provide information on the specific conditions under which

article 605.5 of the Code of Criminal Procedure applies, in particular the two-week time limit for police custody, and on the conditions or restrictions to which persons deprived of their liberty who are suspected of terrorism may be subject (art. 17).

21. Please provide details of 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 items of information listed in article 17 (3) of the Convention and are duly completed and kept up to date without delay. Please indicate whether there have been any complaints concerning delays or failure by officials to record the deprivation of liberty of a person or any other pertinent information in registers concerning persons deprived of their liberty and, if so, please provide information on the proceedings initiated and, if relevant, the penalties imposed and the measures taken to ensure that such omissions are not repeated. Please also 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 the physical integrity of such persons and their ability to exercise fully their rights at the time of release (arts. 17, 21 and 22).

22. Please provide information on the remedies available to persons deprived of their liberty and to any persons with a legitimate interest in challenging the lawfulness of the deprivation of liberty. With reference to the information contained in paragraphs 161 and 162 of the State party's report, please provide specific details of the nature and duration of any particular restrictions on the right of access to information for persons deprived of their liberty by any person having a legitimate interest in such information and, if applicable, the measures envisaged to remove such restrictions if they are in breach of international law, applicable standards and the objectives of the Convention (arts. 17, 18 and 20).

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

23. Please specify whether domestic law provides for all the forms of reparation enumerated in article 24 (5) of the Convention for individuals who have suffered harm as the direct result of an enforced disappearance. Please also clarify whether it is necessary to initiate criminal proceedings in order to obtain compensation or reparation in the case of an enforced disappearance (art. 24).

24. In the absence of a specific declaration of absence by reason of enforced disappearance or a declaration of death, please indicate what rights are available to relatives of the disappeared person so that they may resolve financial matters and those related to social welfare, family law and property rights. Please indicate whether the issuance of a declaration of death has any impact on the State party's obligation to continue its search until the fate of the disappeared person has been clarified (art. 24).

25. Please provide information on the legislation applicable to the wrongful removal of children referred to in article 25 (1) (a) of the Convention. Please indicate whether there have been any complaints about such acts and, if so, please outline the measures taken to find these children and prosecute and punish the perpetrators of such acts, and the results achieved. Please indicate what mechanisms exist to monitor, prevent and punish under criminal law the falsification, concealment or destruction of documents attesting to the true identity of the children referred to in article 25 (1) (a) of the Convention. Please also indicate whether procedures have been established to review the adoption or placement of children and, where appropriate, to annul any adoption or placement that originated in an enforced disappearance (art. 25).

26. Please outline the measures taken to improve the system of child registration at birth, in particular with regard to children in vulnerable situations, in order to prevent any risk of enforced disappearance by ensuring administrative and legal protection of such children from birth. Please also outline the measures taken by the State party to protect children from enforced disappearance, in particular in the context of migration and trafficking in persons, and describe the measures taken in this regard in the context of the COVID-19 pandemic (art. 25).