



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 Gabon under article 29, paragraph 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 in order to recognize the competence of the Committee to receive and consider individual and inter-State communications.
2. Please indicate whether the provisions of the Convention can be directly invoked before and applied by the courts or other competent authorities for purposes other than information. If possible, please provide examples of decisions issued by the courts or other competent authorities in which the provisions of the Convention have been applied and case law in which violations of the Convention have been identified.
3. Please indicate the measures taken by the State party to ensure that the National Commission on Human Rights is in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) so that it may be accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Please elaborate on the mandate, role, jurisdiction and structure of the National Commission on Human Rights. Please indicate the measures taken to provide the Commission with sufficient financial, material and human resources to enable it to carry out its duties with complete independence. Regarding paragraph 3 of the State party's report (CED/C/GAB/1), please clarify the methods used in the preparation of the report, including the nature of the organizations that participated in the national meeting for feedback and approval. Please also indicate whether the Commission adopted a public position on the report. In the light of the State party's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, please specify whether a national preventive mechanism has been established.

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

4. With regard to paragraph 10 of the State party's report, please indicate whether, since the submission of the report, any allegations of enforced disappearance have been brought to the courts' attention.
5. Please indicate whether measures have been taken to amend the Criminal Code with a view to criminalizing enforced disappearance as a separate offence, in accordance with

* Adopted by the Committee at its twelfth session (6-17 March 2017).



article 2 of the Convention. With regard to paragraph 12 of the report, please clarify in which cases acts of enforced disappearance are classified as crimes or serious offences (*crimes*) and in which cases they are classified as lesser offences (*délits*) (arts. 1, 2, 4 and 6).

6. With regard to the information provided in paragraph 17 of the report, please specify which provisions of domestic law guarantee the non-derogability of the prohibition of enforced disappearance, so as to ensure that no exceptional circumstances whatsoever, whether a state of siege or emergency, an imminent threat to the country's internal or external security, an armed uprising or a civil war, may be invoked as a justification for enforced disappearance. Please provide detailed information on the limits prescribed by the Constitution within which guaranteed human rights and freedoms can be restricted, under which specific circumstances and for how long (arts. 1, 17, 18 and 20).

7. Please indicate whether any complaints have been lodged regarding acts defined in 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 carried out and their results, including the sanctions imposed on those responsible, and the reparations — including rehabilitation — granted to victims. Please also indicate whether any complaints have been lodged regarding 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 perpetrators and to offer victims adequate reparation and rehabilitation (arts. 2, 3, 12 and 24).

8. Please indicate how articles 612 to 635 of the Criminal Code, which refer to the acceptance by Gabon of the provisions of the Rome Statute of the International Criminal Court, define the constituent elements of the offence of enforced disappearance as a crime against humanity, in accordance with the applicable rules of international law (art. 5).

9. Please explain whether, in conformity with article 6 of the Convention, the State party holds criminally responsible any person who commits, orders, solicits or induces the commission of an enforced disappearance, given that articles 127 to 129 of the Code of Criminal Procedure provide for exemption from penalties for officials or agents acting on the orders of their superiors “only if the orders were given by the superiors in matters within their competence and they were required to obey by virtue of their rank”. Please explain the apparent contradiction between these provisions and the application in Gabonese domestic law of the theory of “rational obedience”, which authorizes the refusal to obey an unlawful command. Please indicate whether this theory applies to all uniformed and civilian personnel. Please also indicate whether it has ever been invoked by a subordinate in refusing to execute an order to carry out an enforced disappearance, and if so, whether the instigator was sanctioned (art. 6).

10. With respect to paragraph 30 of the report, please describe the scope of application of article 252 of the Criminal Code by explaining the concept of “placement in bondage”. Please indicate whether this article covers cases of human trafficking or domestic slavery and describe the measures envisaged to adjust the penalties to reflect the extreme seriousness of the offences. Please also explain the provisions of article 253 of the Criminal Code, including the minimum and maximum duration of “long-term rigorous imprisonment” and of rigorous imprisonment when the victims were vested with public authority or were subjected to physical torture. Please provide details of the sentences applied when the acts constituting enforced disappearance are committed by a person wearing a genuine uniform, as this information is not provided in the report. Please also explain whether all the mitigating circumstances described in article 7 (2) (a) of the Convention and all the aggravating circumstances described in article 7 (2) (b) of the Convention are taken into account in cases of enforced disappearance (art. 7).

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

11. In relation to the information provided in paragraphs 33 to 35 of the State party's report, please confirm that the statute of limitations does not apply to enforced disappearance as a crime against humanity and describe the regime applicable to enforced

disappearance as a separate offence. Please indicate whether the continuous nature of the offence of enforced disappearance is taken into account. Please also specify what safeguards are provided for to ensure that statutory limitations are not applied to criminal, civil or administrative proceedings brought by victims in exercise of their right to an effective remedy (art. 8).

12. Please indicate whether the State party has jurisdiction over cases in which the victim is one of its nationals but does not reside in its territory. Please clarify whether current legislation grants Gabonese courts jurisdiction over cases of enforced disappearance in the instances referred to in article 9 (2) of the Convention, when the State of competent jurisdiction refuses extradition or when the State party refuses extradition to a requesting State. Please indicate whether the State party has made or received any requests for judicial extradition in relation to cases involving the offence of enforced disappearance, and describe the action taken on those requests. Paragraphs 46 ff. of the State party's report refer to cases of enforced disappearance involving offences covered by the Rome Statute and relating to the State party's cooperation with the International Criminal Court. Please indicate which legal regime applies when enforced disappearance is characterized as an isolated act, as defined in article 4 of the Convention, and not as a crime against humanity (arts. 9 and 11).

13. In relation to paragraph 40 of the State party's report, 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 persons who have disappeared. Please indicate whether the criminal investigation department can open an investigation into enforced disappearance on its own initiative, and if so, please describe the relevant procedure and who is responsible for it. Please also indicate which judicial authority is competent to supervise custodial measures applied by the military authorities, including the military intelligence service, and which authorities are responsible for investigating cases of enforced disappearance committed by members of the armed forces, including cases committed against other military personnel (arts. 11, 12 and 24).

14. With respect to article 31 of the Code of Criminal Procedure, please explain whether domestic law provides for any 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 effectively protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given. Please also indicate whether there are any procedures in place to exclude any law enforcement or security force, whether civilian or military, from the investigation into an enforced disappearance when one or more of its members are implicated in the case (art. 12).

15. Please indicate whether the State party intends to adopt legislation to include the offence of enforced disappearance, as defined in article 2 of the Convention, as an extraditable offence in all treaties concluded with other States. Given that paragraph 57 of the State party's report indicates that the State party ensures that extradition requests are not politically motivated, please specify what steps the State party will take to ensure that, for the purposes of extradition, enforced disappearance is not regarded as a political offence or as an offence inspired by political motives. Please provide detailed information on the extradition treaties concluded by the State party with other States and indicate whether they include enforced disappearance as an extraditable offence (art. 13).

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

16. Please provide additional information on the mechanisms and criteria used in connection with expulsion, return, deportation and extradition procedures to assess and verify the risk that a person may be subjected to enforced disappearance. Please also indicate which authorities are responsible for deciding whether an individual is to be expelled or returned, whether it is possible to appeal against an expulsion or return decision, and whether such an appeal has a suspensive effect. Lastly, please indicate whether the

State party has considered explicitly prohibiting, in its domestic legislation, the expulsion, return, surrender or extradition of a person in the event that there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance (art. 16).

17. In relation to the information provided in paragraph 64 of the report, please indicate the provisions of domestic law that expressly prohibit secret or unofficial detention. As the report contains no information in this respect, please indicate whether any specific authorities or institutions are authorized by law to visit, unannounced, all places of deprivation of liberty. Please also indicate whether the National Commission on Human Rights and non-governmental organizations are authorized to visit places of deprivation of liberty (art. 17).

18. Concerning the information provided in paragraphs 66 and 67 of the report on the conditions of police custody, please indicate what measures are in place to guarantee that all persons placed in police custody have access to a lawyer from the time they are first deprived of liberty. Please also explain the conditions under which the criminal investigation police can issue an 8-day detention order in certain regions in order to bring the accused before the investigating judge and the measures taken to guarantee the fundamental rights of the accused during this period. Please also provide information, in view of paragraph 69 of the report, on the provisions adopted to ensure that all persons deprived of liberty have the right to inform their family or any other person of their choice of their situation, to be examined by a doctor, to consult with their lawyers and to be able to communicate with and have visitors as provided for in the Convention (arts. 17, 18 and 20).

19. In the light of allegations of arrests and disappearances during the unrest that followed the presidential election of 31 August 2016, please indicate the steps taken to find the persons reported to have disappeared, how many individuals remain in detention and how their rights are guaranteed. Please explain whether a judicial or administrative investigation into these events has been conducted, whether those responsible have been identified and, if so, what sanctions have been imposed (arts. 12, 17 and 18).

20. With respect to the information provided in paragraph 67 of the report, please indicate whether all the information mentioned in article 17 (3) of the Convention is included in custody registers, including the ground(s) for the deprivation of liberty. Please provide examples of incidents of poor record-keeping and of the disciplinary and/or legal action that was taken in consequence. In this regard, please indicate whether there have been any complaints of failure to record a case of deprivation of liberty or any other relevant information in custody registers; if so, please provide information on the proceedings initiated and, where appropriate, the sanctions imposed, and on the measures taken to ensure that such omissions are not repeated, including whether training was provided to the personnel in question (arts. 17, 22 and 23).

21. Please provide information on available remedies whereby persons deprived of liberty and any persons with a legitimate interest may challenge the lawfulness of the deprivation of liberty. Please indicate the nature and duration of any special restrictions hindering the right of access to information, by any person with a legitimate interest in such information, about persons deprived of liberty and, if relevant, the measures envisaged to abolish these restrictions if they are in breach of international law, applicable standards and the objectives of the Convention (arts. 17, 18 and 22).

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

22. In the light of the information provided in paragraphs 92 and 93 of the report, 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).

23. In cases where neither a specific declaration of absence by reason of enforced disappearance nor a declaration of death has been issued, please indicate what rights are available to the relatives of a disappeared person so that they may resolve issues related to social welfare, financial matters, 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 the investigation until the fate of the disappeared person has been clarified (art. 24).

24. With regard to the information provided in paragraph 95 of the report, please indicate what measures the State party has adopted to search for and identify disappeared children and return them to their families of origin. Please indicate what mechanisms are in place to monitor, prevent and punish under its 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 specify 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).

25. Please indicate the measures taken to improve the birth registration system, in particular for children in vulnerable situations, in order to prevent any risk of enforced disappearance through the administrative and legal protection of children from birth onward (art. 25).
