



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
16 November 2016

English
Original: French
English, French and Spanish only

Committee on Enforced Disappearances

List of issues in relation to the report submitted by Senegal under article 29 (1) of the Convention*

I. General information

1. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention in order to recognize the competence of the Committee to receive and consider individual and inter-State communications.
2. Please provide information on the mandate of the Senegalese Human Rights Committee and on the measures taken to ensure that it fully conforms to the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Please describe the role, powers and functions of the Senegalese Human Rights Committee and the National Observatory of Places of Deprivation of Liberty when it comes to dealing with cases of enforced disappearance. Please indicate whether any measures have been taken to ensure that both institutions have sufficient resources and a suitable legislative framework for safeguarding their independence. Please also explain the nature of the relationship between the Senegalese Human Rights Committee and the National Advisory Council.

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

3. Please provide the Committee with up-to-date information on the progress made with regard to the bill to amend the Criminal Code, referred to in paragraphs 21 and 24 of the report (CED/C/SEN/1), which calls for classifying enforced disappearance as an independent criminal offence. Please also provide information on the bill's content, in particular as it relates to the measures referred to in article 3 of the Convention and the penalties and specific aggravating and mitigating circumstances referred to in article 7 of the Convention. Please account for the apparent contradiction between the bill to amend the Criminal Code, which contains provisions on command responsibility, and paragraph 97 of the State party's report, which reads as follows: "It is neither necessary nor desirable to establish the criminal responsibility of superior officials as a separate mode of

* Adopted by the Committee at its eleventh session (3-14 October 2016).



responsibility. Were the modes of responsibility enumerated in the Convention to be associated with the offence of enforced disappearance (or related offences), the coherence of Senegalese criminal law would be compromised” (arts. 1, 2, 4, 6 and 7).

4. With regard to the information provided in paragraphs 35 and 36 of the report, please specify which provisions of domestic law guarantee the non-derogability of the prohibition of enforced disappearance and stipulate that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance. Please provide detailed information on the limits within which human rights and freedoms may be restricted under the Constitution, the circumstances in which they may be restricted and the duration of such restrictions. Please also provide information on the legal safeguards that apply to persons deprived of their liberty and specify which of their rights are non-derogable. In this connection, please give details of the provisions of domestic law that establish the guarantee of habeas corpus, to which reference is made in paragraph 1 of the report (arts. 1, 17, 18 and 20).

5. Regarding the reports of the abduction of 12 men by an unidentified armed group in July 2015 in the region of Sédhiou and their release four days later in exchange for a ransom, and of abductions by armed groups in the context of the conflict in Casamance, please provide information on the efforts made to investigate the acts defined in article 2 of the Convention when committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice (art. 3).

6. Please explain how the terms employed in article 431-2 (6) of the Criminal Code, “the widespread and systematic practice of summary executions, abductions and subsequent disappearance of persons”, are in keeping with the constituent elements of the definition of enforced disappearance as a crime against humanity, as defined by the rules of applicable international law (art. 5).

7. Please indicate whether, in conformity with article 6 of the Convention, current Senegalese law requires the State party to hold criminally responsible any person who commits, orders, solicits or induces the commission of an enforced disappearance, given that article 106 of the Criminal Code, which prescribes a penalty of loss of civil rights for “any civil servant, agent, official or member of the Government, who orders or commits an arbitrary act or an act that violates a person’s liberty, the civil rights of one or more citizens or the Constitution” and provides for an exemption if the person can “prove that he or she acted on the orders of a superior” (art. 6).

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

8. According to paragraph 124 of the report, the continuous nature of an offence is never expressly referred to in legislative texts and is a matter for the courts to determine. In this connection, please explain what measures are taken to ensure that no interpretation is capable of diminishing the recognition of the continuous nature of an enforced disappearance. As regards the information provided by the State party in paragraph 125 of its report concerning the revision of the Criminal Code that is currently under way, please specify, in the event that this offence is subject to statutory limitation, whether the extreme gravity and the continuous nature of the crime of enforced disappearance will be taken into consideration. Please also specify what safeguards will be provided to ensure that statutory limitations are not applied to criminal, civil or administrative actions brought by victims in exercise of their right to an effective remedy (art. 8).

9. In paragraphs 134 and 142 of its report, the State party refers to the extraterritorial jurisdiction provided for in article 669 of the Code of Criminal Procedure in cases of enforced disappearance constituting a crime against humanity. Please indicate whether there are plans to adopt a similar specific provision that is in line with article 11 of the Convention for all other cases of enforced disappearance and whether, under article 669, the State party has jurisdiction over cases in which the victim is one of its nationals but does not reside in Senegalese territory (arts. 9 and 11).

10. In relation to paragraph 154 of the report, please provide further information on the procedure and measures that have been introduced in order to ensure that allegations of enforced disappearance are examined promptly and objectively, and investigated thoroughly and impartially, and that a determination is reached as to the fate of the persons who have disappeared. Please indicate which authorities are responsible for investigations into cases of enforced disappearance, including those committed by members of the armed forces in the discharge of their duties, especially when committed against other military personnel. Please also indicate whether it is possible to investigate cases *ex officio*; if so, please explain the procedure that is followed and specify which persons are responsible for such investigations. With reference to the information received by the Committee concerning the amnesty granted in respect of all offences committed during the Casamance conflict, please clarify whether this measure hinders the initiation of investigations and proceedings, the punishment of those responsible and the provision of reparation to the victims of enforced disappearance, whether committed by government forces or non-State armed groups (arts. 2, 3, 11, 12 and 24).

11. In connection with paragraphs 168 and 169 of the report, please specify which provisions of domestic law provide for mechanisms to ensure that complainants, witnesses, relatives of a disappeared person and their defence counsel, and persons participating in an investigation into an enforced disappearance are protected against any ill-treatment or intimidation as a result of having lodged a complaint or provided evidence. Please supply detailed information in this respect. With regard to the information provided in paragraphs 173 to 177 of the report, please indicate whether domestic law provides for the suspension from duties for the duration of the investigation of State officials suspected of having committed or having been involved in the commission of an enforced disappearance. Please describe the procedural mechanisms that have been put in place to enable the exclusion of any civil or military law enforcement or security force from an investigation into an enforced disappearance where one or more of its members are implicated in the case (art. 12).

12. Please indicate whether the State party intends to amend Act No. 71-77 of 28 December 1971 on the extradition of foreign nationals, which is applicable in Senegal, in order to make the crime of enforced disappearance, as defined in article 2 of the Convention, an extraditable offence in all treaties concluded with other States. Given that article 5 (1) of the Act stipulates that extradition is not to be granted if the offence is of a political nature or if the circumstances indicate that the extradition request is politically motivated, please specify what steps the State party will take to ensure that, for the purposes of extradition, enforced disappearance is not regarded as a political offence or as an offence inspired by political motives. Please explain whether, in the absence of an extradition treaty, the Convention is considered to be the legal basis for extradition (art. 13).

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

13. Please provide additional information on the mechanisms and criteria used to evaluate and verify the risk of being subjected to enforced disappearance to which a person may be exposed under expulsion, return, deportation and extradition procedures. Please

indicate whether it is possible to appeal against an expulsion or return decision. Lastly, please indicate whether the State party is considering explicitly incorporating into its domestic legislation a prohibition on the expulsion, return, surrender or extradition of a person in the event that there are substantial grounds for believing that he or she is in danger of being subjected to enforced disappearance (art. 16).

14. With regard to the information provided in paragraph 221 of the report, please specify which provisions in Senegalese law ensure that all persons deprived of liberty are held in officially recognized, regulated and supervised places. Concerning the information provided in paragraphs 245 to 251 of the report, please clarify whether all places of deprivation of liberty, including those under army supervision, are subject to unannounced inspections by the competent and legally authorized authorities and institutions. Please indicate whether non-governmental organizations are authorized to visit places of deprivation of liberty. Please also indicate whether consular authorities are authorized to visit places of deprivation of liberty, since the report contains no information on this subject (art. 17).

15. With regard to the information provided in paragraphs 148 and 224 of the report, please describe what measures are being introduced, in the context of the revision of the Criminal Code and the Code of Criminal Procedure, to ensure that all persons taken into custody have access to legal counsel from the outset of deprivation of liberty and to limit the maximum duration of custody to 48 hours. Please also describe the state of completion of these reforms. Regarding the guarantee of communication with the outside world, please explain in detail the legal or regulatory provisions that recognize the right of any person deprived of liberty to communicate with and be visited by his or her family, counsel or any other person of his or her choice. In connection with the information provided in paragraph 141 of the report, please indicate whether there are plans to establish the right of foreign detainees to communicate with their consular authorities (arts. 11 and 17).

16. Please indicate whether all the information mentioned in article 17 (3) of the Convention is included in the official registers of persons deprived of liberty, irrespective of the nature and location of the place of detention. Please provide examples of incidents of poor record-keeping and of the disciplinary and/or legal action that was taken as a consequence of such incidents. In this regard, please indicate whether there have been any complaints concerning the failure by officials to record a deprivation of liberty or any other relevant information in custody registers; if so, please provide information on the proceedings initiated and, where appropriate, the sanctions imposed, and on the measures taken to ensure that such omissions are not repeated, including whether training was provided to the staff members in question (arts. 17 and 22).

17. With regard to the information provided in the report under the headings of articles 17 and 22, please specify and describe in detail which provisions guarantee that persons deprived of their liberty and any persons with a legitimate interest have access to remedies to contest the lawfulness of the deprivation of liberty, in particular confidential complaint mechanisms, as well as any applicable restrictions on that guarantee. Please describe the nature and duration of any specific restrictions on the right of persons deprived of liberty to communicate with their family, counsel or any other person, and on the right of any persons with a legitimate interest to access information concerning persons deprived of liberty and, where appropriate, the measures envisaged to remove those restrictions if they are in breach of international law, applicable law or the objectives of the Convention. In connection with paragraphs 319 to 321 of the report, in which it is stated that there is no judicial remedy for persons seeking access to information, please indicate whether the State party intends to adopt measures in order to provide for such a remedy and if so, what specifically those measures will entail (arts. 17, 18, 20 and 22).

18. Please describe the status of the bill on the establishment of a genetic fingerprint bank that was mentioned in paragraph 312 of the report and indicate whether there is a time frame for its adoption. Please also specify what body will be responsible for supervising the genetic fingerprint bank and conducting investigations into the fate of disappeared persons (arts. 12, 19 and 24).

19. In the light of the information provided in paragraphs 331 to 335 of the report, please indicate whether there are any plans to provide specific training, as outlined in article 23 of the Convention, for civil or military law enforcement personnel, medical personnel, public officials and any other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges and prosecutors (art. 23).

V. Reparation measures and measures to protect children from enforced disappearance (arts. 24 and 25)

20. Please provide detailed information on the provisions in domestic law which establish that “[t]he definition of victim includes any natural or legal person who has suffered harm as a result of an offence” (para. 340 of the report). Please explain whether the concept of victim incorporated into domestic law is considered to be consistent with the broad definition of victim set forth in article 24 (1) of the Convention (art. 24).

21. Please provide information on the plans to set up a “special fund for assisting victims” mentioned in paragraph 344 of the report. Please specify whether domestic law provides for all forms of reparation enumerated in article 24 (5) of the Convention for individuals who have suffered harm as the direct result of an enforced disappearance. Please also clarify whether it is necessary to initiate criminal proceedings in order to obtain compensation or reparation in the case of an enforced disappearance. Please supply information on compensation and other measures of reparation that are provided in cases equated with an enforced disappearance (art. 24).

22. With reference to the information provided in paragraph 345 of the report, the legal regime pertaining to missing persons does not fulfil the conditions set out in article 24 (6) of the Convention; please describe the legal situation of the relatives of a person “whose absence occurred in circumstances that put his or her life at risk, without his or her body having been found” and their rights with respect to social welfare, financial matters, family law and property rights. Please explain whether the publication of a declaration of absence or death in accordance with the Family Code affects the obligation of the State party to continue the investigation until the fate of the disappeared person has been clarified (art. 24).

23. With regard to the information provided in paragraph 358 of the report, please specify whether the State party plans to incorporate into its domestic legislation any measures regarding the search for and identification of disappeared children and their return to their families of origin, and to prevent or punish under its criminal law the falsification, concealment or destruction of documents attesting to the true identity of the children referred to in article 25 (1) (a) of the Convention. In connection with paragraph 373 of the report, please also specify whether procedures have been established to review the adoption or placement of children and, where appropriate, to annul any adoption or placement that originated in an enforced disappearance. Please indicate what measures are currently employed to detect the use of forged documents attesting to the identity of such children (art. 25).