



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
15 October 2014
English
Original: French

Committee on Enforced Disappearances

Concluding observations on the report submitted by Belgium under article 29, paragraph 1, of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Belgium under article 29, paragraph 1, of the Convention (CED/C/BEL/1 and Corr.1) at its 100th and 101st meetings (CED/C/SR.100 and 101), held on 15 and 16 September 2014. At its 113th meeting, held on 24 September 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Belgium under article 29, paragraph 1, of the Convention and the information contained in the report. The Committee also appreciates the constructive dialogue with the delegation from the State party on the measures taken to implement the provisions of the Convention, which has addressed many of the points raised, and particularly welcomes the openness with which the delegation responded to the questions that it raised. In addition, the Committee thanks the State party for its written replies (CED/C/BEL/Q/1/Add.1 and Corr.1) to the list of issues (CED/C/BEL/Q/1), as supplemented by statements by the delegation, and the additional information submitted in written form.

B. Positive aspects

3. The Committee commends the State party for having ratified almost all of the United Nations core human rights instruments and their optional protocols, as well as the Rome Statute of the International Criminal Court.

4. The Committee also welcomes the fact that the State party has recognized the competence of the Committee under articles 31 and 32 of the Convention, in respect of individual and inter-State communications.

5. The Committee commends the effort made by the State party to promote the Convention, in particular by organizing in January 2013 a seminar on the Convention for all public bodies concerned, as part of the preparation of the State party report.

* Adopted by the Committee at its seventh session (15–26 September 2014).



C. Principal subjects of concern and recommendations

6. The Committee considers that, at the time of the drafting of the present concluding observations, the legislative framework in force in the State party was not in full compliance with the obligations incumbent on States that have ratified the Convention. While noting that the State party has begun a legislative process aimed at full implementation of the Convention, the Committee recommends that the State party take account of its recommendations, which have been made in a constructive and cooperative spirit, with the aim of ensuring as soon as possible that the legal framework and the way it is implemented by the State party's authorities, at the federal, community and regional levels, are fully consistent with the rights and obligations set out in the Convention.

General information

Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

7. The Committee notes the information provided by the State party on the progress made towards ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular in respect of the consent given by some communities and regions. The Committee notes, however, that although the State signed the Optional Protocol in 2005, progress towards ratification has been slow. Furthermore, it notes that none of the inspection mechanisms in the State party meet all the requirements, for example those set out in article 3 and articles 17 to 22 of the Optional Protocol.

8. The Committee recommends that the State party step up the ratification process for the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with the aim of establishing a national preventive mechanism in full conformity with the Optional Protocol.

National human rights institution

9. The Committee notes that several human rights treaty bodies have recommended that the State party establish a national human rights institution in conformity with the Paris Principles. The Committee welcomes the Government's agreement in December 2011 to set up, jointly with the communities and the regions, an inter-federal human rights body. Following that agreement, a working group was established to draw up a draft cooperation agreement creating an inter-federal umbrella institute of human rights. The Committee finds it regrettable, however, that the working group has not been able to conclude a cooperation agreement for the establishment of this institute, and that the process is for the time being at a standstill. The Committee is still concerned about the fact that the State party has not yet established a national human rights institution in conformity with the Paris Principles.

10. The Committee encourages the State party to resume work as soon as possible on the establishment of an independent national human rights institution in full conformity with the Paris Principles, to give it a mandate to promote and protect human rights and to provide it with sufficient human and financial resources to do so.

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

Incorporation of the definition and criminalization of enforced disappearance in the Criminal Code

11. The Committee notes that the Criminal Code contains no provisions defining or criminalizing enforced disappearance as required under articles 2 and 4 of the Convention. It notes, however, that the State party has begun a legislative process aimed inter alia at defining and criminalizing enforced disappearance in its Criminal Code as a separate offence. It notes that in the absence of a definition and criminalization of enforced disappearance, in response to certain questions, the State party has referred to the general legal regime or to criminal rules relating to other, related offences, which do not constitute the crime of enforced disappearance. The Committee considers that reference to a range of existing offences and the relevant regulations is not sufficient to meet this obligation, as the offence of enforced disappearance is not a series of different crimes, but rather a single complex offence, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, that violates various rights. In this context, the Committee considers that the definition of enforced disappearance as a separate offence would enable the State party to comply with the obligation under article 4, which is closely related to other treaty obligations concerning legislation, such as those in article 6, paragraph 1 (a), and article 7 (arts. 2 and 4).

12. The Committee recommends that the State party step up the pace in drafting a bill aimed at implementing the Convention so as to define and criminalize enforced disappearance as a separate offence in its Criminal Code, in conformity with articles 2 and 4 of the Convention, and to make it punishable by appropriate penalties commensurate with the extreme seriousness of the crime.

Consultation with non-governmental organizations (NGOs) and other members of civil society

13. The Committee notes the information provided by the State party to the effect that, since the legislative process aimed at fully implementing the Convention in domestic law is only at the preliminary drafting stage, NGOs and other members of civil society can in its view only be consulted once the draft is sent to the parliament. Nonetheless, the Committee considers that it is useful for the State party to request contributions from NGOs and other members of civil society at a stage that will allow their views to be taken into consideration. It is concerned that to consult them once the draft has already taken shape might exclude them from the process.

14. The Committee urges the State party to encourage contributions from NGOs and other members of civil society, in particular those with activities related to the Convention or in similar fields, at the most appropriate stage of drafting of the bill to fully implement the Convention in domestic law.

Incorporation in the Criminal Code of the definition of enforced disappearance as a crime against humanity

15. The Committee notes that under the terms of article 136 ter of the Criminal Code, enforced disappearance as a crime against humanity is covered as follows: “Crimes against humanity, as defined below, constitute a crime under international law, whether committed in time of peace or time of war, and shall be sanctioned in accordance with the provisions set out herein. In accordance with the Statute of the International Criminal Court, crimes against humanity are defined as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: ... Enforced disappearance of persons”. The Committee notes this reference to

the crime of enforced disappearance in the Criminal Code, in application of article 5 of the Convention. However, the Committee finds it regrettable that enforced disappearance as a crime against humanity is not directly incorporated as such in the Code (art. 5).

16. The Committee urges the State party to adopt the necessary legislative measures, in particular taking advantage of the drafting of its bill on implementation of the Convention, to incorporate in its Criminal Code a definition of enforced disappearance as a crime against humanity, in application of article 5 of the Convention.

Mitigating and aggravating circumstances

17. The Committee notes the provisions of the Criminal Code on general and specific mitigating and aggravating circumstances for distinct offences related to acts of enforced disappearance, such as torture, inhuman treatment, illegal and arbitrary detention by public officials, violation by an individual of freedom of the person and the abduction and concealment of minors or other vulnerable persons. However, the Committee notes in particular that the specific mitigating circumstances for offences related to enforced disappearance, as separate crimes, are currently applicable only to the offence of abduction and concealment of minors or other vulnerable persons, only with the aim of obtaining their release, and apply only to the person who commits the abduction or concealment; they do not cover the elements listed in article 7, paragraph 2 (a), of the Convention. The Committee, while noting the statement in the report of the State party that “Once Belgian law has been amended to establish the act of enforced disappearance as a separate offence, specific aggravating and mitigating circumstances will be defined”, considers that the current provisions of the Criminal Code of the State party relating to mitigating and aggravating circumstances applicable to acts of enforced disappearance and related offences do not conform fully with the provisions of article 7, paragraph 2, of the Convention (art. 7).

18. The Committee encourages the State party to amend its Criminal Code to provide for mitigating and aggravating circumstances applicable to acts of enforced disappearance covering all the elements listed in article 7, paragraph 2, of the Convention.

Criminal responsibility and judicial cooperation with regard to enforced disappearance (arts. 8–15)

Continuous nature of the offence of enforced disappearance

19. The Committee notes the position of the State party that the continuous nature of an offence is never expressly referred to in legislative texts, and that it is a matter for determination by the courts. It also notes the examples of jurisprudence cited by the State party in paragraphs 13 and 14 of its replies to the list of issues (CED/C/BEL/Q/1/Add.1 and Corr.1) regarding the determination of the continuous nature of offences by the Belgian Court of Cassation. The Committee nevertheless wishes to draw attention to the fact that the continuous nature of the crime of enforced disappearance is addressed by the Convention, in particular to ensure that the period of limitations shall not begin until the crime of enforced disappearance has ended, and that it is important for the State party to take steps to ensure that this continuous nature is recognized in its system of criminal law (art. 8).

20. The Committee recommends that the State party take the necessary steps to ensure that the continuous nature of the crime of enforced disappearance is specifically recognized, by mentioning it in the preparatory work for the bill on the

implementation of the Convention in domestic law, such that the period of limitations shall not begin until the crime of enforced disappearance has ended.

Military courts

21. The Committee takes note of the clarification provided by the State party in its replies to the list of issues but notes that military courts remain competent to try crimes of enforced disappearance committed “in time of war”. The Committee considers that, as a matter of principle, military courts do not provide the independence and impartiality required by the Convention to deal with human rights violations such as enforced disappearances (art. 11).

22. The Committee recommends that the State party take the necessary legislative measures to ensure that all cases of enforced disappearance remain expressly outside military jurisdiction and can be tried only by ordinary courts.

Protection of complainants, witnesses, relatives of disappeared persons and their counsel as well as persons participating in the investigation

23. The Committee notes that the State party has set out comprehensive provisions for the protection of witnesses in articles 75 bis, 86 bis and 102 et seq. of its Code of Criminal Procedure. It notes the existence of generally applicable criminal provisions for the protection of any person who is a victim of intimidation and ill-treatment, along with the information provided by the delegation of the State party. The Committee considers that general provisions providing protection against intimidation and ill-treatment are insufficient to meet the requirements of article 12, paragraph 1, of the Convention. The Committee nevertheless remains concerned about the fact that these provisions are not in full conformity with article 12, paragraph 1, of the Convention, which in addition specifically requires that “relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given” (art. 12).

24. The Committee recommends that the State party adopt specific legislative measures to explicitly ensure, in cases of enforced disappearance, the protection not only of complainants and witnesses but also of relatives of disappeared persons and their counsel, as well as persons participating in the investigation, against any ill-treatment or intimidation as a consequence of the complaint or any evidence given.

Measures to prevent enforced disappearance (arts. 16–23)

Human rights training, specifically on the provisions of the Convention

25. The Committee notes the information concerning the training of members of the military, the police and prison personnel in human rights and standards governing the deprivation of liberty. The Committee notes, however, that the Convention is not specifically covered in these training activities (art. 23).

26. The Committee recommends that the State party adopt the necessary measures to ensure that the training provided to military and civilian law-enforcement personnel, to medical personnel, to public officials and to other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other judicial officials at all levels, incorporates training on the Convention, at the federal, community and regional levels, in accordance with article 23.

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

Reparation

27. The Committee notes that the State party has taken measures to protect victims of offences related to enforced disappearance that would also apply to enforced disappearance, specifically article 3 bis of the Preliminary Title of the Code of Criminal Procedure, a circular of 4 May 2007 from the Federal Public Service for Home Affairs, known as GPI 58, and a ministerial directive of 20 February 2002 on searching for disappeared persons. The Committee notes that the Flemish, French and German Communities have established victim assistance services in the State party. While noting that the State party has established a Commission for Financial Support for the Victims of Deliberate Acts of Violence and for Voluntary Rescuers that is able to issue rulings on cases of enforced disappearance, the Committee is concerned about the fact that one of the conditions for granting such support is that the deliberate act of violence in question must take place in Belgium, thus excluding acts committed in other countries that are prosecuted or have effects in Belgium (art. 24).

28. The Committee recommends that the State party consider extending the competence of the Commission for Financial Support for the Victims of Deliberate Acts of Violence, including enforced disappearances, to acts that take place in other countries but that are prosecuted or have effects in Belgium.

Draft royal decrees

29. The Committee finds it regrettable that the draft royal decree on registers of persons deprived of liberty and the one on gathering, conserving and accessing information on the origin of adopted children have still not been finalized (arts. 17 and 25).

30. The Committee recommends that the State party finalize and adopt the royal decrees on registers of persons deprived of liberty and on gathering, conserving and accessing information on the origin of adopted children, so as to bring domestic legislation into line with the Convention in these fields.

D. Dissemination and follow-up

31. The Committee wishes to recall the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when ratifying the Convention and other relevant international instruments. In this regard, and given its federal nature, the Committee calls for the State party to ensure that the Convention is applied in full at both the federal and the community and regional levels.

32. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure

that gender perspectives and child-sensitive approaches are used in implementing the rights and complying with the obligations set out in the Convention.

33. The State party is encouraged to disseminate widely the Convention, its report submitted under article 29, paragraph 1, of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and NGOs operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the actions taken in line with the present concluding observations.

34. In accordance with the Committee's rules of procedure, by 26 September 2015, at the latest, the State party should provide relevant information on its implementation of the Committee's recommendations contained in paragraphs 8, 12 and 30.

35. Under article 29, paragraph 4, of the Convention, the Committee requests the State party to submit, no later than 26 September 2020, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society in the preparation of this information.
