



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by the Niger under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by the Niger under article 29 (1) of the Convention¹ at its 385th and 386th meetings,² held on 29 and 30 March 2022. At its 399th meeting, held on 7 April 2022, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by the Niger under article 29 (1) of the Convention, which was prepared in accordance with the Committee's reporting guidelines. Moreover, the Committee thanks the State party for its written replies³ to the list of issues.⁴

3. The Committee also appreciates the constructive dialogue with the high-level delegation from the State party on the measures taken to implement the provisions of the Convention, which has dispelled several of its concerns, and particularly welcomes the openness with which the delegation responded to the questions raised by the Committee. It thanks the State party for the additional information and clarifications provided in its oral statements.

B. Positive aspects

4. The Committee commends the State party for having ratified or acceded to all of the core United Nations human rights instruments, and most of the optional protocols thereto, and the Rome Statute of the International Criminal Court.

5. The Committee welcomes the measures taken by the State party in areas relevant to the Convention, including the adoption of Act No. 2020-02 of 6 May 2020 establishing the national mechanism for the prevention of torture.

6. The Committee welcomes the fact that the State party has issued a standing invitation to all special procedure mandate holders of the Human Rights Council.

* Adopted by the Committee at its twenty-second session (28 March–8 April 2022).

¹ CED/C/NER/1.

² CED/C/SR.385 and CED/C/SR.386.

³ CED/C/NER/RQ/1.

⁴ CED/C/NER/Q/1.



C. Principal subjects of concern and recommendations

7. The Committee is aware of the serious difficulties faced by the State party and notes with empathy the statement made by the delegation during the dialogue that “every family has a disappeared or abducted person in its midst”. However, it considers that, at the time of adoption of the present concluding observations, the legislation in force in the State party to prevent and punish enforced disappearance and guarantee the rights of victims as well as the conduct of some of its competent authorities were not in full compliance with the obligations under the Convention. It therefore urges the State party to carry out its recommendations, which have been drawn up in a constructive spirit of cooperation, in order to ensure the full implementation of the Convention in law and in practice. In this regard, the Committee invites the State party to take advantage of the ongoing discussions on various bills in areas relevant to the Convention to follow up on the recommendations made in the present concluding observations.

1. General information

Urgent action procedure

8. The Committee takes note of the information received during the dialogue regarding the case that was the subject of the request for urgent action transmitted to the State party in 2020. Nevertheless, it regrets that it has not received any response to the requests for information submitted within the framework of the procedure, despite several reminders (art. 30).

9. The Committee calls upon the State party to enhance its cooperation within the framework of the urgent action procedure and to respond without delay to the communications transmitted by the Committee, providing information on the measures taken to search for disappeared persons and investigate their disappearance. It also invites it to disseminate information about the urgent action procedure among civil society actors and the general public.

Individual or inter-State communications

10. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual or inter-State communications. However, it welcomes the announcement made during the dialogue that the Minister for Foreign Affairs would soon make the declaration under article 31 of the Convention (arts. 31 and 32).

11. The Committee encourages the State party to recognize the Committee’s competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention with a view to strengthening the framework for the protection against enforced disappearances.

Applicability of the Convention

12. The Committee regrets that no court decisions relating to cases of enforced disappearance have been registered and that, according to the State party, the non-application of the Convention is due in particular to the fact that judges and other judicial actors are unaware that the Convention exists.⁵ In this regard, the Committee notes with satisfaction the information provided during the dialogue on the efforts made to make the Convention known (art. 23).

13. The Committee recommends that the State party intensify its efforts to provide training on the Convention to judges, prosecutors and lawyers so that it is applied and taken into account by national courts.

⁵ CED/C/NER/RQ/1, para. 3.

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

Statistical information

14. The Committee recalls that, in its replies to the list of issues, the State party had stated that it did not have disaggregated statistical data on disappeared persons.⁶ During the dialogue, however, the State Party stated that it had statistics by region on disappearances committed by armed groups. The Committee regrets that it has not received such information (arts. 1, 2, 3, 12 and 24).

15. The State party should generate without delay accurate and up-to-date statistical information on disappeared persons, disaggregated by sex, sexual orientation, gender identity, age, nationality, place of origin and racial or ethnic origin. This information should include the date of disappearance, the number of disappeared persons who have been located, whether alive or diseased, and the number of cases in which the State is alleged to have participated, somehow or other, within the meaning of article 2 of the Convention.

Offence of enforced disappearance

16. The Committee is concerned that enforced disappearance does not yet constitute a separate offence under domestic law. It notes with satisfaction, however, that a bill to criminalize acts of enforced disappearance was adopted by the Council of Ministers on 24 February 2022 and will soon be submitted to the parliament (arts. 2, 4, 6, 7 and 8).

17. The Committee invites the State party to conclude without delay the procedure for the adoption of a law criminalizing acts of enforced disappearance that is fully in line with the Convention and provides, inter alia, for a term of limitation that is of long duration and is proportionate to the extreme seriousness of this offence, which, taking into account the continuous nature of enforced disappearance, commences from the moment when the offence ceases.

Acts committed by non-State actors without State participation

18. The Committee is aware of the many challenges faced by the State party as a result of serious abuses, including disappearances, committed by non-State armed groups. Nevertheless, it regrets that it has not received information on the investigations into these disappearances and their results, including the sanctions imposed on perpetrators, and on the assistance provided to the victims and the search for and location of disappeared persons (art. 3).

19. The Committee recommends that the State party increase its efforts to ensure that allegations of acts defined in article 2 of the Convention committed by armed groups without the authorization, support or acquiescence of State officials are immediately, thoroughly and impartially investigated and that the alleged perpetrators are brought to justice and, if found guilty, given sentences commensurate with the seriousness of their acts. The Committee also recommends that the State party take all necessary measures to assist the victims and to search for and locate persons disappeared as a result of the actions of these armed groups and to prevent such acts.

3. Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)

Military jurisdiction

20. The Committee notes that military courts have the jurisdiction to investigate cases of enforced disappearance when perpetrated by military personnel or during a state of emergency. It takes note of the information received during the dialogue regarding judicial guarantees that apply to the military courts, including their mixed composition. However, the

⁶ Ibid., para. 28.

Committee recalls that the jurisdiction of military courts must be excluded in cases of serious human rights violations, including enforced disappearances (art. 11).

21. Recalling its statement on enforced disappearances and military jurisdiction,⁷ the Committee recommends that the State party take the necessary legislative measures to exclude investigations and prosecutions involving enforced disappearances from military jurisdiction in all cases.

Protection of persons participating in an investigation

22. The Committee notes the State party's assertion that the families of disappeared persons are not at risk of reprisals because the perpetrators do not know the abducted persons. Nevertheless, it regrets that it has not received information on the concrete measures taken to ensure that victims and witnesses are protected (art. 12).

23. The Committee recommends that the State party establish mechanisms, including a structured programme, to ensure that all persons referred to in article 12 (1) of the Convention are effectively protected against all ill-treatment or intimidation as a consequence of complaints made or any evidence given.

Allegations of enforced disappearance

24. The Committee is concerned about allegations of the enforced disappearance of more than 100 people between 27 March and 2 April 2020 in the department of Ayorou in the Tillabéri region. It takes note of the conclusions of the report of the National Human Rights Commission on these allegations, including that the perpetrators were elements from the defence and security forces, and the State party's assertions that various services have concluded that these disappearances were committed by terrorists using official military uniforms and vehicles. The Committee also takes note of the statement that the identification of the perpetrators will only be possible after the investigations currently under way before the military and civilian courts are completed, even though, as was recalled earlier, as a matter of principle, all cases of enforced disappearance should fall within the exclusive competence of the ordinary civilian authorities. The Committee is concerned about other allegations of enforced disappearances committed by agents of the defence and security forces in the context of the conflict. In addition, it regrets that it has not received precise information on the existence of mechanisms to exclude from the investigation of an enforced disappearance any person who may be involved in the case (arts. 1, 11, 12 and 24).

25. The Committee recommends that the State party increase its efforts to ensure that all measures taken to combat terrorism are fully in line with the Convention and to guarantee the right of all victims of enforced disappearance to justice, truth and reparation. In that regard, the State party should:

(a) **Ensure that all allegations of enforced disappearance are investigated immediately, thoroughly and impartially, even in the absence of a formal criminal complaint, and that the perpetrators are prosecuted and given a sentence commensurate with the seriousness of their acts;**

(b) **Ensure that public officials suspected of involvement in the commission of a crime of enforced disappearance are suspended from their duties from the outset and for the duration of the investigation, without prejudice to respect for the principle of the presumption of innocence, and that the law enforcement or security forces whose members are suspected of having participated in the commission of the crime may not take part in the investigation;**

(c) **Encourage and facilitate the safe filing of complaints and the active and full participation in investigations by victims, including relatives of the disappeared person who so wish;**

⁷ A/70/56, annex III.

(d) **Ensure that right of victims to the truth is fully respected at all stages of the proceedings, in particular by ensuring that they are regularly informed of the progress and results of investigations, even when they have not filed a civil suit;**

(e) **Take all necessary measures to find, release and, in the event of death, identify all persons subjected to enforced disappearance whose fate has not yet been clarified, and ensure that the search procedures implemented are in accordance with the Committee's guiding principles for the search for disappeared persons.⁸ In this regard, the Committee also recommends that the State party put in place the protocols and mechanisms mentioned in paragraphs 196–198 of its report submitted under article 29 (1) of the Convention;**

(f) **Ensure that there is effective coordination and cooperation between all organs involved in investigations and searches, and ensure that they have the necessary financial, technical and human resources and structures, and the expertise, to carry out their duties expeditiously and effectively.**

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

Non-refoulement and protection of migrants from enforced disappearance

26. The Committee is concerned about allegations that individuals have been removed from the Niger, in accordance with administrative or extradition procedures, despite the proven risk that they could be subjected to torture or ill-treatment in the country of return.⁹ It is also concerned about reports that the punitive approach adopted in some provisions of Act No. 2015-36 of 26 May 2015 on the smuggling of migrants encourages migrants to go into hiding in conditions that expose them to numerous abuses, which could include the risk of being a victim of enforced disappearance. In this regard, the Committee notes with satisfaction that, according to the State party, this law is being revised (art. 16).

27. **The Committee recommends that the State party ensure that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly observed in all circumstances. In particular, the Committee recommends that the State party:**

(a) **Consider expressly incorporating into its domestic law a prohibition on expelling, returning, surrendering or extraditing a person where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance;**

(b) **Guarantee that, before proceeding to an expulsion, return, surrender or extradition, all relevant procedures have been exhausted and a thorough individual examination has been carried out to determine whether there are substantial grounds for believing that the person concerned would be in danger of being subjected to enforced disappearance and that, if there are such grounds, the person concerned is not expelled, extradited, surrendered or returned;**

(c) **Guarantee that appeals against a decision to expel, return, surrender or extradite have a systematic suspensive effect.**

28. **The Committee also recommends that the State party prevent the enforced disappearance of migrants, including by revising Act No. 2015-36 in the light of relevant international standards.**

Secret detention and fundamental legal safeguards

29. While noting the State party's assertion that "secret detention is prohibited in any place other than those established by law",¹⁰ the Committee is concerned about the allegations raised by the Committee against Torture that some individuals are held in police custody or pretrial detention in undisclosed locations not provided for by law, such as the

⁸ CED/C/7.

⁹ CAT/C/NER/CO/1, para. 17.

¹⁰ CED/C/NER/RQ/1, para. 59.

General Directorate for Documentation and External Security, the National Police Academy and some military camps.¹¹ It is also concerned by the fact that the Code of Criminal Procedure does not guarantee the right of persons in police custody to inform their families of the deprivation of liberty.¹² While taking note of the information on detention registers, the Committee is concerned about reports of shortcomings in the maintenance of registers of persons deprived of their liberty.¹³ It also regrets the lack of clarity as to the provisions of domestic law establishing a specific remedy in accordance with article 17 (2) (f) of the Convention (arts. 17, 18 and 21).

30. The Committee recommends that the State party guarantee that no one is held in secret detention, including by ensuring that all persons deprived of their liberty are afforded all the fundamental legal safeguards set out in article 17 of the Convention and other human rights instruments to which the Niger is a party. In this sense, the State party must:

(a) **Ensure that persons deprived of their liberty are held solely in officially recognized and supervised places of deprivation of liberty at all stages of the proceedings;**

(b) **Guarantee, from the outset of the deprivation of liberty, that all persons, regardless of the offence with which they are charged, have effective access to a lawyer and that their relatives, any other person of their choice and, in the case of a foreign national, the consular authorities of their country, are effectively informed of their deprivation of liberty and their place of detention;**

(c) **Record all deprivations of liberty, without exception and from the outset, in uniform registers and/or files that contain, as a minimum, the information required under article 17 (3) of the Convention; the registers or files are to be accurately filled in and updated without delay and be subject to regular checks;**

(d) **Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any person with a legitimate interest, will be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.**

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

Right to obtain reparation

31. The Committee is concerned that domestic law does not provide for a comprehensive system of reparation that is fully in line with article 24 (4) and (5) of the Convention. It is also concerned that the "special funds" for victims of terrorism and trafficking in persons have been set up but have not yet been made available. The Committee is further concerned that the State party does not appear to have taken into consideration or acted on the recommendations of the National Human Rights Commission regarding reparation for the victims of the enforced disappearances that occurred between 27 March and 2 April 2020 in the department of Ayorou in the Tillabéri region (art. 24).

32. The Committee recommends that the State party include in its national legislation a comprehensive reparation system that: (a) fully complies with articles 24 (4) and (5) of the Convention and other relevant international standards and thus offers guarantees of non-repetition; (b) is applicable even when no judicial proceedings have been initiated; and (c) is based on a differential approach that takes into account the specific situation of each victim, including sex, sexual orientation, gender identity, age, ethnicity, social status and disability. It also recommends that the State party make

¹¹ CAT/C/NER/CO/1, para. 11.

¹² CAT/OP/NER/1, para. 51.

¹³ CAT/C/NER/CO/1, para. 9; and CAT/OP/NER/1, paras. 59 and 60.

available the special funds created for victims of terrorism and trafficking in persons. Furthermore, the State party should carefully consider the recommendations on reparation made by the National Human Rights Commission in its report on the investigation into the enforced disappearances in Tillabéri and provide a detailed reply as soon as possible.

Situation of women members of the family of a disappeared person

33. The Committee recalls the limitations faced by women of the Niger with respect to inheritance and access to social benefits that were reported by the Committee on the Elimination of Discrimination against Women¹⁴ and is concerned about the potential negative impact of these limitations on women's full enjoyment of the rights enshrined in article 24 of the Convention (art. 24).

34. **The Committee recommends that the State party ensure that all women and girls who are members of the families of disappeared persons are able to exercise all the rights enshrined in the Convention without restriction, including those contained in article 24.**

Right to form organizations and associations

35. The Committee is concerned about the information provided by the State party that there are no associations of victims of enforced disappearance in the country. It also notes with concern the concerns expressed by the Human Rights Committee,¹⁵ the United Nations High Commissioner for Human Rights¹⁶ and the Special Rapporteur on the rights to freedom of peaceful assembly and of association¹⁷ regarding restrictions on freedom of association that are in place in the State party (art. 24).

36. **The Committee recommends that the State party revise its legislation on freedom of association to bring it fully into line with article 24 (7) of the Convention and create a framework conducive to the establishment of independent associations of victims of enforced disappearance.**

6. Measures to protect children against enforced disappearance (art. 25)

Wrongful removal of children

37. The Committee takes note of the articles of the Criminal Code concerning offences against children and the family, in particular article 248. However, it notes with concern that the legal framework in force is not completely in line with article 25 of the Convention. Furthermore, the Committee is concerned that, in the so-called imported babies case, the State party has not taken the necessary measures to identify children who were victims of wrongful removal or enforced disappearance and to return them to their families of origin, including in cooperation with Nigeria, also a State party to the Convention. The Committee also regrets that it has not received information on the measures taken to prevent any risk of the wrongful removal of children that might be the result of acts of corruption (art. 25).

38. **The Committee recommends that the State party specifically criminalize the acts referred to in article 25 of the Convention and adjust its national legislation to bring it fully into line with this provision. It also recommends that the State party ensure the prevention of the acts referred to in article 25 and search for and identify child victims in order to return them to their families of origin and, to this end, seek, as necessary, the cooperation of the countries of origin, in particular Nigeria.**

¹⁴ CEDAW/C/NER/CO/3-4, para. 34.

¹⁵ CCPR/C/NER/CO/2, paras. 14–15.

¹⁶ Office of the United Nations High Commissioner for Human Rights (OHCHR), "United Nations High Commissioner for Human Rights, Michelle Bachelet, concludes her official visit to the Niger (2–4 December)", press release, 4 December 2021.

¹⁷ OHCHR, "Preliminary observations of the United Nations Special Rapporteur on the rights to peaceful assembly and of association, Clément Nyaletsossi Voule, following his visit to the Niger", statement, 16 December 2021.

D. Fulfilment of the rights and obligations under the Convention, dissemination and follow-up

39. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures it adopts are in full accordance with the Convention and other relevant international instruments.

40. The Committee wishes to emphasize the particularly cruel effect of enforced disappearance on the rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of a family member, are especially vulnerable to numerous human rights violations. The Committee therefore places particular emphasis on the need for the State party to ensure that gender issues and the specific needs of women and children are systematically taken into account in implementing the recommendations made in the present concluding observations and all the rights and obligations under the Convention.

41. The State party is encouraged to disseminate widely the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues that was drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the process of implementing the recommendations contained in the present concluding observations.

42. Pursuant to article 29 (4) of the Convention, and with a view to enhancing its cooperation with the State party, the Committee requests the State party to submit, by 8 April 2025, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations under the Convention since the adoption of the present concluding observations. This document should be prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention.¹⁸ The Committee encourages the State party to involve civil society in the preparation of this information.

¹⁸ CED/C/2, para. 39.