



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

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## Committee on Enforced Disappearances Twenty-fifth session

### Summary record of the 444th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 12 September 2023, at 10 a.m.

*Chair:* Ms. Villa Quintana

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*The meeting was called to order at 10.05 a.m.*

### **Consideration of reports of States parties to the Convention** *(continued)*

*Initial report of Mauritania (continued)* (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. de Frouville** (Country Rapporteur) said that the Committee would appreciate receiving information on the action taken by the State party in response to several cases of secret detention and particularly on the prosecution of any of those cases and any reparations made to the victims. The first case, that of Mr. Boumeny Ould Jibril Ould Cheine, also known as “Souvi”, had involved a number of violations of the Convention. The victim had died in detention after having been subjected to physical violence; he had not been informed of his right to legal counsel; his family had not been informed of his detention following his arrest at a police station; and the prosecutor had apparently not been informed of the decision to place him in police custody.
3. The second case dated back to 2012 and involved 14 persons who had been placed in administrative detention on terrorism charges. Despite efforts by human rights associations and family members to find out where they were being held, the place of detention had remained unknown for a long time. Several other human rights committees had asked about the case and about the applicable legal framework. It thus appeared that all contact between the persons in detention and the outside world had been cut off and all information on the place of detention and the detainees’ state of health had been withheld, in violation of articles 17 and 18 of the Convention.
4. The third case was one on which the Working Group on Arbitrary Detention had issued an opinion in 2018. Senator Mohamed Ould Ghadde had been detained in 2017 and held in secret detention for a week at the headquarters of the Directorate General of National Security in Nouakchott. He and the other detainees held with him had been denied any contact with their families or legal counsel during that period.
5. With regard to investigations into the period of unresolved humanitarian issues known as the *passif humanitaire*, he noted the State party’s position that, as the Amnesty Act of 1993 predated the adoption of the Convention, the question of its compatibility with the Convention did not make legal or logical sense. He wished to point out, however, that it was not a matter of discussing the human rights violations that had occurred during that period, but of current issues that derived from events in the past. As the Committee had established in its 2013 statement on the *ratione temporis* element in the review of reports submitted by States parties, the reporting process under article 29 was expected to take into consideration the full range of States’ current obligations under the Convention: if information related to the past was useful during the reporting process as a means of fully understanding the challenges of the present, the Committee was called upon to direct its attention in its concluding observations to the current obligations of the State concerned in that light and would proceed to do so, in accordance with its long-standing practice.
6. The Committee took note of the significant steps taken to investigate events associated with the *passif humanitaire*, as described by the delegation at the previous meeting (CED/C/SR.443). However, they fell short of fully honouring Mauritania’s obligations under the Convention. Was the State party aware of the list of some 500 alleged victims of enforced disappearance that had been drawn up by reliable sources? If so, he would like to know what steps had been taken to ascertain their fate, in accordance with article 24 of the Convention. He would be particularly interested to know what had been done to locate the remains of persons who had been executed: relatives had heard direct eyewitnesses’ accounts that their family members had been executed but had never had official confirmation and had never been able to recover their remains. In short, what had the State party done to guarantee family members’ right to the truth and to return the remains of the victims?
7. In that context, the Committee was aware that an ad hoc truth and justice commission had been set up to shed more light on that period, but it was still awaiting tangible results that would satisfy family members and meet the State’s obligations under the Convention.

8. With regard to articles 11 and 12 of the Convention, he understood that the State party had established certain safeguards to prevent individuals from exercising undue influence over investigations and to ensure the independence of investigations and fair trials. However, the Committee had received reports that persons who had committed crimes between 1986 and 1991 had been appointed to senior military or political positions. He would like to know how the State party could prevent such appointments from taking place and, if they did occur, how it could ensure that they did not hamper criminal investigations.

9. With regard to the independence and impartiality of judicial authorities, the Committee took note of the National Human Rights Commission's report for 2021–2022, which was critical of the workings of the judicial system and highlighted, in particular, the question of security of tenure for judges.

10. **Mr. Diop** (Country Rapporteur), noting that enforced disappearance was not defined as a separate criminal offence in domestic law, asked how the State party ensured that that crime was covered by extradition treaties signed with other States that were not parties to the Convention and what potential obstacles to extradition existed.

11. With reference to guarantees of non-removal where there was a risk of a person being subjected to torture, as provided for under the laws on torture and on trafficking in persons, he would like to know what criteria were applied in assessing such risk and how the information contained in diplomatic assurances provided by the receiving State was verified. Was there a right of appeal against decisions to extradite or return an individual and, if so, with what authority were such appeals lodged and who was able to exercise that right?

12. The Act on Combating Torture guaranteed access to a lawyer from the time of arrest, in accordance with article 17 of the Convention, yet, under the Code of Criminal Procedure and the legal provisions on terrorism, detainees' right to contact family members or legal counsel was severely restricted. He wished to know whether the State party intended to review its national legislation to ensure that all persons deprived of their liberty, including those held in solitary confinement or incommunicado detention or for offences against the security of the State and terrorism, were able to challenge the legality of their deprivation of liberty and were able, upon arrest or transfer from one place of deprivation of liberty to another, to communicate with and be visited by their relatives, whether immediate family members or not, by a lawyer or any other person of their choice and, in the case of foreign nationals, by their consular authorities.

13. He would appreciate information as to which authorities and organizations were permitted access to persons deprived of their liberty in order to discuss their conditions of detention and what system for the registration of detainees was in place. Which international organizations were authorized to visit places of detention, and did they have access to the registers? He wondered what progress was being made in the modernization and digitization of the registration system, notably with a view to harmonizing and integrating registers across institutions and authorities.

14. He would like to know what training on the Convention was provided to law enforcement and medical personnel, public officials and other persons involved in the custody or treatment of persons deprived of liberty, including judges, prosecutors and other law officials, in accordance with article 23 of the Convention.

15. **Mr. de Frouville** said that he would welcome more details regarding the procedures and methods used when the mechanism for an immediate search was triggered, what institutions or bodies conducted such searches and what protocols were applied. He would also be interested to learn more about the operation of the joint investigation committee set up to search for a person who had allegedly disappeared on Malian territory, as mentioned by the delegation at the previous meeting.

16. He wondered whether victims' families were involved in the searches. In how many cases where individuals had died had the remains been returned to family members? Did the State party intend to set up a database of DNA samples in order to assist with the identification of remains?

17. The Committee had taken note of the various forms and mechanisms of reparation established by the State party, notably for those affected by the *passif humanitaire*. It was

nevertheless concerned that the measures did not seem sufficiently comprehensive and failed to cover all the various kinds of harm caused by disappearances. In addition, there was a heavy emphasis on compensation, which could sometimes be seen as a way of simply closing a case. He would be interested to know what measures the State party intended to take to institute comprehensive reparation proceedings, including provisions for securing truth and justice for those concerned.

18. He wondered whether the State party was considering adopting a system for issuing absence certificates in respect of disappeared persons in order to clarify the legal status of the family members of disappeared persons. In particular, he would be interested in hearing the delegation's comments on allegations that women and children had been deprived of housing owing to the disappearance of their relatives and that the children of 14 persons recently accused of terrorist offences were unable to enrol in public schools and lacked access to medical care.

*The meeting was suspended at 10.40 a.m. and resumed at 11 a.m.*

19. **A representative of Mauritania** said that police officers had visited Mr. Boumeny Ould Jibril Ould Cheine, also known as "Souvi", to investigate a complaint of fraud made against him by a member of the public. He had then voluntarily presented himself at a police station, where he had been subjected to physical torture. After his death in hospital from his injuries, an investigation had been launched, during which the rights of the victim's family, including the right to be present at the autopsy, had been respected. Once it had been proved that the victim had died of torture, a commission of inquiry chaired by the public prosecutor had been established and eight persons, including high-ranking police officers, had been arrested. Three more persons had been arrested following a judicial investigation. All the suspects were currently in detention pending the next session of the applicable criminal court.

20. The 14 persons convicted of terrorism in 2012 had not been held incommunicado or in an unofficial place of detention but rather in a prison in Ouadane. The prison governor and the International Committee of the Red Cross had facilitated written communication with their families, who had been unable to visit owing to the remote location of the prison. Soon after the 2016 visit of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the prisoners had been transferred to a more accessible location. All family members had been granted visiting rights upon request. The Government was aware of one remaining family that claimed that the children lacked documents relating to their father. As it did whenever necessary, the prison administration had recently facilitated that prisoner's civil registration. However, it appeared that the prisoner had not been registered as the children's father at the time of their birth. That matter did not fall within the prison administration's responsibility and would have to be remedied in court. One of the persons involved in the cases highlighted in 2022 by the Working Group on Enforced or Involuntary Disappearances had been released after serving his sentence.

21. **Mr. Sidi** said that his Government had acted transparently in response to the unacceptable acts committed in the "Souvi" case and had requested the national human rights institution and the country office of the Office of the United Nations High Commissioner for Human Rights to carry out an investigation. To ensure such incidents did not recur, the Government was acting upon the recommendations made in the resulting report, which included the provision of training for internal security force officials on fundamental safeguards for persons deprived of their liberty. It had also decided that autopsies should be performed in all cases of deaths occurring following action by the security forces. It planned to train the necessary number of forensic pathologists and was encouraging more medical students to choose that speciality.

22. **A representative of Mauritania** said that Mr. Ghadde had been arrested and detained in accordance with Mauritanian law. Owing to the nature of the charges against him and the dissolution of the Senate, he had not had parliamentary immunity. He had been arrested on 10 August 2017 following a complaint of defamation made by an army officer and held in police custody until 18 August 2017. Between 18 August and 31 August 2017, he had been held under a separate procedure for suspected corruption, for which a longer maximum custody period applied. The duration of the two periods of custody had not exceeded the legal maximum. His detention had been ordered by a panel of three judges from the anti-corruption

investigation unit and upheld as legally valid by the indictments chamber and the Supreme Court. His lawyers had been able to make use of all available remedies to defend their client. As Mr. Ghadde had enjoyed all the rights provided for in Mauritanian and international law, he was not a victim of arbitrary detention. He was currently at liberty and in possession of all his civil rights.

23. **A representative of Mauritania** said that security of tenure for judges was provided for in the law on the status of the judiciary. Judges could only be reassigned based on exigencies of service; despite the authorities' efforts to recruit and train more judges, it was sometimes necessary to fill posts in particular locations. However, in most cases, judges were reassigned at their own request. The issues raised regarding periods of police custody would be addressed in the final document produced as part of the current justice system reform process.

24. Pursuant to the Code of Criminal Procedure, extradition was not permitted in cases involving political offences, if the person was of Mauritanian nationality, if the case was being tried in Mauritanian courts or if the statute of limitations had expired or amnesty had been granted. In addition, no one who faced a risk of torture or ill-treatment could be extradited. Secret detention was considered an act of torture.

25. Independent bodies, such as the National Human Rights Commission and the national preventive mechanism, and certain international organizations, including the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Human Rights, could conduct unplanned visits to all detention facilities and meet with detainees. Any civil society organization could access places of detention with permission from the prison authorities.

26. **A representative of Mauritania** said that a commission had been set up on the instructions of the President to register all Mauritanian citizens throughout the country before 31 December 2023. In May 2022, the Government had adopted a decree on the implementation of the Convention relating to the Status of Refugees and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, and a national advisory commission on refugees and persons in need of protection had been established under the Ministry of the Interior. The commission comprised representatives of all relevant government departments and was working closely with the Office of the United Nations High Commissioner for Refugees (UNHCR).

27. A study had been conducted and a road map developed to ensure full harmonization of the country's legislation with international law and to help Mauritania to honour its international commitments. He wished to confirm that, as the Committee had previously been informed, there had been no cases of enforced disappearance.

28. **A representative of Mauritania** said that a department of the Ministry of Foreign Affairs, Cooperation and Mauritians Abroad was responsible for handling letters rogatory and extradition requests and for transmitting all legal documents through diplomatic channels. Article 22 of the Constitution stated that no one could be deported except in accordance with the law and the applicable extradition treaty, and an amendment to the Code of Criminal Procedure had been introduced by Act No. 2010-036 to establish procedures for extradition in line with the Convention and other international instruments. Political considerations did not justify the use of secret detention and, therefore, extradition for such offences could not be refused on political grounds.

29. **A representative of Mauritania** said that the Government had organized various training and awareness-raising campaigns on human rights. A special edition of the Official Gazette had been published on all the conventions ratified by Mauritania, and training workshops on the protection of persons from enforced disappearance had been held in Nouadhibou and Nouakchott for members of the judiciary, law enforcement officials and representatives of non-governmental organizations.

30. **Mr. Sidi** (Mauritania) said that, while the events that had occurred during the period of unresolved humanitarian issues known as the *passif humanitaire* had been serious and tragic, article 35 of the Convention clearly stated that the Convention could not be invoked retroactively, and the amnesty declared under Act No. 93-23 of 1993 had been introduced

before Mauritania became a party to the Convention. Nevertheless, the President had established an independent commission to address the issue of the *passif humanitaire*.

31. **Mr. Diop** said that he wished to know which authority was responsible for hearing appeals against expulsion or refoulement and whether such appeals had a suspensive effect in terms of the expulsion procedure.

32. **Mr. de Frouville** said that he would appreciate further information on how victims participated in the search for persons presumed to have been subjected to enforced disappearance, especially as part of the joint investigation committee with Mali. He would also like to hear more about the use of genetic databases, alternative forms of reparation and the legal status of disappeared persons. In view of reports that Mauritanian authorities had prevented victims of enforced disappearance and civil society organizations from holding memorial ceremonies and similar events, he would welcome public assurances from the delegation that no one who had attended the current dialogue with the State party would face reprisals upon their return to Mauritania.

33. He wondered whether the State party planned to introduce a law to cover all aspects of the enforced disappearance of children or the falsification of their identity documents that were dealt with under article 25 (1) of the Convention, including non-criminal aspects, and what measures the State party had taken to promote birth registration in order to mitigate the risk of the enforced disappearance of children or the concealment of their true identity.

34. **Mr. Ravenna** said that he would be grateful for a reply to the questions that he had asked at the previous meeting (CED/C/SR.443). First, he wished to know exactly when, according to the State party's interpretation of the notion of continuous crimes, such a crime was considered to have ended. Second, was the Government considering the possibility of incorporating the legal notion of a continuous crime into the relevant legal instruments? Third, in the light of the delegation's comments regarding the application of the principle of passive extraterritoriality and in view of the reciprocal nature of that principle, he would appreciate learning more about the State party's reasoning with respect to its consideration of the possibility of recognizing the Committee's competence to receive and consider individual communications under article 31 of the Convention.

35. **Ms. Janina** said that she would be interested to hear what the status of the asylum bill was and whether it included provisions on protection from enforced disappearance. It would be useful to know what the requirements for obtaining asylum were, which authorities were involved in granting asylum and what appeals system was in place.

36. **The Chair** said that she wished to know how judges, prosecutors and other justice officials were appointed and whether there was a procedure for excluding any person who had participated in serious human rights violations from joining any institution, including the National Assembly, the judiciary or any other administrative body involved in the investigation of human rights violations. She wondered what steps the State party had taken to disseminate the Guiding Principles for the Search for Disappeared Persons, whether it had provided training on the Principles and whether they were being followed. She would be interested to learn what specific steps had been taken to build national capacity for undertaking searches, set up a genetic database and create ante- and post-mortem registers for use in linking disappeared persons to their family members.

*The meeting was suspended at 12.15 p.m. and resumed at 12.30 p.m.*

37. **Mr. Sidi** (Mauritania) said that, with respect to the issue of freedom of association, Act No. 004 of 2021 had introduced a notification system which was administered by the Commission on Human Rights, Humanitarian Action and Relations with Civil Society. Special software was used to process all applications from civil society organizations concerning public ceremonies in order to avoid administrative errors or abuse by officials. If an application was denied, the official handling the case must give the reasons for having done so. Otherwise, authorization was automatically granted two months after receipt of the application. He was unaware of any instances where such authorizations had been denied.

38. The asylum bill had been one of the outcomes of the studies carried out by the intersectoral technical committee responsible for drafting reports on the harmonization of domestic law with the Convention. The matter of recognizing the Committee's competence

to receive and consider individual communications under article 31 of the Convention would be discussed at the next meeting of the intersectoral technical committee, which would be held after it had received the concluding observations of the Committee on Enforced Disappearances.

39. **A representative of Mauritania** said that all prison facilities kept registers. A management application was being developed as part of a pilot project in the country's largest prisons to modernize and streamline the registration system, and another pilot project on the digitization of court registries in Nouakchott was under way. Work to ensure that the two systems would be interoperable was also being undertaken.

40. By law, all persons born in the country, including the children of asylum-seekers, were entitled to Mauritanian birth certificates. Circulars had been prepared in cooperation with UNHCR and issued by the Ministry of Justice to the relevant courts to ensure the issuance of such certificates. Articles 150 et seq. of the Code of Civil, Commercial and Administrative Procedure established an effective remedy against all administrative decisions.

41. The time limit for the prosecution of continuous crimes ran from the moment the criminal act ceased. In accordance with Act No. 2015-033 on Combating Torture, however, there was no statute of limitations for the crime of secret detention. Mutual judicial assistance was always based on the principle of reciprocity, and the Mauritanian authorities had executed requests for assistance purely on that basis. Only the reasons set forth in international treaties, including risk to public order and incompatibility with domestic law, constituted grounds for refusing such requests.

42. Judges and prosecutors were appointed according to the procedure established in the regulations governing the judiciary and were subject to oversight by the Supreme Council of the Judiciary. Judges enjoyed security of tenure and could be removed only in cases of professional misconduct or at their own request. The regulations stipulated that judges acted independently and were subject only to the authority of the law. Prosecutors could be required to file charges only by written order of the Minister of Justice, in accordance with article 31 of the Code of Criminal Procedure.

43. **A representative of Mauritania** said that, in the past, proof of paternity had to be provided in order to obtain a birth certificate. However, under the current registration system, births could be registered based on oral testimony from persons residing in the area.

44. Whereas previous provisions had concerned only refugees, the new decree covered all persons in need of protection. UNHCR and the national advisory commission on refugees and persons in need of protection were notified of asylum applications, and the commission processed the applications with the support of UNHCR. The asylum bill had been drafted with the participation of all relevant government departments and was ready for approval by the Council of Ministers.

45. With respect to the question asked by Mr. Ravenna, he could add that, under Mauritanian law, continuous crimes were offences that the perpetrator intended to continue committing indefinitely. The statute of limitations began to run at the point in time where the last act entailed in the commission of the offence came to an end.

46. A large scientific laboratory had been constructed that included a unit that analysed DNA samples. That unit was in the process of building up a genetic database. The country now had several forensic scientists, and a recently adopted law on the protection of personal data would facilitate the identification of disappeared persons.

47. **Mr. Sidi** (Mauritania) said that the Government had launched a major awareness-raising campaign together with civil society in order to ensure that all applicants were registered, especially human rights defenders, throughout Mauritania.

48. **A representative of Mauritania** said that the country had a robust legal arsenal with which to ensure the protection of the fundamental rights of children. It was a party to a range of international instruments, including the Convention on the Rights of the Child, various International Labour Organization conventions and the African Charter on the Rights and Welfare of the Child, which served to promote the development and participation of children in society and prohibit all forms of discrimination and violence against them. Under the Child

Protection Code, the best interests of the child were the primary consideration when any judicial, administrative or private institution made any decision affecting children. Article 4 of the Code stated that children must remain with their parents unless a judicial authority believed that they were at serious risk of physical or psychological harm or if it would not be in the best interests of the child.

49. **Mr. Sidi** (Mauritania), thanking the Committee for its pertinent questions and comments, said that the Government would make every effort to follow up on the Committee's observations and recommendations to protect all persons from enforced disappearance.

*The meeting rose at 1.05 p.m.*