



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

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## Committee on Enforced Disappearances

Twenty-fifth session

11–29 September 2023

Consideration of reports of States parties to the Convention

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

[Date received: 31 May 2023]

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



1. The Committee considered the initial report of Mauritania on the measures taken to give effect to the Convention and the progress made towards the realization of the rights recognized in it. It then submitted a list of issues or additional information to be provided.
2. The present document contains information relating to the list of issues transmitted by the Committee to Mauritania.

## **I. General information**

### **Reply to the issues raised in paragraph 1 of the list of issues (CED/C/MRT/Q/1)**

3. Consideration will be given to the issue of the Committee's competence to receive and consider individual and inter-State communications.

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

4. The National Human Rights Commission is empowered to receive complaints relating to obligations under the Convention and has set up a mechanism for this purpose.
5. To date, the Commission has received no complaints relating to cases of enforced disappearance.

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

6. Reports are prepared in a participatory and inclusive manner. This report was first drawn up by the intersectoral technical committee responsible for drafting reports and was then circulated among stakeholders, including the National Human Rights Commission and civil society organizations, by the Non-State Actors Platform.

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

7. With regard to the direct applicability of the Convention, article 80 of the Constitution provides that ratified or approved international treaties and agreements are applicable as soon as they are published and take precedence over national laws.

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

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

8. Having ratified the Convention, the Government intends to enact a specific criminal law on enforced disappearance that will define it in accordance with the Convention and establish it as an offence subject to the appropriate penalties. Article 5 of the Convention is applicable pursuant to article 80 of the Constitution.

### **Reply to the issues raised in paragraph 8**

9. Article 319 of the Criminal Code prescribes a penalty of hard labour for a fixed term for acts of detention, arrest, abduction and kidnapping carried out without a legal basis and for the lending of premises for the commission of such acts. Any person who commits the acts specified in article 111 of the Criminal Code will lose his or her civil rights. Article 13 of the Act on Combating Torture provides for a penalty of 10 to 20 years' imprisonment for anyone who detains an arrested or convicted person in premises not registered as a place of deprivation of liberty.

### **Reply to the issues raised in paragraph 9**

10. Since the ratification of the Convention, no complaints of enforced disappearance have been registered.

### **Reply to the issues raised in paragraph 10 (a)**

11. See the reply to the issues raised in paragraph 8.

**Reply to the issues raised in paragraph 10 (b)**

12. Under article 11 of the Act on Combating Torture, the penalty is increased from 12 to 24 years' imprisonment if the victim of the act of torture is a minor or a pregnant woman, or if it is committed using equipment specifically designed for torture. The penalty is 30 years' imprisonment if the act results in the partial or total disability of the victim or if it is accompanied by mutilation or the loss of use of a sensory or reproductive organ. The penalty is life imprisonment if the act of torture results in the death of the victim or if it consists of, or is preceded by, rape.

13. With regard to mitigating circumstances, the court deliberates on the guilt of the accused in accordance with article 322 of the Code of Criminal Procedure. It first rules on the main offence and then, if applicable, on each aggravating circumstance, the subsidiary characterizations, each legal excuse and, lastly, the mitigating circumstances.

**Reply to the issues raised in paragraph 10 (c)**

14. Under article 13 of the Act on Combating Torture, incommunicado detention is classified as a crime against humanity and is punishable by 10 to 20 years' imprisonment.

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

15. The right to disobey an order to commit torture, including an order to place a person in incommunicado detention, is established in article 15 of the Act on Combating Torture, which provides that no one may be punished for disobeying an order to commit an act equivalent to torture and that any legal or regulatory provision contrary to this principle is null and void. No public official may be punished for disobeying such an order.

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

16. Having ratified the Convention without reservations, Mauritania intends to expressly incorporate its provisions into domestic law.

**III. Judicial procedure and cooperation in criminal matters (arts. 8–15)****Reply to the issues raised in paragraph 13**

17. Under article 1 of the Act on Combating Torture, the offence of torture, including incommunicado detention, is not subject to any statute of limitations. Under ordinary law, felonies are subject to a statute of limitations of 10 years. Misdemeanours are subject to a statute of limitations of three years. The statute of limitations runs from the day on which the offence is committed. As enforced disappearance is a continuing offence, the statute of limitations runs from the moment that the offence ceases. The victim's right to file a complaint accompanied by a civil claim is guaranteed during this period.

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

18. In addition to articles 621–628 of the Code of Criminal Procedure, which relate to jurisdiction over felonies and misdemeanours committed abroad, article 17 of Act No. 2015-033 on Combating Torture establishes jurisdiction over related offences, including incommunicado detention. The national courts have jurisdiction where (1) the act is committed in Mauritanian territory, (2) the act is committed aboard a vessel registered under Mauritanian law or in relation to which a permit or identification number has been issued in accordance with such a law, (3) the act is committed on board an aircraft, (4) the perpetrator is a national of Mauritania, (5) the complainant or victim is a national of Mauritania and (6) the perpetrator is in Mauritania after the commission of the act.

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

19. The waiver of a civil claim cannot stop or suspend public proceedings, except in cases provided for by law. However, public proceedings may be ended by settlement or by payment of a fine, where the law expressly provides for this possibility. Public proceedings may also

be ended by the withdrawal of the complaint in cases where the filing of a complaint is a necessary condition for prosecution.

20. Article 9 of the Act on Combating Torture provides that the competent judicial authorities must routinely initiate an impartial investigation whenever there are reasonable grounds to believe that an act of torture or ill-treatment, including incommunicado detention, has been attempted or committed within their jurisdiction, even when no complaint has been received. Anyone who claims to have been subjected to torture may make a complaint to the competent authorities.

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

21. Violations of criminal law may be reported by any means, including anonymously, and anyone who becomes aware of a felony or misdemeanour is required to inform the competent authorities and transmit any relevant information to them.

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

22. See the reply to the issues raised in paragraph 9.

**Reply to the issues raised in paragraph 18**

23. National laws must be made compatible with international laws only when they are adopted after the adoption of international laws.

24. As the Amnesty Act was adopted several years before the adoption of the Convention, the question of its compatibility with the Convention does not make any legal or logical sense.

**Reply to the issues raised in paragraph 19**

25. The public prosecutor receives complaints and reports and decides what action to take. He or she transmits all the reports and complaints received to the competent investigating authorities (criminal investigation officers) or judicial authorities or orders that the case be closed by a decision that he or she may review. The public prosecutor sends requests to initiate an investigation to these authorities (Code of Criminal Procedure, art. 36).

26. Criminal investigation officers are responsible for registering violations of criminal law, gathering evidence and searching for the perpetrators. They receive complaints and reports and carry out preliminary investigations, subject to the conditions established in law, until an investigation is initiated. Once an investigation has been initiated, they perform the tasks entrusted to them by the investigating judges and comply with their requests. In cases of misdemeanours and felonies committed in flagrante delicto, they exercise the powers assigned to them by law.

27. With regard to the right of the competent authorities to any information relevant to an investigation or to access to any place where there are reasonable grounds to believe that a disappeared person may be present, criminal investigation officers have access to all relevant information within the framework of an investigation and may directly request the assistance of the police in order to carry out their mission.

**Reply to the issues raised in paragraph 20**

28. Extradition is subject to dual criminal liability, which requires acts for which extradition is requested to be classified as criminal offences under the law of the requested State. As mentioned above, acts of enforced disappearance may obviously be classified as punishable offences under Mauritanian national law.

29. In addition to the obstacles to extradition provided for in bilateral, multilateral and international treaties and agreements, Act No. 2010-036, repealing and supplementing parts of the Code of Criminal Procedure, provides that extradition may not be granted in the following cases:

1. When the subject of the request is a Mauritanian national and was recognized as such at the time of the commission of the offence for which extradition is requested;
2. When the felony or misdemeanour is of a political nature or if the circumstances indicate that the extradition request is politically motivated;

3. When the felonies or misdemeanours were committed in Mauritania; when the felonies or misdemeanours, despite being committed outside Mauritania, were prosecuted in Mauritania and a final judgment was issued;
4. When, according to the laws of the requesting State or the requested State, the time limit for bringing an action has passed before the extradition request is served, or the time limit for the enforcement of the sentence has passed before the arrest of the individual whose extradition is requested and, generally, whenever the proceedings in the requesting State have been completed;
5. When an amnesty has been granted in the requesting State or the requested State, provided that, in the case of the requested State, the offence is one that may be prosecuted in that State when it is committed outside its territory by a foreign national; and when the subject of the request faces a risk of torture in accordance with article 18 of the Act on Combating Torture.

**Reply to the issues raised in paragraph 21**

30. Subject to the international treaties and agreements binding Mauritania, requests for mutual legal assistance or judicial cooperation are processed in the manner provided for in national law, including the Code of Criminal Procedure.

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

**Reply to the issues raised in paragraph 22**

31. Article 16 of the Convention must be applied without delay, in accordance with article 80 of the Constitution.

**Reply to the issues raised in paragraph 23**

32. From the moment that a person is deprived of his or her liberty, fundamental safeguards must be in place. The provision allowing a person deprived of his or her liberty to exercise his or her right to have a family member or a person of his or her choosing informed of the detention and place of detention must be applied immediately.

33. Unlawful deprivation of liberty is a punishable offence under the laws in force. Such detention is prohibited by law and may be challenged at any time.

**Reply to the issues raised in paragraph 24**

34. At least once a month, judges responsible for the enforcement of sentences visit the prisons overseen by the court in the *wilayah* (region) where they work. For each visit, they consult the records and draw up a report containing their observations for the Minister of Justice, sending copies to the public prosecutor's office attached to the court of appeal and the inspector general of the judicial and prison authorities. They draw up files on the inmates for whom they are responsible. These files include information on the identity of prisoners, the numbers of their case files in the prosecution service register, the judicial and disciplinary decisions concerning them, and the observations of the investigating judge. Judges responsible for the enforcement of sentences make proposals for pardons or parole.

35. Public prosecutors, investigating judges, State prosecutors attached to the court of appeal and the presidents of indictment divisions visit prisons.

36. In addition, the National Human Rights Commission and the national mechanism for the prevention of torture may carry out announced and/or unannounced visits to all places of deprivation of liberty, including investigative services and hospitals.

37. Civil society organizations may be authorized to carry out monitoring visits and reintegration activities in prisons.

**Reply to the issues raised in paragraph 25**

38. The following registers may be mentioned:

- The custody register provided for in article 59 of the Code of Criminal Procedure includes information on the identity of persons in custody, the reasons for the custody, the time when it began and ended, the duration of questioning, the times of rest periods, the physical condition and state of health of the arrested person and the food provided to him or her. It is submitted to and initialled by the public prosecutor at least once a month and is signed by the person deprived of his or her liberty on release and when he or she is transferred for court appearances.
- The prison register provided for in article 648 of the Code of Criminal Procedure is kept in all prisons and is signed and initialled on all pages by the public prosecutor. Any person responsible for enforcing a judgment, a sentence, a warrant for detention, an arrest warrant or an administrative detention order issued in accordance with the law is required, prior to handing over the person concerned to the prison governor, to have a mention of the document that he or she is bearing entered into the register. The register also contains details of the record of remand in custody, the prisoner's date of release and, where appropriate, the decision or the law justifying the release.
- The register provided for in article 4 of the Act on Combating Torture is kept in all places of deprivation of liberty of all kinds. It contains information on the identity, physical condition and state of health of persons deprived of their liberty; the date, time and reason for the deprivation of liberty; the name of the authority that ordered the deprivation of liberty; the date and time of a person's release or his or her transfer to another place of detention; and the place to which the person has been transferred and the authority overseeing the transfer.
- The register of punishments and rewards provided for in article 58 of Decree No. 70-153, which established the internal regulations of prisons, must include references to relevant decisions and the authorities that issued them.
- The special register provided for in article 96 of Decree No. 70-153 must list the objects, clothing and personal effects carried by inmates when they enter a prison, which must be returned to them when they leave, taking into account those items that may remain in their possession.

39. At present, there is no link between the different registers held by different authorities. However, as part of the modernization of the criminal justice system, the public authorities are planning to digitize procedures, which will undoubtedly make it easier to link up the different registers.

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

40. In accordance with article 117 of the Criminal Code, officials and agents in charge of prisons who admit a prisoner without a warrant or judicial decision or, in the case of deportation or extradition, without an order, persons who detain an individual or refuse to present him or her to the police officer or the person transmitting his or her orders, without an injunction from a public prosecutor or a judge, and persons who refuse to show their custody registers to a police officer will be deemed to be guilty of arbitrary detention and liable to a prison term of between 6 months and 2 years and a fine of between 5,000 and 20,000 ouguiyas.

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

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

41. The National Police and the National Gendarmerie provide toll-free numbers for the public to report disappeared persons. Search procedures are immediately launched to determine the fate of persons whose disappearance has been reported.

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

42. Enforced disappearance is not defined as a separate offence in national criminal law. However, under article 56 of the Code of Criminal Procedure, a victim is defined as a person

who claims to have been harmed by an offence and who may file a complaint, institute civil proceedings and seek reparation for the direct harm that he or she has suffered as a result of the offence.

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

43. Mauritania has drawn up a national social protection strategy based on the values of national solidarity, the principles of equity, the rights guaranteed by the Constitution and the results proposed by national development and poverty reduction strategies. The overall aim of the social protection strategy is to help reduce the vulnerability of disadvantaged groups and to help people cope with life's biggest challenges.

44. In order to achieve these objectives, the national social protection strategy is built around five strategic areas, one of the most important of which is social welfare and the advancement of vulnerable groups, including relatives of disappeared persons.

45. The Government has set up social protection programmes that particularly target women and children, including programmes for school canteens, maternal and child health care, cash transfers, funding for micro-projects benefiting women, food distribution, free health insurance for 100,000 poor households, social housing, agricultural land development, priority education zones and social registers.

46. The Department of Social Welfare has set up income-generating activities for vulnerable groups; micro-credit agencies for women's groups and cooperatives and initiatives launched by individual women; and social assistance and promotion measures for vulnerable people, including older persons, women, children and young people.

47. Family law is governed by Act No. 2001.052 of 19 July 2001 on the Personal Status Code, under which paramount importance is attached to strengthening the family as a whole and protecting the rights of children and women.

48. The right to property is guaranteed to all citizens without distinction by article 15 of the Constitution.

49. In accordance with article 240 of the Personal Status Code, persons who have disappeared in exceptional circumstances, where it seems likely that they have died, are declared deceased one year after the date on which all hope of being able to determine whether they were dead or alive was abandoned. In all other cases, it is up to a judge to determine the maximum period after which a person may be legally declared deceased, taking into account the probable duration of his or her life. The period after which an individual may be legally declared deceased is established by the judge. This period begins once all efforts to search for the disappeared person have ended.

50. A disappeared person's death certificate may be drawn up only on the basis of a judicial decision that has acquired the force of res judicata. The decision must be transmitted at the time of the declaration, which must be made in the form and within the time limits established by the law in force. The period within which the declaration must be made begins on the date on which the court decision is registered with the competent authorities (Civil Status Code, art. 58).

51. With regard to formal objections raised on behalf of third parties, article 336 of the Property Rights Code provides that guardians, legal representatives, the public prosecutor, the guardianship judge and the curator of the property of missing and disappeared persons may, subject to the justifications provided for by law, intervene in the proceedings to raise an objection on behalf of persons who have disappeared.

52. In the event that a minor's testamentary guardian or curator disappears, the person holding the minor's property is responsible for returning it to the rightful owner (Personal Status Code, art. 199). For the purposes of guardianship, the mandate of testamentary tutors and curators ceases upon their disappearance (art. 195).

53. In the event that any legatees disappear on the death of the deceased, those legatees who are present share the life interest in the legacy. Any new legatee who comes forward may make a concurrent claim for the legacy, until all hope in the existence of remaining legatees has ended. At this point, the legacy will be divided among the existing legatees, and the deceased legatee's share will be given to his or her heirs (Personal Status Code, art. 223).

54. Under article 106 of the Personal Status Code, a wife may apply to a judge for divorce on the grounds that she has suffered harm because her husband's absence, for more than one year, has deprived her of a marital relationship, even if he has assets that could be used to support her. However, unless the wife is facing destitution or moral degradation, the divorce may take place only after the expiry of a four-year period that starts from the date on which the case was brought before the judge and is followed by a legal period of widowhood, at the end of which the wife may marry. If the husband has disappeared in enemy territory, divorce may take place only if the disappeared person is deemed to have reached the limit of a human lifespan, unless the wife is facing destitution or moral degradation (art. 107).

**Reply to the issues raised in paragraph 30**

55. The right to demonstrate is guaranteed by law. Civil society organizations are regulated by Act No. 2021-004. The Government cooperates closely with human rights organizations, granting them certain facilities and subsidies.

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

**Reply to the issues raised in paragraph 31**

56. Under article 3 of the General Child Protection Code, the best interests of the child must be the primary consideration in all measures taken concerning him or her by all persons, judicial or administrative organs and public or private social protection institutions.

57. Under article 21 of the General Child Protection Code, the public authorities give priority to ensuring that children remain with or return to their parents or, where appropriate, other members of their immediate family, as the family is the fundamental unit of society and the natural place in which to promote their growth and ensure their well-being and protection.

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