



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

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## Committee on Enforced Disappearances

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

#### I. General information

1. With reference to paragraph 28 of the State party's report,<sup>1</sup> please indicate whether the provisions of the Convention can be directly invoked before and applied by the courts or other competent authorities. Please provide examples of case law, if any, in which the provisions of the Convention have been invoked before or applied by the courts or other competent authorities.
2. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications.
3. With reference to paragraph 4 of the State party's report, please provide information on the preparation of the report, in particular regarding consultations held with civil society representatives.

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

4. Please specify whether there is a unified and operational register of disappeared persons regardless of the circumstances and if so, the kind of information that it contains, and whether such information could enable the differentiation between cases of enforced disappearance as defined under article 2 of the Convention and the other cases of disappearance that do not fall under that category. Please describe the measures taken: (a) to ensure that relevant information about all alleged cases of disappearance is promptly entered into the register and duly updated; (b) to compare and consolidate the information contained in the register with the information on disappeared persons held by other State institutions, including those providing forensic services or administering DNA databases; (c) whenever necessary, to share the registered information with other States potentially related to the disappearance at stake (arts. 1–3, 12, 14, 15 and 24).
5. Please provide up-to-date statistical information, disaggregated by the sex, sexual orientation, gender identity, age, nationality, place of origin and racial or ethnic origin of the victim, on the number of disappeared persons in the State party, specifying the date of their disappearance, the number of persons who have been located and the number of cases in which there may have been some form of State participation within the meaning of article 2 of the Convention, including with regard to disappearances occurring in the context of migration or trafficking in persons (arts. 1 and 24).

\* Adopted by the Committee at its twenty-fourth session (20–31 March 2023).

<sup>1</sup> [CED/C/BEN/1](#).



6. With reference to paragraph 15 of the State party's report, please indicate whether there are plans to explicitly prohibit under national law the invocation of exceptional circumstances as a justification for enforced disappearance. In this regard, please indicate what measures were taken during the coronavirus disease (COVID-19) pandemic to ensure that the State party's actions and decisions were in conformity with its obligations under the Convention, in particular with regard to articles 1, 12 and 24 (arts. 1, 12 and 24).

7. With regard to paragraphs 17, 20 and 22 of the State party's report, please describe the steps that have been taken or are planned to harmonize the definition of enforced disappearance under national law, in accordance with article 2 of the Convention, including in cases where the offence cannot be categorized as a crime against humanity. Please specify how the Convention is currently being implemented and, in particular, please indicate the legal provisions that may be invoked to identify, prosecute and punish those responsible for the acts defined in article 2 of the Convention (arts. 1, 2 and 4).

8. Please explain how the State party intends to ensure that the definition of enforced disappearance in article 464 of the Criminal Code is compatible with the definition contained in the Convention. Please specify the situations in which enforced disappearance constitutes a crime against humanity, provide information on the legal consequences of committing this offence and describe the applicable penalties (arts. 2 and 5).

9. Please indicate whether any complaints have been made or any cases have been pursued that relate to the commission of the acts described in article 2 of the Convention by persons or groups of persons acting without the authorization, support or acquiescence of the State, including disappearances of migrants and disappearances committed for the purpose of trafficking. If they have, please give examples of specific cases and provide information on the number of complaints made, the investigations conducted and their outcomes, the penalties imposed on the persons responsible and the reparation provided to the victims (arts. 3, 12 and 24).

10. With regard to paragraphs 23 and 24 of the State party's report, please provide detailed information on the specific measures taken to hold criminally responsible any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance, including a superior under the circumstances described in article 6 (1) (b) of the Convention. In addition, please indicate whether any legislation or jurisprudence addresses the prohibition on invoking an order or instruction from a public authority to justify an offence of enforced disappearance and whether orders or instructions prescribing, authorizing or encouraging enforced disappearance are expressly prohibited under domestic law. Please also indicate what safeguards are in place under domestic law to ensure that a person who refuses to obey an order to commit an act of enforced disappearance will not be punished (art. 6).

### **III. Judicial procedure and cooperation in criminal matters (arts. 8–15)**

11. With reference to paragraphs 38 to 40 of the State party's report, please clarify whether the State party has competence to exercise jurisdiction over the offence of enforced disappearance in the cases covered by article 9 (1) (b) and (c) of the Convention when the offence is not punishable in the country where it was committed (principle of double criminality). Please also clarify whether the State party has competence to prosecute the alleged perpetrator of an offence of enforced disappearance committed abroad, regardless of the nationality of the victim and offender and of the country where the offence was committed, when he or she is present in a territory under the State party's jurisdiction. Please provide examples of cases in which the State party would exercise its jurisdiction over an offence of enforced disappearance committed in a country where there is no legitimate State authority (art. 9).

12. Please indicate the procedures in place to ensure the presence of the alleged perpetrator of an enforced disappearance before the authorities. Please indicate the existing legal, administrative or judicial measures for conducting a preliminary inquiry or

investigations to establish the facts, should the State party take the measures referred to in article 10 (1) of the Convention (art. 10).

13. With regard to paragraph 46 of the State party's report, please indicate whether there are plans to preclude the military authorities from having jurisdiction to investigate or prosecute persons accused of enforced disappearance, even when the defendant is a member of the armed forces (art. 11).

14. Please indicate whether the authorities of the State party have received any allegations of enforced disappearance since the submission of the report. If they have, please report on the investigations conducted and their outcomes. Please provide information on the authorities responsible for investigating allegations of enforced disappearance, including the financial and human resources at their disposal, and indicate whether any restrictions that: (a) may be placed on their access to places of deprivation of liberty where there are grounds to believe that a disappeared person may be present; and (b) are applicable to their access to the documentation and other information relevant to their investigations. Please indicate whether there are any mechanisms in place to exclude a law enforcement officer, a member of the security forces or any other public official, whether civilian or military, from the investigation of an enforced disappearance when he or she is suspected of having been involved in the commission of the offence (arts. 1, 2, 12 and 17).

15. With reference to paragraph 61 of the State party's report, please explain how it is ensured in practice that all cases of enforced disappearance are investigated *ex officio*, even if there has been no formal complaint. Please describe the measures taken to ensure that a search is immediately launched when a case of enforced disappearance is brought to the attention of the authorities (art. 12).

16. Please indicate whether national law establishes that the suspension from duty of a State official suspected of involvement in the commission of an enforced disappearance is effective from the outset of the investigation and continues for its duration; if it does, please provide information on the applicable provisions (art. 12).

17. With reference to paragraphs 63 and 64 of the State party's report, bearing in mind that enforced disappearance is not defined as a separate offence in the Criminal Code, please describe the steps taken to ensure that enforced disappearance is designated as an extraditable offence in all treaties with other States, whether or not they are parties to the Convention and irrespective of the place where the offence was committed. Please also provide information on any impediments to extradition under national law, extradition treaties or agreements concluded with third countries in respect of the offence of enforced disappearance. In addition, please indicate whether the offence of enforced disappearance has been included in extradition treaties concluded after the entry into force of the Convention (arts. 9 and 13).

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

18. With respect to paragraphs 82 to 86 of the State party's report, please provide detailed information on the measures taken to ensure strict compliance, in law and in practice, with the principle of non-refoulement under article 16 of the Convention. In particular, please: (a) describe the provisions prohibiting the expulsion, return, surrender or extradition of a person where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance, and the mechanisms and criteria used in determining whether such a risk exists and in assessing it; (b) indicate whether it is possible to appeal against a decision authorizing an expulsion, return, surrender or extradition and, if so, who is permitted to file the appeal, before which authority and under which procedure, and whether the appeal has suspensive effect; (c) provide information on mechanisms to ensure that each case is assessed individually before an extradition, return, surrender or expulsion is carried out; and (d) indicate whether the State party accepts diplomatic assurances when there are substantial grounds for believing that the person concerned would be in danger of being subjected to enforced disappearance (art. 16).

19. With regard to paragraphs 92, 96 and 100 of the State party's report, please provide further information on the existence of any official registers of persons deprived of liberty,

regardless of the place of deprivation of liberty, and indicate the measures taken to ensure that they contain all the information listed in article 17 (3) of the Convention and that they are immediately completed and updated and then monitored. In addition, please provide additional information on the fulfilment of the rights enshrined in article 17 of the Convention, in particular the right to communicate with counsel and relatives and the right to an effective remedy (art. 17).

20. Please provide additional information on the legislation adopted and the practices followed to ensure the verification of the release of persons deprived of liberty in all places of deprivation of liberty, and information on the authorities responsible for monitoring their release (arts. 17 and 21).

21. With reference to paragraphs 92, 93 and 98 of the State party's report, please provide examples of non-compliance by criminal investigation police officers with provisions on the rights of detained persons (arts. 17–21).

22. With regard to paragraphs 102 and 103 of the State party's report, please indicate what measures have been taken to ensure that, in addition to the family members and counsel of the person deprived of liberty, any person with a legitimate interest has access to all the information covered by article 18 (1) of the Convention. Please indicate the various existing remedies available in the event of a refusal to disclose this personal information, and the measures that have been taken to prevent and punish acts that delay or obstruct these remedies (arts. 18, 20 and 22).

23. With regard to paragraphs 118 to 120 of the State party's report, please indicate whether the State party provides, or plans to provide, training on the Convention for civil and military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges and other officials responsible for the administration of justice (art. 23).

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

24. Please provide information on the definition of "victim" under national law and explain how it conforms to the definition contained in article 24 (1) of the Convention. Please indicate whether a victim of enforced disappearance must initiate criminal proceedings in order to be considered a victim and whether victims have the right to take an active part in the investigation and the search for the disappeared person (arts. 12 and 24).

25. With regard to paragraph 123 of the State party's report, please provide further information on: (a) how the State safeguards the right of victims to know the truth; (b) the rules and procedures in place to ensure that victims of enforced disappearance are able to obtain reparation and compensation; and (c) the type of compensation and reparation provided to victims, including information on the text of the relevant legislative provisions. Please indicate whether the right of victims to obtain compensation and reparation is subject to a time limit (art. 24).

26. Please indicate whether there is an emergency system for the immediate launch of an urgent search when a case of disappearance is reported to the authorities, and provide additional information on the procedures undertaken by the Beninese authorities when such a report is received, including on time frames and modes of response. Please describe the mechanisms in place to ensure effective and efficient coordination between the authorities responsible for searching for disappeared persons and those responsible for investigating cases of disappearance (arts. 12 and 24).

27. Please provide information on the legal situation, under national law, of disappeared persons whose fate has not been clarified and of their relatives in such areas as social welfare, financial matters, family law and property rights. In this regard, please indicate whether a declaration of absence or a declaration of death is issued in respect of the disappeared person in these cases and, if it is, how long after the disappearance the declaration is issued and what impact it might have on the State party's obligation to continue the search and investigation until the fate of the disappeared person has been clarified (art. 24).

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

28. Please provide detailed information on the legislation applicable to the acts described in article 25 (1) of the Convention and indicate whether there are plans to define those acts as specific offences under the Criminal Code. In addition, please indicate whether any complaints relating to the wrongful removal of children within the meaning of article 25 (1) (a) of the Convention have been filed since the entry into force of the Convention in the State party and, if they have, please provide information on the measures taken to find these children and prosecute and punish the perpetrators, and on the outcomes of those measures (art. 25).

29. Please indicate whether national law establishes procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship arrangement that originated in an enforced disappearance. If no such procedures have been established, please indicate whether steps have been taken to bring national legislation into line with article 25 (4) of the Convention (art. 25).

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