



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 443rd meeting

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Chair: Ms. Villa Quintana

Contents

Consideration of reports of States parties to the Convention

Initial report of Mauritania

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The meeting was called to order at 3.05 p.m.

Consideration of reports of States parties to the Convention

Initial report of Mauritania (CED/C/MRT/1; CED/C/MRT/Q/1; CED/C/MRT/RQ/1)

1. *At the invitation of the Chair, the delegation of Mauritania joined the meeting.*
2. **Mr. Sidi** (Mauritania) said that his country's initial report (CED/C/MRT/1) had been prepared by an intersectoral technical committee and finalized following extensive consultations with stakeholders, including civil society organizations. The instrument of his country's ratification of the Convention had been published in Official Gazette No. 1326 bis of 9 December 2014 and, since that point in time, the Convention could be invoked before any court in the country. Mauritania had taken numerous measures to promote human rights, including the adoption of Act No. 2015-033 on Combating Torture, a law establishing the national mechanism for the prevention of torture, a law on the composition of the National Human Rights Commission and, in 2022, a law on the prohibition of human trafficking and the protection of victims. It had also adopted laws to prevent people smuggling and to reform the prison system and had plans to enact a law to protect women from domestic and family violence. It had set up the High Council for Fatwas, a commission on social cohesion, a data protection authority and a commission to combat trafficking. Furthermore, it had adopted national strategies for promoting access to justice and raising public awareness of human rights and had launched a digital portal through which individuals could file complaints against law enforcement officials.
3. The right to bodily integrity was guaranteed by Mauritanian law. The Constitution and other domestic laws prohibited the use of verbal and physical violence, as did codes of conduct for law enforcement officials. In recent years, various steps had been taken to bring the country's prisons and detention centres into line with global standards. Oversight mechanisms and conditions in detention facilities had been improved, and training, with a focus on prisoner rehabilitation, had been provided to prison officers.
4. Mauritania was a party to the Arab League Convention on Extradition, the Arab League Convention on Mutual Legal Assistance in Criminal Matters, the Agreement of 1993 on Legal and Judicial Cooperation between the Countries of the Arab Maghreb Union, the general convention on judicial cooperation signed at Antananarivo on 12 September 1961, the convention on judicial cooperation among the States parties to the Accord on Non-Aggression and Mutual Assistance in Defence adopted at Nouakchott on 21 April 1987 and bilateral judicial cooperation agreements with France, Mali and Spain. In addition, it was a member of the Regional Judicial Platform of the Sahel countries and the Network of West African Central Authorities and Prosecutors against Organized Crime.
5. The domestic definition of torture was in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Torture was considered to be a crime against humanity, was not subject to a statute of limitations and was punishable under Act No. 2015-033. Mauritania had also made secret detention a criminal offence. In 2021 and 2022, the national mechanism for the prevention of torture had conducted 125 visits to detention centres across the country.
6. Act No. 2021-004 had been adopted to regulate civil society organizations. Initiatives had been undertaken to strengthen the capacity of such organizations, and regional forums had been set up to ensure civil society participation in efforts to promote sustainable development.
7. The President of the Republic had identified social justice and the well-being of the most vulnerable members of the population as national priorities. Mauritania was committed to upholding human rights principles and values, including those enshrined in the Convention, and to engaging in productive cooperation with the human rights treaty bodies.
8. **Mr. de Frouville** (Country Rapporteur), noting that the report had been submitted almost seven years late, said that it was encouraging to see the participation of Mauritanian civil society organizations and the National Human Rights Commission in the review process.

9. While the adoption of Act No. 2015-033 on Combating Torture and the establishment of the national mechanism for the prevention of torture represented significant steps forward, there appeared to be no specific domestic law prohibiting enforced disappearance as a separate offence. Legislative action was therefore needed to bring the domestic legal framework into line with the Convention. Another concern was the gap between law and practice, which had been mentioned by the Committee against Torture in paragraph 8 of its concluding observations on the second periodic report of Mauritania (CAT/C/MRT/CO/2). Accordingly, he would be particularly grateful for concrete examples of how the relevant laws were being implemented.

10. In relation to paragraph 3 of the replies to the list of issues (CED/C/MRT/RQ/1), he wished to know what steps would be involved in the State party's consideration of the issue of the Committee's competence to receive and consider individual and inter-State communications and what the timeline for that process was.

11. He would appreciate further information on the National Human Rights Commission, including details concerning its activities, composition and budget. A description of the workshops held for the purpose of consulting and exchanging views with civil society and parliamentary bodies, which were referred to in paragraph 89 of the report, would also be welcome. The Committee had received credible reports that the civil society organizations represented on the Non-State Actors Platform mentioned in paragraph 6 of the replies to the list of issues did not enjoy complete freedom of expression and that other organizations working in the field of enforced disappearance had not been included in the Platform or consulted on the preparation of the report. He would be interested to hear the delegation's response to those claims.

12. To date, there appeared to have been no domestic court rulings on cases of enforced disappearance, at least not ones that invoked the Convention, which pointed to a need to disseminate the Convention more widely among justice officials.

13. **Mr. Diop** (Country Rapporteur) said that he was pleased to note the impressive, multisectoral composition of the delegation. In the State party's replies to the list of issues, it had asserted that, to date, the National Human Rights Commission had received no complaints relating to cases of enforced disappearance. He wished to recall the continuous nature of enforced disappearance and the instability of the political and security situation in Mauritania in the 1980s and 1990s. The unresolved humanitarian issues that had arisen during that period, which had been labelled the "*passif humanitaire*" by some civil society organizations, had been acknowledged by the Commission in its 2019/20 report. In that report, the Commission had urged the Government to pursue efforts to bring what had been a painful chapter of the country's past to a conclusion. With that in mind, he would appreciate learning whether the Commission had received complaints relating to cases of enforced disappearance committed prior to or since the ratification of the Convention, along with an explanation of the steps that the State party planned to take to resolve the aforementioned humanitarian issues once and for all.

14. It would be useful to learn whether the Constitution expressly prohibited the invocation of exceptional circumstances as a justification for enforced disappearance, as well as to know from which rights derogations were permitted during public emergencies and on what legal basis. He would also be grateful if the delegation could explain whether any major obstacles currently prevented the State from carrying out its plan to establish enforced disappearance as a specific offence under its criminal law.

15. In that regard, he wished to know which criminal offences might currently be applied in cases of enforced disappearance, what the minimum and maximum penalties were for those offences, how the State party would ensure that those penalties reflected the seriousness of the crime of enforced disappearance, whether aggravating and mitigating circumstances were applicable and what the maximum penalty would be in a case of enforced disappearance that constituted a crime against humanity.

16. In its report, the State party said that the Mauritanian courts had not heard any cases of enforced disappearance as defined in article 2 of the Convention since the country had become a party to the Convention, but he wondered whether the courts had dealt with any

cases of enforced disappearance, including in the context of migration, attributable to non-State actors who had acted without the authorization, support or acquiescence of the State.

17. With reference to paragraphs 128 and 129 of the initial report, he would appreciate an explanation of how the exemption from criminal responsibility provided for by article 111 of the Criminal Code for officials acting on the orders of their superiors was compatible with article 6 (2) of the Convention, according to which no order from any public authority could be invoked to justify an offence of enforced disappearance. He would also welcome an explanation of how depriving officials of their civil rights if they had given an order to perform acts that were prejudicial to personal freedom or civic rights was a punishment commensurate with the seriousness of that offence. Further information would, in addition, be appreciated on the criminal provisions applicable to persons who had committed the acts described in article 6 (1) of the Convention.

18. **Mr. de Frouville** said that, while he had been reassured by the State party's affirmation in its replies to the list of issues that the notion of a continuous offence existed in Mauritanian law, he failed to see how that notion was applied to enforced disappearance in the country, since a separate offence of enforced disappearance had not yet been established. In that connection, he would be grateful if the delegation could provide examples of other offences to which the notion of a continuous offence might apply. He would also be interested to learn how the State party reconciled its acceptance of the notion that enforced disappearance was of a continuous nature with the effects of the adoption of Act No. 93-23 of 1993, which granted an amnesty for crimes committed during the period known as the *passif humanitaire*.

19. As the State party had indicated that it would adopt a specific law on enforced disappearance in the future, it would be useful to learn whether the State party planned to include a provision whereby it would establish universal jurisdiction over such cases. In that regard, it would also be interesting to learn whether the State party had prosecuted or opened investigations into cases of enforced disappearance committed abroad in which the alleged victims were Mauritanian nationals. He would particularly like to know whether investigations had been opened into the cases of the journalist Ishagh Ould El Mokhtar, who had reportedly disappeared in the Syrian Arab Republic, and the businessman Rachid Moustapha, who was said to have disappeared in Angola. It would also be useful to hear how the State party handled reports of the disappearance of Mauritanian nationals abroad for which the authorities of another State might be responsible, as in the case, for example, of recent reports regarding the fate of 14 Mauritians arrested by the Malian armed forces. Were the families of the disappeared persons involved in any such investigations?

20. The State party had indicated in paragraph 19 of its replies to the list of issues that public proceedings could be ended by settlement or by payment of a fine where the law expressly provided for that possibility. He would be grateful if the delegation could clarify whether public proceedings in cases of crimes of such gravity as enforced disappearance could also be ended in that way. Lastly, he wished to know more about the protection currently offered to the families of victims of enforced disappearance and witnesses who filed reports or complaints in that regard and, if no such protection system existed, whether the State party planned to set one up.

The meeting was suspended from 4 p.m. to 4.20 p.m.

21. **Mr. Sidi** (Mauritania) said that his Government regretted the late submission of the initial report. An interministerial working group of experts tasked with drafting national human rights reports had since been established, and all future reports would, he hoped, be submitted on time.

22. **A representative of Mauritania** said that the National Human Rights Commission was an independent body charged with providing advisory opinions concerning legislative bills and other matters to the Government, the National Assembly and other competent institutions; promoting a culture of human rights; contributing to the preparation of human rights reports; cooperating with United Nations human rights bodies; conducting unannounced visits to places of deprivation of liberty; assessing reports and complaints of human rights violations, including enforced disappearance; combating discrimination and slavery; and raising public awareness of human rights. The Commission, whose mandate was set out in Organic Act No. 2017-016 of 5 July 2017, had been accredited with category A

status by the Global Alliance of National Human Rights Institutions. Its budget was established each year in the annual Finance Act. It was composed of representatives of professional and civil society organizations; public authorities also sat on the Commission but only in a consultative capacity.

23. **A representative of Mauritania** said that, since enforced disappearance had not yet been established as a separate offence in Mauritania, secret detention, defined under the Act on Combating Torture as an act of torture and potentially a crime against humanity, was the offence that could most fittingly be applied in cases of enforced disappearance.

24. Regarding the legal provisions governing police custody, in 2022 the Government had adopted a road map for the harmonization of national legislation and, in January 2023, national judicial consultations had resulted in the adoption of a road map on the reform of the justice system. The question of the harmonization of criminal law would be taken up as part of that reform process.

25. As had been mentioned in the initial report, no complaints or cases of enforced disappearance had been registered in Mauritania. However, international human rights treaties had been invoked and applied by the courts. For example, the International Covenant on Civil and Political Rights had been invoked in a case involving the application of national legal provisions that ran counter to the State's obligations under that Covenant. The courts had ruled that the Covenant took precedence over national law.

26. Regarding the minimum and maximum sentences for offences involving enforced disappearance, in accordance with article 11 of the Act on Combating Torture, in the case of the offence of secret detention, aggravating circumstances were applicable if the victim was subjected to mutilation or lost a sensory or reproductive organ or if the victim was a pregnant woman. Mitigating circumstances could be applied at the discretion of the court, in accordance with article 322 of the Code of Criminal Procedure.

27. He was unable to provide any information about the application of the notion of continuous offences in respect of enforced disappearance, since there had been no cases of such disappearances, as previously mentioned. However, the same notion applied to the offence of slavery, many cases of which had come before the courts.

28. The deprivation of civil rights was a type of penalty that no longer existed in many jurisdictions and was indeed not the most appropriate punishment for the types of serious offences covered by the Convention. Waiver of a civil claim or the withdrawal of a complaint could end criminal proceedings only under the circumstances set out in the Code of Criminal Procedure, which would not apply to serious offences such as abduction or torture. The statute of limitations was calculated from the date when the crime had been committed, which, for continuous offences, was the date on which the crime had ceased. If an investigation or prosecution had been initiated, the relevant date was that of the last criminal action taken.

29. **A representative of Mauritania** said that the report had been prepared in a participatory and inclusive manner. The National Human Rights Commission, which was mainly composed of civil society representatives, was an observer on the technical committee responsible for drafting human rights reports as well as being represented on the Non-State Actors Platform. Inclusion of civil society representatives as full members of the technical committee was being considered as part of the ongoing reform process.

30. In 2021, his Government had carried out a comprehensive study with a view to harmonizing national legislation with the international human rights instruments to which Mauritania was a party. That study had resulted in the compilation of a database of incompatible legislation and the development of a road map that was currently being implemented by the relevant departments. In addition, the Government had prepared a strategy for those harmonization efforts which provided for the adoption of a law on enforced disappearance. Under that law, enforced disappearance would be a specific offence whose definition and accompanying penalties would be in line with the Convention.

31. **A representative of Mauritania** said that strict requirements for the use of exceptional powers and restrictions of individual rights during states of emergency were set out in a 1959 law. Those restrictions could be applied only in exceptional situations, such as

war or insurrection, when it was completely impossible to uphold the rights concerned and the interests being protected were real and proven. The President could declare a state of siege for no more than 30 days. The purpose of such exceptional powers was to protect the population, not to commit crimes such as enforced disappearance. The prohibition on using exceptional circumstances to justify enforced disappearance set out in article 1 of the Convention was already directly applicable in national law and could be invoked by a judge. It would be expressly incorporated into national law as part of the ongoing reform process.

32. Since there had been no cases of enforced disappearance, there were obviously no statistics on any such occurrences. Moreover, his Government did not collect statistics on ethnicity or religion. However, in June 2022, it had looked into six cases identified by the Working Group on Enforced or Involuntary Disappearances and ascertained the location of two of the persons involved, one of whom was in prison.

33. All relevant government departments had recently received instructions to review laws and regulations with a view to their harmonization with instruments such as the Convention. That review process also provided for the passage of a law under which enforced disappearance would be a separate offence. Meanwhile, the offence of secret detention incorporated some aspects of the definition of enforced disappearance.

34. **A representative of Mauritania** said that superior officers were legally obligated to act on any information indicating that their subordinates were committing or preparing to commit a crime, including torture or enforced disappearance. The personal criminal responsibility of public officials and government contractors in such cases was clearly set out in law and was not affected by the responsibility of their superiors. However, public officials were fully protected from legal claims by third parties for acts related to the performance of their duties. Officials against whom a criminal prosecution had been initiated could be subject to disciplinary action and suspended from duty pending the decision of the disciplinary board.

35. **Mr. Sidi** (Mauritania) said that the report of the national preventive mechanism had recently been submitted to the President. The latest available report of the National Human Rights Commission covered the period 2020–2021.

36. **A representative of Mauritania** said that at least one case of involuntary disappearance committed by private individuals had been recorded during the reporting period. The perpetrators had been convicted and the victim had received compensation. Jurisdiction over the offence of enforced disappearance was ensured by article 17 of the Act on Combating Torture; extraterritorial jurisdiction was established through the direct applicability of article 9 of the Convention, as provided for in article 80 of the Constitution of Mauritania. The penalty for torture committed with aggravating circumstances, such as enforced disappearance, was a prison term of 12 to 24 years, increasing to 30 years if the offence resulted in the disability of the victim and to life imprisonment if it resulted in death. Under article 15 of the Act on Combating Torture, no one could be punished for disobeying a superior order to commit torture, including secret detention.

37. **Mr. Sidi** (Mauritania) said that the events referred to as the *passif humanitaire* had occurred before the entry into force of the Convention for Mauritania. The amnesty law covering that period had been proposed by the parliament rather than the executive, which was a sign of its popular support. By the end of the 1990s, over 35,000 Mauritanian refugees had returned voluntarily from Senegal under a special rapid reintegration programme. Pensions had been provided to victims' widows and other beneficiaries. The situation for civilians had been resolved following the signing in 2007 of a tripartite agreement between Mauritania, Senegal and the Office of the United Nations High Commissioner for Refugees whose implementation was monitored by the National Agency to Assist and Integrate Refugees. A framework agreement with the families of victims who had been in the armed forces had been implemented in 2009.

38. In 2007, the President had acknowledged the State's responsibility for the events in question. The consultation process initiated the following year had resulted in an agreement on memorialization and an apology that had been expressed on the Day of National Reconciliation in 2009. Subsequently, almost 25,000 more refugees had chosen to return from Senegal. That repatriation process had been concluded in 2012 at a ceremony attended by the United Nations High Commissioner for Refugees. A national commission established

to identify public servants who had been victims of the events had restored the rights of over 1,000 officials. Other steps taken to help reintegrate returnees included the construction of basic infrastructure, the development of agricultural land, the provision of microloans for income-generating activities and the distribution of land for housing. Those efforts had been bolstered by the current President's commitment to healing the wounds left by those traumatic events, which had led to the establishment of a special commission presided over by the National Human Rights Commission, with four members representing the State and four representing the victims.

39. **Mr. Diop** said that, while he understood the context of the quest for social cohesion in which the amnesty law had been adopted, he was interested in the Government's response to civil society organizations which considered that the unresolved humanitarian issues constituting the *passif humanitaire* were an ongoing issue rather than a closed subject, especially given that there were still victims of enforced disappearance to be located, and that coming to terms with the events of the past was part of the national reconciliation process. He wished to know whether the death penalty could be imposed in cases of enforced disappearance involving aggravating circumstances and whether the penalty of forced labour involved corporal punishment.

40. **Mr. de Frouville** said that he wished to know whether the proposed bill on the alignment of national law with the Convention formed part of the national human rights strategy, whether there was a timeline for the development of the bill and whether civil society and international organizations would be participating in the initial stages of the process. He would welcome clarification as to whether secret detention was defined as a form of torture in Act No. 2015-033 of 10 September 2015 on Combating Torture. The Committee would be grateful for further information on the protection afforded to victims and witnesses of enforced disappearance, the State party's extraterritorial jurisdiction over the offence and the investigations conducted into the disappearance of Mauritanian nationals abroad.

41. **Mr. Ravenna** said that he would welcome further clarification of the State party's understanding of the notion of the continuous nature of enforced disappearance. In particular, he would be grateful for confirmation that, under the laws in force, the offence was not considered to have ceased until the disappeared person, or his or her remains, had been located and the offence had been thoroughly investigated. He wondered whether the Amnesty Act accounted for the continuous nature of enforced disappearance.

42. **Mr. Ayat** said that he wished to know how the Convention could be directly applied by the courts when there was no specific law that defined enforced disappearance and set out the applicable penalties for the offence. Judges could not be expected to hand down sentences for enforced disappearance without a legal basis for their decisions.

43. **Mr. Bal** (Mauritania) said that national law did not currently contain a definition of enforced disappearance that corresponded to the definition in the Convention. In order to address that shortcoming, the Government could either amend the Act on Combating Torture to include a definition of enforced disappearance or it could draft and adopt a specific law establishing enforced disappearance as a separate offence. In the meantime, penalties applicable to similar offences, such as secret detention, could be handed down to perpetrators of enforced disappearance.

44. An interministerial committee was responsible for addressing the *passif humanitaire* and the treatment of refugees. On the initiative of the President, a body comprising the Commission on Human Rights, the National Human Rights Commission and representatives of victims' families had been established to serve as a bridge between victims of human rights violations and the State.

45. **A representative of Mauritania** said that, under articles 20 and 36 of the Code of Criminal Procedure, criminal investigation officers and the public prosecutor were authorized to receive complaints. Criminal investigation officers conducted inquiries and reported their findings to the public prosecutor. Under article 20 of the Act on Combating Torture, the forms of protection made available to victims, their families and witnesses were to be established by decree. It was not clear why no such decree had yet been issued.

46. **A representative of Mauritania** said that a moratorium on the death penalty had been in force for several decades. If a person held in secret detention died, the penalty handed down to the perpetrator would not be the death penalty but life imprisonment. Prisoners sentenced to forced labour were not subjected to any form of corporal punishment.

47. A provision on the punishment for secret detention was included in the chapter on punishments for acts of torture of the Act on Combating Torture and was therefore classified as such. As for the Government's understanding of the continuous nature of enforced disappearance, it should be pointed out that secret detention, which was the offence that most closely resembled enforced disappearance, was not subject to any statute of limitations. Therefore, no statute of limitations would be applied in cases of enforced disappearance. All articles of the Convention, aside from those that required specific legislation to be incorporated into national law, were automatically incorporated into the Mauritanian legal order under article 80 of the Constitution.

48. **A representative of Mauritania** said that whenever the Government received reports of a Mauritanian national who had disappeared abroad, the Ministry of Foreign Affairs sought to determine the fate of the person concerned and to deploy the resources required to save his or her life, if possible. The Government had obtained very little information about the fate of the Mauritanian businessman Rachid Moustapha, who had disappeared in Angola. The Angolan authorities had informed the Government that they had conducted a number of searches for him but had failed to determine his fate or whereabouts. As for the Mauritanian journalist Ishagh Ould El Mokhtar, who had been disappeared in the Syrian Arab Republic, the Syrian authorities had informed the Government that he had been abducted by an Islamic fundamentalist group in Aleppo. Under the legal cooperation agreement established between the Governments of Mauritania and Mali, a joint investigation committee had been established to investigate the case of the Mauritanian nationals who had been abducted and murdered in Mali. Letters rogatory would be issued to request the extradition of the perpetrators identified as a result of those investigations.

49. **Mr. Sidi** (Mauritania) said that the moratorium on the death penalty was the longest-running one in the world. The five-year national human rights strategy had been developed with the participation of civil society. The strategy had been approved by the Interministerial Committee on Human Rights and was expected to be adopted by the Council of Ministers. The strategy covered all aspects of human rights and all the commitments made by Mauritania in the area of human rights, including the obligation to align national law with international human rights instruments.

The meeting rose at 5.50 p.m.