



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances Twenty-second session

Summary record of the 385th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 29 March 2022, at 3 p.m.

Chair: Ms. Villa Quintana

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention *(continued)*

Initial report of the Niger (CED/C/NER/1; CED/C/NER/Q/1; CED/C/NER/RQ/1)

1. *At the invitation of the Chair, the delegation of the Niger joined the meeting.*
2. **Mr. Ikta Abdoulaye Mohamed** (Niger), introducing the initial report of the Niger (CED/C/NER/1), said that, as a harmonious development process was impossible unless human rights were respected, his Government had made strenuous efforts to improve the human rights situation in the Niger, in general, and to combat enforced disappearance, in particular, despite the grave security crisis in the Sahel region. On 24 February 2022, the Council of Ministers had approved a bill that defined the criminal offence of enforced disappearance in line with the definition set out in the Convention. That legislative text also met the latter's requirements regarding the incorporation of the Convention's substantive provisions into domestic law. Perpetrators of the crime of enforced disappearance faced a prison sentence of up to 20 years, or a life sentence if the victim had died. Any individual who was not an agent of the State and who aided or abetted a perpetrator of an act of enforced disappearance faced a prison sentence of up to 15 years, or a life sentence if the victim had died. Enforced disappearance also carried a life sentence if it was accompanied by aggravating circumstances, in other words, if the victim was a minor, a person with a disability, a pregnant woman or an older person.
3. A superior was deemed to be an accomplice to a crime of enforced disappearance if he or she knew that, or consciously disregarded information which clearly indicated that, one or more subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance and if that superior then failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.
4. Persons who were implicated in an enforced disappearance but who effectively helped to bring the disappeared person forward alive or who made it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance could plead mitigating circumstances. However, no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, might be invoked as a justification for enforced disappearance. No order or instruction from any civil, military or other authority could be used as a justification for an enforced disappearance. The statute of limitations ran for 10 years as from the date on which the crime ceased. No one could be extradited to a country where there were substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance or torture.
5. Although transnational organized crime was making it difficult to implement the Convention, his Government knew that it could count on the international community to help it to overcome those difficulties and to end impunity for the crime of enforced disappearance.
6. **Mr. López Ortega** (Country Rapporteur) said that he appreciated the effort made by the delegation to attend the meeting in Geneva. He would like to invite the delegation to provide updated versions of the Criminal Code and the Code of Criminal Procedure to the Committee for its use in formulating its concluding observations. First and foremost, he would like to know what progress the State party had made towards recognizing the Committee's competence to receive communications under articles 31 and 32 of the Convention. Did the Code of Civil Procedure and the Act on the Organization and Jurisdiction of the Courts of the Niger permit courts and legal practitioners to rely directly on the Convention? It would be useful to have an indication of whether the State party planned to adopt provisions that would make the Convention self-executing. He would appreciate information on measures to ensure that members of the legal profession and judiciary were provided with training in the application of the Convention. The Committee would also be interested to learn what steps had been taken to supply the National Human Rights Commission with adequate financial, material and human resources and who the partners were who, as noted in the State party's report, provided the Commission with

logistical and financial support. In the light of paragraphs 50 and 51 of the replies to the list of issues, he would like to know to what extent the Commission's findings were respected when the State party itself called them into question.

7. He would be grateful for information on the specific restrictions that could be placed on people's rights under a state of emergency, especially with regard to persons deprived of liberty. In paragraph 40 of the State party's replies to the list of issues, it had noted that, as enforced disappearance was a continuing offence, the statute of limitation did not begin to run until the time when a disappeared person was no longer being held. He would appreciate clarification as to exactly which legal provision established that principle in law. Lastly, he would welcome further information regarding the scope of the exemptions provided for in article 7 of Act 2020-05 on Manifestly Unlawful Orders.

8. **Mr. de Frouville** (Country Rapporteur) said that he wished to know whether, as part of the reform of the Criminal Code, the State party intended to make it obligatory to keep statistical records on the number of persons who had disappeared in the country. It would be useful to know whether the State party maintained a list of attacks committed by armed groups in the context of which enforced disappearances had occurred and, if so, to receive a copy of that list. The Committee would also appreciate it if the State party could provide a list of the investigations conducted into such attacks, describe their outcomes and indicate whether witnesses' statements had been taken and suspected perpetrators identified and brought to trial. The State party might also wish to indicate to what extent it relied on mutual legal assistance in criminal matters. It would be helpful to find out whether national courts exercised extraterritorial jurisdiction over acts of enforced disappearance, irrespective of the nationality of the perpetrator or of the victim. If not, did the State party intend to amend its legislation so that it could do so?

9. The State party had yet to reply to the Committee's questions regarding the alleged enforced disappearances committed in the context of Operation Almahaou between 27 March and 2 April 2020 in the Tillabéri region. The National Human Rights Commission, drawing on a vast body of evidence and witness statements, had concluded that members of the defence and security forces of the Niger were responsible for the enforced disappearance of 135 persons in that connection. In a letter dated 9 April 2021, Human Rights Watch had corroborated the Commission's version of the events. The State party had nevertheless argued that it was not possible to ascertain the truth about the events or attribute responsibility to its regular forces, indicating that the matter had been referred to the military court and that a judicial investigation was in progress. The Committee would be grateful for information about the status and nature of that investigation and the reason for referring the matter to the military court. In the Committee's view, military jurisdiction ought to be excluded in cases of gross human rights violations, including enforced disappearance. Could the State party indicate whether the bill on enforced disappearances would establish that military courts did not have jurisdiction over such crimes?

10. Additional information was needed on the practical steps taken to protect victims and witnesses of acts of enforced disappearance from intimidation or reprisals. It was unclear how the law on torture and other cruel, inhuman or degrading treatment or punishment afforded protection in such cases; further clarification and examples of cases where the law had been applied for that purpose would be appreciated. The State party might also wish to explain how that law, or any other legislation, had been applied to ensure the protection of victims and witnesses of the alleged enforced disappearances committed during Operation Almahaou. With respect to the Committee's as-yet unanswered question about the procedural mechanisms in place to bar persons implicated in enforced disappearances from participating in related investigations, it would be helpful to find out exactly how those mechanisms had been applied in practice. The issue was particularly relevant since the investigation concerning Operation Almahaou had been referred to the military court even though the evidence suggested that the alleged perpetrators might have been members of the armed forces.

11. The State party might wish to comment on the alleged enforced disappearance of 23 men reportedly arrested in Bani Bangou and at the Garney market between 5 and 10 April 2020 and on the alleged enforced disappearance of four Fulani men at the Tilwa checkpoint, near In Tirzawane at the Mali border, on 20 February 2020. It would also be helpful to receive

information regarding the case of Marawan Mousa Allan, which was registered under the Committee's urgent action procedure, since the State party had thus far failed to provide follow-up information in response to the Committee's request for urgent action.

The meeting was suspended at 3.50 p.m. and resumed at 4.10 p.m.

12. **Mr. Djibagé Maman Sani** (Niger) said that his delegation would be glad to provide the Committee with copies of the updated Criminal Code and the Code of Criminal Procedure.

13. The Niger had recognized the competence of several other treaty bodies to consider individual communications and would do so in the case of the Committee on Enforced Disappearances in the near future. As doing so required no legislative changes, a simple declaration would suffice.

14. Pursuant to article 171 of the Constitution, duly ratified international treaties took precedence over domestic law. Some of the provisions of the Convention were directly applicable, while provisions concerning criminal matters, for example, required the adoption of domestic legislation to take effect. In February 2022, the Government had adopted a bill providing for the full integration of the Convention into domestic law. That bill had been submitted to the National Assembly and was expected to be passed on 4 April 2022.

15. As the Convention was the most recent of a series of human rights instruments ratified by the Niger, to date not all law enforcement and judicial staff were well versed in its provisions. The Government had taken a series of measures to disseminate the Convention, and non-governmental organizations had produced and were currently distributing local-language versions. Training on the provisions of the Convention for law enforcement personnel and members of the security forces would be conducted at the regional level.

16. In response to questions about measures taken to build the capacities of the National Human Rights Commission, while it was true that the Commission's resources were limited, under Act No. 2012-44 it was entitled to receive donations and support from domestic or international partners. In addition to its most important partner, the Office of the United Nations High Commissioner for Human Rights, resources and support were provided by the European Union, international non-governmental organizations such as the Oxford Famine Relief Organization (Oxfam) and the Danish Institute for Human Rights, among others. On the occasion of a recent visit to the Commission's premises, the Agent of the Niger had committed to increasing the Commission's budget. The institution had also been provided with new headquarters and with vehicles for each of the commissioners.

17. As regarded the status of the Commission's findings and recommendations, it was important to recall that it was not a judicial body. Its findings, while made public, did not have the status of a court ruling. In regard to the incident in Tillabéri, the Commission had drawn the obvious conclusion from reports that the persons implicated in the arbitrary killings had been dressed in military clothing and arrived in military vehicles. However, a few days earlier, there had been an attack in the area during which military vehicles, clothing and weapons had been stolen and several soldiers had been killed. Only a court could clarify the circumstances of the killings and alleged enforced disappearances and identify the perpetrators; as the perpetrators were alleged to be military personnel, the case had been referred to the military court.

18. The military court of the Niger was of mixed composition, with both military and civilian judges on the bench. Acts of enforced disappearance attributed to the military were tried in the military court, whereas cases involving civilian suspects were tried by civilian courts.

19. The bill on enforced disappearance recently approved by the Council of Ministers faithfully reflected the provisions of the Convention. It established the definition of enforced disappearance as provided for in the Convention; referred to the non-derogable nature of the prohibition of enforced disappearance; provided that the statute of limitations commenced from the moment when the offence of enforced disappearance ceased; defined aggravating circumstances; and stipulated that no order or instruction from any public authority might be invoked to justify an offence of enforced disappearance.

20. **Mr. Djibrilou** (Niger) said that the Convention did not expressly call for military courts to be excluded from trying cases involving enforced disappearances. The military court of the Niger provided the same procedural guarantees of due process as other courts. Trials concerning military personnel were conducted under the supervision of the public prosecutor, and military courts had repeatedly demonstrated their capacity to identify the perpetrators of human rights violations and render fair judgments.

21. As regarded the integration of the Convention into domestic law, the Convention rights were already implicit in the domestic legal framework. Under the country's laws and Constitution, human beings were sacred. There was an arsenal of laws on deprivation of liberty, pretrial detention, detention in police custody, the right to legal counsel and redress. Experience with the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had shown that lawyers and judges invoked the provisions of international instruments as soon as they had been ratified, without waiting for the adoption of domestic laws on the subject. The future law on enforced disappearances would provide protection from such crimes, including in the context of threats posed by terrorist organizations and armed groups.

22. A state of emergency did not imply a suspension of the rule of law; in the Niger, state of emergency legislation was subject to strict parliamentary control and reviewed every three months.

23. **Mr. Labo** (Niger), reaffirming the supra-constitutional status of the Convention, said that once international treaties had been ratified, the judiciary was bound by their provisions.

24. **Mr. Abani Ahmed Mohamed** (Niger) said that all final rulings of the military court were subject to approval by the Court of Cassation. The Niger engaged actively in mutual legal assistance arrangements, including through regional platforms for legal cooperation, which helped to expedite proceedings. In order to ensure respect for human rights during anti-terrorism operations, continuous awareness-raising activities and human rights training were provided for military staff, including by members of the military court.

25. **Mr. Soumaila** (Niger) said that the investigations into the allegations surrounding Operation Almahaou had been initiated by the gendarmerie of Ayérou, the department in which the incidents had occurred, and had subsequently been referred to the military court. Only days prior to the incident, terrorists had attacked a military post, stealing four vehicles, killing nine soldiers and injuring eight others; terrorists were known to use stolen military equipment in their operations to arouse suspicion of the military among the general population.

26. **Mr. Yacouba** (Niger) said that the case of Mr. Omar Marawan Mousa Allan, a Jordanian national who had been reported missing in the Niger, had been brought to the Government's attention by Interpol and the Jordanian police in 2019. In May 2019, public authorities had launched an investigation with the aim of establishing Mr. Allan's whereabouts and had traced his movements from Niamey to Agadez. The investigation had failed to uncover any further information about his movements, however, and had been closed in September 2019.

27. **Mr. Abani Ahmed Mohamed** (Niger) said that additional steps had been taken to prevent any further cases like the one involving Mr. Allan. Although foreign nationals were able to enter the country freely provided that they were in possession of the appropriate travel documents, steps were taken to ensure that visitors did not leave Niamey by road without protection. Roadside checks were carried out, and any unaccompanied foreign nationals were sent back to the capital.

28. **Mr. Dioffo** (Niger) said that the purpose of a state of emergency was not to restrict individual freedoms. On the contrary, the aim was to guarantee the rights and safety of citizens. All measures taken under a state of emergency were regularly evaluated and were closely monitored by the National Assembly.

29. The President of the Republic had made the defence and promotion of human rights one of the main priorities of his Administration. He had personally met with representatives of the National Human Rights Commission and had pledged to strengthen its operational capacity and to provide human rights training to civil servants. He was determined not to

impede the Commission's activities in any way and had demonstrated his support by offering it the use of a State-owned building as its head office.

30. Matters such as the abductions that had taken place in Bani Bangou in 2020 were a source of genuine concern. The National Assembly had repeatedly called on the Government to explain the circumstances surrounding such incidents, only to learn that they had been carried out by non-State armed groups. There had even been cases in which entire populations of villages had been massacred or abducted. The Government was doing everything possible to prevent such atrocities.

31. **Mr. Ikta Abdoulaye Mohamed** (Niger) said that armed groups were responsible for the vast majority of abductions and cases of enforced disappearance in his country. Each and every member of those armed groups was considered to be a criminal, and every effort was made to apprehend those persons and bring them to justice. With specific regard to the persons who had disappeared in Tillabéri, legal proceedings had been initiated in two separate cases. Those proceedings would not be influenced by the outcome of the trial taking place in the military court.

32. **Mr. Saadou** (Niger) said that every time the National Assembly considered whether or not to extend the state of emergency, it looked at all existing measures in order to decide whether they were still necessary. As a result, although the state of emergency remained in place, certain restrictions were being lifted.

33. He also wished to stress that it was the Government's intention to increase the budget allocated to the National Human Rights Commission. However, resources in the country were in short supply, and many other sectors were also in need of more funding.

34. **Mr. López Ortega** said that he welcomed the news that the State party was willing to recognize the Committee's jurisdiction under articles 31 and 32 of the Convention. Since that declaration had been made by a high-level delegation, he understood it to be a formal commitment on the part of the State party.

35. With respect to the implementation of the Convention in the Niger, there were still certain issues that required close attention. Article 12 called on States parties to ensure that the competent authorities had the necessary powers and resources to conduct investigations effectively. In the case of the Niger, that would entail strengthening its domestic laws and, in particular, the Code of Criminal Procedure. The principles of the Convention did not count for anything if they were not accompanied by the enactment of specific provisions in national law. It was to be hoped that many of the necessary provisions would be included in the bill that was scheduled for submission to the National Assembly on 4 April. It would be helpful if the delegation could share the text of that bill with the Committee. He also wished to know more about the enactment procedure and approximately how long it would take before the new provisions came into force.

36. It was encouraging to hear that the President of the Republic had made a commitment to support the work of the National Human Rights Commission. He would be interested to learn more about the Commission's current activities and to know if the delegation could provide an estimate of the level of financing that would be required for the Commission to become fully operational. When might those funds be made available?

37. Lastly, he wished to gain a fuller understanding of the ways in which the rights of detainees could be restricted under a state of emergency. The protection of the rights of persons deprived of liberty was a core tenet of the Convention. He was therefore eager to know whether their rights were currently being limited in any way, including through the extension of terms of imprisonment.

38. **Mr. de Frouville** said that the Committee had published a statement on enforced disappearance and military jurisdiction on 13 February 2015 in which it had recommended that cases of enforced disappearance remained expressly outside military jurisdiction. There were various reasons for the Committee's stance, not least of which was the importance of combating impunity in cases where mass human rights violations were committed by the military. Having heard the delegation's explanations as to why cases of enforced disappearance had been brought under military jurisdiction in the Niger, he would be interested to know more about the nature of the State party's military court. In particular, it

would be useful to receive a more complete description of its hybrid composition. He also wished to know more about how the State party ensured the independence and impartiality of investigations into cases of enforced disappearance. It was encouraging that decisions could be appealed before the Court of Cassation. However, that was not a sufficient safeguard in itself since the Court of Cassation was presumably empowered to rule only on points of law.

39. Many questions remained unanswered concerning the case of the 135 disappeared persons in the region of Tillabéri. While bearing in mind the delegation's explanation that the incident had been committed by non-State actors, the fact remained that the National Human Rights Commission had published a report that directly contradicted some aspects of the Government's version of events. Witnesses had reportedly declared that the abductions had been carried out by military personnel, and one man had allegedly been released following a telephone call to a relative who worked in the national armed forces. He invited the delegation to comment on those reports.

40. The Committee welcomed the new information provided by the delegation on the case of the Jordanian national who had gone missing in the Niger in 2019. Since the case was the subject of a request for urgent action under article 30 of the Convention, he encouraged the State party to submit the information in its possession to the Committee in writing at the earliest opportunity.

41. **Mr. Diop** said that all the material elements of the offence of enforced disappearance appeared to be covered by national laws on such offences as abduction, kidnapping and even murder. However, cases of enforced disappearance called for special investigative and prosecutorial procedures. He therefore wished to know more about the specific provisions of the bill regarding the criminal offence of enforced disappearance. It would also be helpful to understand whether that bill contained retroactive provisions.

42. He would be interested to receive confirmation as to whether the State party planned to open, or had already initiated, negotiations with the armed groups operating on its territory. A crucial issue in the context of any potential negotiations would be whether the Government would be prepared to grant immunity to the perpetrators of past cases of enforced disappearance in order to reach a peace agreement with such groups.

43. **Mr. Albán-Alencastro** said that further information on the selection process for military judges would be welcome. He wished to know who appointed military judges and whether or not members of the public were able to challenge those decisions. To his mind, the objectivity of the military court could be compromised in cases involving crimes allegedly committed by military personnel or other State actors. He therefore wished to understand what specific safeguards were built into the court's procedures to ensure that due diligence was exercised throughout its investigations.

44. He would also welcome further information about the jurisdiction of the Court of Cassation in the Niger. Usually, the powers of such courts were limited to ruling on points of law. It would be useful to know whether the Court of Cassation in the State party was in fact able to consider evidence and the merits of the cases brought before it and thus to examine a case from beginning to end rather than simply handing down rulings on specific legal issues.

45. **Mr. Ravenna** said that he wished to know why an attack on a military unit was being investigated by a military court rather than an ordinary one since the alleged perpetrators were not members of the military. It would be helpful to know whether military courts had jurisdiction in all cases where members of the military were either perpetrators or victims.

46. **Mr. Ayat**, recalling the Committee's statement in which it had established that cases of enforced disappearance should never be brought before military courts, said that individuals appearing before any type of court should enjoy fair trial guarantees. He would appreciate further information regarding the responsibility of superior officers and wished to know whether the order of a superior could ever, under any circumstances, be invoked to justify an offence of enforced disappearance.

47. **The Chair** said that she wished to know whether the State party had a code of military justice; what type of court had jurisdiction in cases involving acts carried out by groups of agents of the State or of persons acting with its authorization, support or acquiescence in

cases where those groups included both civilians and members of the military; and whether jurisdictional conflicts had ever arisen between military and ordinary courts in such cases.

48. **Mr. Maman Sani** (Niger) said that the bill on enforced disappearance, which would introduce new articles into the Criminal Code, included a definition of enforced disappearance that had been taken directly from the Convention. The provisions addressing the responsibility of superiors mirrored the language of article 6 (1) (b) of the Convention and introduced the concept of complicity by omission, which had thus far been absent from domestic criminal law. In addition to the aggravating circumstances detailed earlier by the head of the delegation, premeditation or the temporary or permanent mutilation of the victim were also classified as aggravating factors. The bill did not address reparation because that topic was governed by provisions of the Code of Criminal Procedure that were applicable in all criminal cases. The bill made clear that no exceptional circumstances could be used to justify an enforced disappearance. No order or instruction from any public authority – civilian or military – could be invoked to justify an enforced disappearance.

49. In the Niger, bills were first adopted by the Council of Ministers and then sent to the National Assembly, where they were reviewed in depth by a committee that would then share its views with the plenary. Representatives of the Government involved in the drafting of a bill were called to appear before the committee during its review.

50. In response to recommendations already received from other treaty bodies, the Government had held two meetings with members of the National Assembly to encourage them to increase the budget of the National Human Rights Commission, as budgets required parliamentary approval. The Commission's budget currently amounted to some 380 million CFA francs. The Government planned to restructure its budget in the near future in order to increase the amount allocated to the Commission, which comprised nine elected members.

51. **Mr. Ikta Abdoulaye Mohamed** (Niger) said that bills related to treaties ratified by the Niger faced no obstacles in the National Assembly, and he was confident that the bill on enforced disappearance would be adopted. Persons in detention did not feel the impact of states of emergency, as their rights were already limited. Enforced disappearance remained an offence during states of emergency.

52. **Mr. Abani Ahmed Mohamed** (Niger) said that the military court had been created in 2003 and had become operational in 2006. A military commissioner headed its prosecution service. Case files involving members of the military and gendarmes were sent to the Minister of Defence, those involving members of the national guard were sent to the Minister of the Interior and those involving customs officers were sent to the Minister of Finance so that those authorities could order the initiation of the relevant prosecutions. The proceedings then moved forward as they would in a civilian court and were subject to the same procedural requirements. Since 2006, only civilian judges had acted as investigating judges, even though the law had provided for military judges to do so, because it had been found that the former had the requisite experience and expertise. The panel of judges of the military court comprised three civilian judges, one of whom presided over their deliberations, and five military judges. The role of the military judges was to provide technical insight that would help civilian judges better understand the facts of a case. The chambers for indictments and review were also composed of both civilian and military judges. The Code of Military Justice had been in effect since 2003 and provided that any matters not addressed within it would be resolved in accordance with the Criminal Code and the Code of Criminal Procedure.

53. **Mr. Ikta Abdoulaye Mohamed** (Niger) said that investigations were being conducted by the military court and by a civilian court into the enforced disappearances allegedly committed in connection with Operation Almahaou, and their findings had not yet been released. The report of the National Human Rights Commission and the reports of different government entities had contained varying accounts of the events. The Government would not be able to say which account was correct until the investigations were completed. However, the presence of military uniforms and vehicles alone was insufficient to indicate that members of the military had been involved.

54. The kidnappings that were being carried out on a daily basis in the Niger were the work of armed groups over which the Government had no control. Statistics could be provided on those kidnappings. Relatives of individuals who had disappeared did not require

protection because the kidnappers were not abducting people in order to settle scores; they did not know who the relatives of their victims were at the time that they abducted them. Rather, the kidnappers hoped to extort money from the families. If they did not succeed in doing so, they killed their victims.

55. **Mr. Maman Sani** (Niger) said that the bill on enforced disappearance would not be made retroactive, as retroactivity would run counter to established principles of law. Military courts offered the same safeguards as civilian ones, such as the presumption of innocence and the right to a lawyer. During states of emergency, military courts had jurisdiction over all offences affecting the security of the State, regardless of who the perpetrator was. They also had jurisdiction over all offences in which an accessory, principal or co-principal was a member of the military and all offences committed against the country's armed forces or their property. The case involving the enforced disappearances allegedly committed in connection with Operation Almahaou had been brought before a military court because that court had jurisdiction, given the existing state of emergency, and because the National Human Rights Commission had indicated that members of the military had been responsible. Whether those acts had been committed by soldiers was for the court to decide.

The meeting rose at 6.05 p.m.