



# International Convention for the Protection of All Persons from Enforced Disappearance

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## Committee on Enforced Disappearances

### Twenty-ninth session

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Consideration of reports of States Parties under  
article 29 (1) and additional information  
under article 29 (4) of the Convention

## Replies of Benin to the list of issues in relation to its report submitted under article 29 (1) of the Convention\*

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\* The present document is being issued without formal editing.



## **Replies to the list of issues (CED/C/BEN/Q/1)**

### **I. General information**

#### **Reply to the questions raised in paragraph 1**

1. Pursuant to article 147 of the Constitution, any convention ratified by Benin takes precedence over domestic legislation and may be invoked before the courts. However, conventions are not effective against third parties until they have been published in the Official Gazette.
2. Following receipt of the list of issues, the Ministry of Justice and Legislation sent a request to the courts to provide it with data on any relevant cases.

#### **Reply to the questions raised in paragraph 2**

3. For the time being, Benin does not intend to make the declarations relating to the Committee's competence to receive and consider individual and inter-State communications.

#### **Reply to the questions raised in paragraph 3**

4. Several non-governmental organizations (NGOs) that are involved in the protection and defence of human rights and form part of platforms and networks participated in the preparation and validation of the report.
5. They offered some useful contributions, which were incorporated into the document.

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

#### **Reply to the questions raised in paragraph 4**

6. A unified register of disappeared persons has not yet been established. Investigations are launched as soon as cases of disappearance are brought to the attention of the judicial authorities.
7. The Public Security Documentation Centre operates as the national police database. It possesses data on all offences reported and recorded by police units across the country, including reported cases of abduction. In such cases, the information compiled concerns the identity of the victims, any potential suspects, the date of the incident and the place where it occurred. No cases of enforced disappearance have been recorded in Benin.

#### **Reply to the questions raised in paragraph 5**

8. The judicial authorities take the appropriate steps to open an investigation as soon as a case of disappearance, whether it be in relation to migration or trafficking in persons, is brought to their attention, with a view to finding the disappeared person.
9. No statistics are available.

#### **Reply to the questions raised in paragraph 6**

10. There are no plans to prohibit under national law the invocation of exceptional circumstances as a justification for enforced disappearance.
11. The decisions made and action taken as part of efforts to address the coronavirus disease (COVID-19) pandemic were consistent with the recommendations of the World Health Organization.

#### **Reply to the questions raised in paragraph 7**

12. The definition of enforced disappearance in article 465 of the Criminal Code is in line with that contained in the Convention.

13. Article 8 of the Constitution establishes that the human person is sacred and inviolable. Any violation of the integrity of the human person is punishable.

14. Benin has several national strategy papers on the protection of human rights, into which the provisions of all relevant instruments are incorporated. There is a need, however, to step up efforts to disseminate the Convention.

**Reply to the questions raised in paragraph 8**

15. The Criminal Code is currently under review. These concerns will be transmitted to the review committee.

16. Enforced disappearance is classed as a crime against humanity and punished by life imprisonment.

**Reply to the questions raised in paragraph 9**

17. Acts of disappearance committed without the authorization, support or acquiescence of the State, such as disappearances of migrants and disappearances committed for the purpose of trafficking, are handled through judicial investigations opened against an unknown perpetrator.

18. No statistics are available.

**Reply to the questions raised in paragraph 10**

19. Articles 464 ff. of the Criminal Code apply to any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance.

20. Article 19 (2) of Act No. 90-32 of 11 December 1990 establishing the Constitution of the Republic of Benin, as amended by Act No. 2019-40 of 7 November 2019, releases all public officials from their duty to obey superior orders when the order received is manifestly contrary to the law.

21. No reprisals are carried out against individuals who refuse to comply with an order to commit an act of enforced disappearance.

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

**Reply to the questions raised in paragraph 11**

22. In accordance with the principles of territoriality and national sovereignty, any offence committed abroad comes under foreign jurisdiction unless there is an extradition agreement in place.

23. With regard to offences committed in national territory, article 14 of the Criminal Code provides that criminal law applies to anyone present in the territory of Benin who is guilty of being an accomplice to an offence or crime committed abroad, when the offence or crime is punished by both Beninese law and the foreign law and when the crime or offence has been established by a final decision of the foreign court.

24. Title IX of the Code of Criminal Procedure, which is entitled “Crimes and offences committed abroad”, is devoted to this issue.

**Reply to the questions raised in paragraph 12**

25. The procedure consists of eight key stages. It begins with the preliminary investigation and ends, where applicable, with the issuance of a closing order:

1. Preliminary investigation;
2. Notification of the proceedings to the public prosecutor;
3. Opening of an investigation;

4. Presentation of accused persons being held under a detention order to the liberties and custody judge;
5. Interrogation of accused persons, search for possible perpetrators, co-perpetrators and accomplices, interviewing of witnesses and gathering of corroborating evidence;
6. Transmission of the file to the prosecutor for further action;
7. Submissions from the public prosecutor with a view to final settlement;
8. Issuance of the closing order.

26. Accused persons are reminded of their rights of defence, both at the start of the preliminary investigation and upon their first appearance before the investigating judge.

**Reply to the questions raised in paragraph 13**

27. Benin does not have a military court. All persons accused of enforced disappearance, whether they belong to the military or not, are prosecuted in the ordinary courts.

**Reply to the questions raised in paragraph 14**

28. No allegations of enforced disappearance have been made since the submission of the report.

**Reply to the questions raised in paragraph 15**

29. Where the public prosecutor finds that there are reasonable grounds to believe that an act of torture has been committed, the public prosecutor must proceed immediately to an objective and impartial investigation, even if the victim has not lodged a complaint.

30. The public prosecutor is also entitled to initiate proceedings ex officio in connection with any other matter.

31. This power of the public prosecutor may be extended or exercised in other cases, including those concerning enforced disappearance.

**Reply to the questions raised in paragraph 16**

32. Whenever a public official is prosecuted, a notice of prosecution is sent to the responsible minister. Disciplinary proceedings are initiated only after a judicial decision has been made.

33. Any public official who is accused of committing a crime is automatically suspended from duty, without prejudice to any legal proceedings. The following measures are taken in such cases:

- The establishment of an investigating committee
- The appearance of the individual concerned before a disciplinary board
- The imposition of disciplinary measures

**Reply to the questions raised in paragraph 17**

34. Any person prosecuted for an offence subject to universal jurisdiction under the international conventions ratified by Benin may be extradited.

35. The fact that enforced disappearance is not defined as a separate offence in the Criminal Code does not constitute an obstacle to the prosecution of cases.

36. Extradition under agreements concluded with other countries may be refused where fair trial guarantees are not assured or there is a risk of torture. The principle of non-extradition of nationals also applies.

37. The offence of enforced disappearance has not been included in any extradition agreements concluded by Benin.

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

### Reply to the questions raised in paragraph 18

38. The principle of non-refoulement is a fundamental element of international law that prohibits the forced return of persons to countries where their life or freedom could be threatened. This principle is widely recognized and has been incorporated into various international legal instruments, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

39. This principle is respected in law and in practice to ensure the protection of refugees, asylum-seekers and all foreign nationals. The Beninese authorities comply with their international obligations relating to the protection of the human person and refugees, including the principle of non-refoulement, in order to guarantee that no one is returned to a place where he or she would be at risk of persecution or serious human rights violations.

### Reply to the questions raised in paragraph 19

40. All prisons have a register of persons deprived of liberty. The information contained in these registers is consistent with that listed in article 17 of the Convention. All prisons have a room in which detained persons and their lawyers may hold discussions.

41. The internal regulations provide for visiting days, on which detained persons are free to converse with their relatives in a room set up for such purposes.

42. Detained persons enjoy an effective right to appeal. Appeals are recorded in a register before being transmitted to the competent authorities.

43. The registers are periodically checked by the general inspectorate of judicial services of the Benin Prison Agency.

### Reply to the questions raised in paragraph 20

44. Prison governors routinely report on the execution of release orders, a record of which is entered into the register of releases.

45. The judicial authorities regularly monitor the execution of release measures.

46. A prison alert and management system has been set up to facilitate monitoring of the enforcement of sentences and the execution of releases.

### Reply to the questions raised in paragraph 21

47. The criminal investigation police strive to fully uphold the rights of detained persons. Nonetheless, a few complaints were recorded following the latest round of prison inspections in December 2023. Criminal investigation police officers have been given strict instructions to rectify the shortcomings identified.

### Reply to the questions raised in paragraph 22

48. The information listed in article 18 of the Convention is general in nature and accessible to lawyers and any person who has a legitimate interest in obtaining access to it. In the event that such access is denied, the requesting individual may refer the matter to the prison governor's superior.

49. Individuals who have a legitimate interest in obtaining such information but are denied access to it may apply to the Constitutional Court or the liberties and custody chamber.

### Reply to the questions raised in paragraph 23

50. Several training sessions have been run for actors in the criminal justice system. In order to build on these efforts, steps will be taken to integrate modules on the Convention into training curricula.

## **V. Measures to protect and ensure the rights of victims of enforced disappearance (art. 24)**

### **Reply to the questions raised in paragraph 24**

51. Article 2 of the Code of Criminal Procedure establishes that “a victim, in the strict sense of the word, is any person who has personally suffered harm as the direct result of an offence. In broader terms, a victim is any duly registered person or association that, despite not having suffered direct personal injury, has a legitimate interest in bringing action.” This definition is consistent with that contained in article 24 of the Convention.

52. A person who reports a matter to the criminal investigation police or the judicial authority may be considered a victim and must collaborate with that authority to establish the truth.

### **Reply to the questions raised in paragraph 25**

53. Hearings are public and comply with the adversarial principle and the principle of two-tier proceedings.

54. Any person who has suffered direct or indirect harm as a result of an offence may bring a claim for damages before the court. Compensation for victims may also be ordered by means of an administrative decision.

55. Depending on the decision reached, compensation may be material or financial.

### **Reply to the questions raised in paragraph 26**

56. Emergency systems are in place to ensure the immediate launch of an urgent search when a case of disappearance is reported to the authorities. These systems include:

- The early warning system
- The West African Police Information System
- The National Central Bureau of the International Criminal Police Organization (INTERPOL)

### **Reply to the questions raised in paragraph 27**

57. Articles 18–31 of the Persons and Family Code list the rules applicable to an absent or disappeared person.

58. The person’s estate is managed by a liquidator, who is appointed by the judge responsible for inheritance matters.

59. In terms of social protection, the State provides psychosocial and financial support for the most vulnerable population groups, including the children of victims of enforced disappearance.

## **VI. Measures to protect children against enforced disappearance (art. 25)**

### **Reply to the questions raised in paragraph 28**

60. There are no plans in place to incorporate the offences specified in article 25 (1) of the Convention into the Criminal Code.

61. Child abduction is addressed and punished under articles 598 to 601 of the Criminal Code.

62. No complaints concerning the wrongful removal of children within the meaning of article 25 (1) (a) of the Convention have been filed.

**Reply to the questions raised in paragraph 29**

63. The rules applicable to adoption are set out in the Children's Code and its implementing decrees. Failure to comply with these rules results in the annulment of the adoption and leaves those responsible open to prosecution.

64. When the disappeared person reappears, the adoption or guardianship decision becomes null and void.

65. Any adoption, placement or guardianship arrangement put in place on a fraudulent basis is null and void.

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