



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
18 October 2024

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

List of issues in the absence of the report of Lesotho due under article 29 (1) of the Convention¹

I. General information

1. In view of article 2 of the Constitution, please clarify the status of the Convention vis-à-vis domestic law, including the Constitution, and indicate whether the provisions of the Convention can be directly invoked before and applied by courts or other relevant authorities. Please include examples of case law, if any, in which the provisions of the Convention have been directly invoked before or applied by courts or other relevant authorities.
2. Please provide information on the progress of the establishment and operationalization of the national human rights commission. Please also indicate whether there are any specific arrangements or plans in which the commission is envisaged to work on enforced disappearances; if so, please provide detailed information in that regard, including on measures taken to ensure that the Commission has the financial, technical and staffing resources necessary to properly discharge its functions.
3. Please indicate whether the State party envisages making the declarations provided for in articles 31 and 32 of the Convention relating to the Committee's competence to receive and consider individual and inter-State communications.

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

4. Please indicate whether any measures have been taken, or are envisaged, to incorporate enforced disappearance as an autonomous crime in domestic legislation in accordance with the definition contained in article 2 of the Convention.
5. In the absence of an autonomous crime of enforced disappearance, please provide information on:
 - (a) The measures taken to incorporate enforced disappearance as an offence in national criminal legislation in accordance with the definition contained in article 2 of the Convention;
 - (b) How the Convention is implemented at present;
 - (c) The specific provisions invoked in national legislation to handle cases involving facts amounting to enforced disappearance as defined in article 2 of the Convention;
 - (d) The measures taken to define the widespread or systemic practice of enforced disappearance as a crime against humanity in accordance with article 5 of the Convention,

¹ Adopted by the Committee at its twenty-seventh session (23 September–4 October 2024).



and to implement the Rome Statute of the International Criminal Court, ratified by the State party in 2000 (arts. 2, 4, 5 and 7).

6. Please provide updated statistical data, disaggregated by the sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation and occupation of the victim, on: (a) the number of disappeared persons in or from the State party, specifying the date and place of disappearance and the number of those persons who have been located; (b) the number of those persons who may have been subjected to enforced disappearance within the meaning of article 2 of the Convention; and (c) the number of persons who may have been subjected to the acts described in article 3 of the Convention, including acts of disappearance committed for the purpose of trafficking in persons and illegal intercountry adoption and disappearances in the context of migration (arts. 1–3, 12 and 24).

7. Please indicate whether there exists a register that includes all cases of disappeared persons, regardless of the circumstances of the disappearance. If such a register exists, please indicate the type of information that it contains and whether such information could enable the differentiation between cases of enforced disappearance as defined under article 2 of the Convention and cases of disappearance that do not fall under that category. Please specify whether that information is cross-checked with other databases, such as registers of persons deprived of liberty, and whether these databases are accessible to all interested persons. Please also specify the methodology used to keep the existing databases updated (art. 17).

8. Please describe the legal or administrative measures that have been taken to ensure that no exceptional circumstances can be invoked to derogate from the right not to be subjected to enforced disappearance, including a state of war or a threat of war, internal political instability or any other public emergency. Please specify whether any measures adopted by the State party concerning counter-terrorism, emergency situations, national security or other similar grounds have had any impact on the effective implementation of the Convention (art. 1).

9. Please describe:

(a) The applicable legislation governing the acts and omissions enumerated in article 6 (1) (a) and (b) of the Convention and how this legislation ensures that any person engaging in such acts or omissions is held criminally responsible;

(b) The legislation that addresses the prohibition on invoking an order or instruction from any public authority to justify an offence of enforced disappearance, and indicate whether the notion of “due obedience” as a criminal law defence has any impact on the implementation of this prohibition. Please explain how the State party ensures that any person contemplated in article 23 (1) (a) of the Convention is held criminally responsible when he or she invokes a superior order to justify an enforced disappearance. Please also explain how national legislation guarantees that a person who refuses to obey orders or instructions that prescribe, authorize or encourage enforced disappearance will not be punished and provide information on remedies available to subordinates against potential disciplinary measures resulting from their refusal to carry out such orders (art. 23).

10. Please describe the maximum and minimum penalties provided for in the Penal Code for crimes that could be invoked to deal with cases of enforced disappearance, indicating whether any of them carry the death penalty. Please also provide information on the possible mitigating or aggravating circumstances, indicating the maximum and minimum penalties that would apply in such cases (art. 7).

11. Please provide information and statistical data on disappearances, including enforced disappearances, covering the period that has elapsed since the entry into force of the Convention and disaggregated by gender, sexual orientation, age and ethnic group of the victim, and year and place of disappearance, regarding:

(a) The number of reports of enforced disappearance received by the competent authorities;

(b) Investigations conducted and their outcomes, including the sentences handed down to perpetrators;

(c) Reparation awarded to victims (arts. 1, 12 and 24).

12. Please indicate whether there are any allegations of enforced disappearance that have been attributed to security forces. If so, please report on the measures taken to investigate those allegations, to bring perpetrators to justice and to provide reparations for victims (arts. 1, 12 and 24).

13. In view of the Committee's general comment No. 1 (2023) on enforced disappearances in the context of migration, please indicate the number of complaints that have been lodged concerning cases of disappearance that occurred in the context of migration, including cases involving the disappearance of refugees and asylum-seekers, or in the context of trafficking in persons. Please specify the measures that have been taken in those cases to search for the disappeared persons, investigate their disappearance, bring perpetrators to justice and provide the victims with appropriate protection and reparation. Please also indicate the measures taken by the State party to prevent such disappearances (arts. 1–3, 12 and 24).

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

14. Please indicate whether, in the absence of an autonomous crime of enforced disappearance, and for the purposes of extradition, the offence covered by the provisions of the Penal Code that could be invoked to deal with cases of enforced disappearance may be regarded as a political offence, an offence connected with a political offence or as an offence inspired by political motives. Please also describe whether any extradition agreements with other States parties have been concluded since the entry into force of the Convention and, if so, please specify whether enforced disappearance has been included in such agreements, in accordance with article 13 (3) of the Convention. In addition, please indicate whether, in accordance with domestic law, any limitations or conditions could be applied in relation to requests for judicial assistance or cooperation regarding the terms established under articles 14, 15 and 25 (3) of the Convention. Please also indicate whether the State party has made or received any requests for international cooperation in respect of cases of enforced disappearance since the entry into force of the Convention (arts. 13–15 and 25).

15. Please indicate whether the State party applies a statute of limitations in respect of cases of enforced disappearance and, if so, please indicate whether the term of limitations for criminal proceedings: (a) is of long duration and proportionate to the extreme seriousness of the offence; and (b) commences from the moment when the offence of enforced disappearance ceases, taking into account the continuous nature of the offence. Please also provide information about the measures taken by the State party to guarantee the rights of victims of enforced disappearance to an effective remedy during the term of limitation (art. 8).

16. Please indicate whether the State party's legal framework establishes its competence to exercise jurisdiction over the offence of enforced disappearance in all cases contemplated in article 9 (1) and (2) of the Convention (art. 9).

17. Please provide information about the measures taken to guarantee, in law and in practice: (a) that any person tried for an offence of enforced disappearance benefits from a fair trial; and (b) the independence and impartiality of the courts. Please also indicate whether military authorities are competent under domestic law to investigate and/or prosecute alleged cases of enforced disappearance and, if so, please provide information on the applicable legislation. In addition, please clarify whether customary and military courts can adjudicate alleged cases of enforced disappearance and, if so, please indicate the punishments they can impose (art. 11).

18. Please indicate whether domestic law provides for the possibility for competent authorities to initiate an investigation into an enforced disappearance even if there has been no formal complaint, and report on measures taken to ensure in law and in practice that competent authorities: (a) have the powers and resources necessary to conduct investigations into allegations of enforced disappearance effectively, including access to the documentation and other information relevant to their investigation; and (b) have access to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present (art. 12).

19. Please describe the measures taken to search for, locate and release disappeared persons, and, in the event of death, to locate, respect and return their remains. Please also describe measures taken to ensure that the search continues until the fate of the disappeared person has been clarified, and the protocols and procedures for searching for, locating and releasing disappeared persons and the applicable time frames. Please report on the steps taken to ensure the systematic collection of ante-mortem information related to disappeared persons and their relatives and to set up a national DNA database to identify victims of enforced disappearance (art. 24).

20. Please report on measures taken to ensure that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation. In particular, please indicate whether: (a) the law provides for suspension from duties, from the outset and for the duration of an investigation, when the alleged offender is a State official; and (b) there are any mechanisms in place to ensure that law-enforcement or security forces do not participate in the investigation into an enforced disappearance when one or more of their officials are suspected of being involved in the commission of the offence (arts. 12 and 24).

21. Please describe the mechanisms and measures available in the domestic legal framework for the protection of complainants, of witnesses and of relatives of the disappeared person and their defence counsel, as well as of persons participating in the investigation of an enforced disappearance, against all ill-treatment or intimidation as a consequence of the complaint or any evidence given (arts. 12 and 24).

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

22. Please indicate whether domestic law provides for an explicit prohibition on carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance. In addition, please describe the applicable legal framework and procedures relating to the expulsion, return, surrender or extradition of persons. In this respect, please also:

(a) Provide detailed information about the mechanisms and criteria applied in the context of procedures of expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance;

(b) Indicate whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority and under which procedure, and whether the appeal has suspensive effect (art. 16).

23. Please report on measures taken to guarantee in law and in practice that, from the outset of the deprivation of liberty, all persons deprived of liberty, regardless of the offence of which they are accused, 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. Please also indicate whether any conditions and/or restrictions could be applied to the right of persons deprived of liberty to communicate with and be visited by family members; counsel; consular representatives, in the case of foreign nationals; or any other person of their choice (art. 17).

24. Please provide detailed information about measures taken to ensure that all official registers and/or records of persons deprived of liberty, regardless of the nature of the place where they are deprived of liberty, include all the elements listed in article 17 (3) of the Convention and are properly and immediately completed and kept up to date. In addition, please indicate whether there have been any complaints concerning delays or failure by officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of liberty. If so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed and the measures taken to ensure that such omissions are not repeated, including training imparted to the personnel in question. Please also report on 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

their physical integrity and their ability to fully exercise their rights at the time of release (arts. 17, 21 and 22).

25. Please provide information about the measures taken to guarantee in law and in practice, in accordance with article 17 (2) (f) of the Convention, that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, are entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful (art. 17).

26. Please provide information about measures taken to guarantee to any person with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the information listed in article 18 (1) of the Convention. In this respect, please also provide information about the procedures to be followed to gain access to such information and indicate whether any restrictions to such access could be applied and, if so, for how long and by which authorities (arts. 18 and 20).

27. Please provide information about the measures taken to prevent and impose sanctions for the conduct described in article 22 of the Convention (art. 22).

28. Please indicate whether the State party provides, or envisages providing, specific training on the Convention, in the terms set forth in article 23 thereof, to civil or military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice. In doing so, please also indicate the nature and frequency of the training provided and the authorities in charge of facilitating such training (art. 23).

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

29. Please indicate whether domestic law provides for a definition of victim that is line with that contained in article 24 (1) of the Convention. Please also provide information about the measures taken to ensure in the State party's legal system that any person who has suffered harm as the direct result of an enforced disappearance has the right to obtain prompt, fair and adequate compensation and all forms of reparation enumerated in article 24 (5) of the Convention. In addition, please indicate who would be responsible for providing compensation and/or reparation under domestic law in the event of an enforced disappearance; whether access to compensation and/or reparation is contingent on a criminal conviction; and whether there is a time limit for victims of enforced disappearance to access compensation and/or reparation (art. 24).

30. Please provide information on the legal situation under national legislation of disappeared persons whose fate has not been clarified and that of their relatives, in areas such as social welfare, financial matters, family law and property rights, and the measures taken to ensure the application of a gender perspective in such a context. Please also describe the procedures in place to issue a declaration of absence or of death of the disappeared person and their impact on the State party's obligation to continue the search and investigation into an enforced disappearance until the fate of the disappeared person has been clarified (art. 24).

31. Please provide information about measures taken to guarantee in law and in practice the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance (art. 24).

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

32. Please describe the legislation applicable to prevent and punish the conduct described in article 25 (1) of the Convention and indicate whether any complaints have been received in that regard. If so, please report on the measures taken to locate those children and prosecute and punish those responsible, and on the outcome of those measures. Please provide information about measures taken to improve birth registration in order to prevent any risk of wrongful removal of children.

33. In the light of the joint statement on illegal intercountry adoptions issued by the Committee and several other human rights mechanisms, please describe the system of adoption or other form of placement of children in the State party. In that connection, please indicate the legal procedures in place to review and, where appropriate, annul any adoption, placement or guardianship that originated in an enforced disappearance. If no such procedures are yet in place, please indicate the steps taken in this regard (art. 25).

34. Please indicate the measures the State party has taken to protect children, especially unaccompanied minors, from enforced disappearance, particularly in the context of migration and trafficking. Please describe the measures taken to ensure that information on unaccompanied minors is adequately recorded, including in genetic and forensic databases, in order to facilitate the identification of disappeared children (art. 25).
