



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
8 May 2013
English
Original: French

Committee on Enforced Disappearances

Concluding observations on the report submitted by France under article 29, paragraph 1, of the Convention, adopted by the Committee at its fourth session (8–19 April 2013)

1. The Committee on Enforced Disappearances considered the report submitted by France under article 29, paragraph 1, of the Convention (CED/C/FRA/1) at its 46th and 47th meetings, held on 11 and 12 April 2013 (CED/C/SR.46 and 47), and adopted the following concluding observations at its 57th meeting, held on 19 April 2013.

A. Introduction

2. The Committee welcomes the report of France submitted pursuant to article 29, paragraph 1, of the Convention, part II of which complies with the guidelines on the form and content of reports. The Committee commends the State party for having submitted its report within the time prescribed by article 29, paragraph 1, of the Convention. The Committee appreciated the high quality of the written replies provided by France to the list of issues (CED/C/FRA/Q/1/Add.1) and the additional information provided orally during the consideration of the report. The Committee also appreciated the constructive dialogue on the application of the provisions of the Convention held with the delegation representing the State party and thanks it for the answers to the questions raised by Committee members.

B. Positive aspects

3. The Committee commends France for the role that it has played in combating enforced disappearances, from the first resolution on disappeared persons, resolution 33/173, adopted by the General Assembly of the United Nations on 20 December 1978, on the State party's initiative, to the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance on 20 December 2006, and for its role in promoting the ratification of that instrument.

4. The Committee notes with satisfaction that the State party has ratified almost all the United Nations human rights treaties, including the Optional Protocols in force, as well as the Rome Statute of the International Criminal Court.

5. The Committee also commends the State party for having recognized the competence of the Committee under articles 31 and 32 of the Convention concerning the consideration of communications submitted, respectively, by individuals or States parties.

6. The Committee commends the State party for having started the process of adopting specific legislation on enforced disappearance.
7. The Committee also notes with satisfaction that the provisions of Bill No. 250 brought before the Senate on 11 January 2012 were incorporated into a distinct legislative vehicle, namely Bill No. 736 (amended), in order to expedite their adoption and entry into force.
8. The Committee commends the State party for having consulted with the National Consultative Commission on Human Rights and civil society on the drafting of the report submitted under article 29, paragraph 1, of the Convention.

C. Subjects of concern and recommendations

9. The Committee notes that, as at the time of the drafting of its recommendations, the legislative framework in force in the State party for preventing and punishing enforced disappearances does not fully conform to the provisions of the Convention and the obligations that it imposes on States that have ratified it. The Committee welcomes Bill No. 736 (amended), and encourages the State party to take account of the recommendations made, in a constructive and cooperative spirit, in order to shore up the regulatory framework of the draft and ensure that it fully complies with all the provisions of the Convention for its effective implementation.

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

10. The Committee notes the statement by the delegation of the State party that enforced disappearance is regarded as a “manifestly illegal” act. However, it would be appropriate to adopt a specific law that establishes the absolute prohibition of enforced disappearance in exceptional circumstances, whether a state of war or a threat of war, internal political instability or any other public emergency granting special powers to the President of the Republic.

11. The Committee recommends that the State party should adopt a provision explicitly affirming that no exceptional circumstances of the kind described in article 1 of the Convention may be invoked to justify the offence of enforced disappearance.

12. The Committee notes the State party’s position that “placement outside the protection of the law” is regarded as an element of enforced disappearance. The Committee expresses its concern that the definition of enforced disappearance as a separate offence set out in Bill No. 736 includes the reference “in conditions that place such a person outside the protection of the law” in a place in the text that differs from the text of article 2 of the Convention and introduces vague phrases such as “when such actions are followed by a person’s disappearance and accompanied by a refusal to acknowledge ...” that are not found in article 2 of the Convention.

13. The Committee recommends that the State party should adopt a definition of enforced disappearance as a separate offence in line with article 2 of the Convention and avoid altering the text by changing the position of phrases in sentences or introducing new expressions. This is to preclude the definition of enforced disappearance from being understood as requiring intent to be shown to incriminate the conduct.

14. The Committee commends the State party for having included in its legislation a definition of enforced disappearance as a crime against humanity, whether it is committed in peacetime or wartime. Nevertheless, the Committee notes that the definition provided in article 212-1 (para. 9) of the Criminal Code requires that such an offence must be

committed “as part of a concerted plan”, a condition that is not found in article 5 of the Convention or other international instruments, including article 7 of the Rome Statute of the International Criminal Court.

15. The Committee recommends that the State party should review its criminal legislation relating to enforced disappearance as a crime against humanity and delete the expression “as part of a concerted plan” in order to ensure compliance with article 5 of the Convention and applicable international law so as to avoid introducing an additional condition for the prosecution of cases of enforced disappearance.

16. The Committee notes the State party’s position that article 6, paragraph 1, of the Convention does not specify the measures necessary to hold a superior criminally responsible. The Committee notes that the Criminal Code provides the same penalties for the perpetrators and the accomplices of an offence and that attempt and complicity are codified in articles 121-4, 121-6 and 121-7. Nevertheless, given that for crimes against humanity the Criminal Code provides for the criminal liability of superiors, it would be appropriate to do the same in cases of enforced disappearance as offences in their own right.

17. The Committee recommends that, in Bill No. 736, the State party should hold superiors fully responsible in any case of enforced disappearance, in accordance with article 6 of the Convention, and not responsible as accomplices.

18. The Committee notes the State party’s position that the establishment of mitigating or aggravating circumstances provided for under article 7 of the Convention is not compulsory. Nevertheless, the Committee considers that the establishment of mitigating circumstances could help to clear up certain cases of enforced disappearance.

19. The Committee invites the State party to consider including mitigating circumstances in the law as a measure that might help in recovering the disappeared person alive or make it possible to clarify some cases of enforced disappearance or to identify the perpetrators of an enforced disappearance.

Criminal responsibility and judicial cooperation with regard to enforced disappearance (arts. 8–15)

20. The Committee notes with satisfaction that the State party has increased the statute of limitations from 10 to 30 years under Bill No. 736 but notes that the starting point is not explicitly stated and that the statute of limitations for civil damages for victims of disappearance will be the same as the statute of limitations under civil law, i.e. between 5 and 10 years.

21. The Committee recommends that, in Bill No. 736, the State party should specify the starting point of the statute of limitations, which begins from the moment that the offence of enforced disappearance ceases in all its elements. The Committee recommends that the statute of limitations for civil damages should be, at a minimum, in conformity with the statute of limitations applied to other offences of similar gravity such as torture.

22. The Committee notes with satisfaction that Bill No. 736 allows for extraterritorial jurisdiction of the French courts. Nevertheless, the Committee notes with concern the cumulative and restrictive conditions provided for under article 689-11 of the Code of Criminal Procedure, which make it difficult to prosecute and try persons alleged to have committed crimes against humanity, genocide and war crimes. The Committee also notes with concern that the obligation to extradite or try a suspect under article 113-8-1 of the Code of Criminal Procedure applies only to persons whose extradition is denied.

23. **The Committee recommends that the State party should submit any cases of enforced disappearance to the competent authorities for the purpose of prosecution, in accordance with article 11 of the Convention, regardless of whether an extradition request against the suspect has been submitted beforehand.**

24. The Committee notes that the investigations ordered by the prosecution service and the investigating judge are conducted by the police and the Gendarmerie and that there is no mechanism that prohibits a police force suspected of having committed the offence of enforced disappearance from investigating the offence. The Committee also notes that article 40-1 of the Code of Criminal Procedure gives the prosecution service the power to decide whether or not to order an inquiry when an offence is reported to it. The complainants may lodge an appeal with the public prosecutor or the Minister of Justice, but not another independent judicial body, for a review of the legal merits of the prosecutor's initial decision.

25. **The Committee takes note of the statement by the State party that all cases of enforced disappearance were excluded from military jurisdiction. The Committee also recommends that the State party should include in Bill No. 736 a provision requiring the implementation of a mechanism to ensure that any police force suspected of the crime of enforced disappearance does not participate in the investigation. The Committee also recommends subjecting any offence of enforced disappearance to the jurisdiction of the specialized judicial centre recently established under the Paris *Tribunal de Grande Instance* (court of major jurisdiction) to ensure the independence of investigations. The Committee recommends that the State party should guarantee to any person who reports an enforced disappearance the right to challenge the legal merits of the decision of the prosecutor not to investigate or prosecute cases.**

Measures to prevent enforced disappearance (arts. 16–23)

26. The Committee notes that the State party's legislation prohibits refoulement, but no express reference is made to enforced disappearance among the factors that could put an alien who is returned in serious danger. The Committee also expresses its concern about the administrative procedures for admission and the very brief period of appeal granted to asylum seekers located in holding areas. The Committee remains concerned that the priority procedures do not provide for a suspensive appeal against an initial rejection by the French Office for the Protection of Refugees and Stateless Persons. Applicants may therefore be returned to countries where they are at risk of enforced disappearance before the National Court on the Right of Asylum is able to consider their applications for protection.

27. **The Committee recommends that the State party should make express provision under its domestic legislation for the prohibition of refoulement where there is a risk of a person being subjected to enforced disappearance. The Committee recommends that the State should guarantee an effective remedy to asylum seekers, within a suitable period, under asylum procedures at the border. The Committee recommends that the State party should introduce an appeal with suspensive effect for asylum applications submitted under the priority procedures on which the French Office for the Protection of Refugees and Stateless Persons has issued a negative decision.**

28. The Committee notes that the State party is involved in military operations abroad and highlights the need to fully implement the principles of the Convention, including the principle of non-refoulement. The Committee takes note of the information from the State party concerning the possible reasons for delays in communication to the chain of command regarding the capture or detention of persons during the intervention of French armed forces in situations of war or overseas operations and notes that the security reasons mentioned by the State should be limited solely to the detained persons' own security.

29. **The Committee recommends that, in the event of an intervention of the armed forces in crisis situations, delays in communication to the chain of command regarding the capture or detention of persons should be limited exclusively to cases in which the detained persons' own security is at stake and, in any case, should be in keeping with the Convention. The Committee recommends that the State party should establish a protocol for the transfer of detainees between States that is consistent with international law. The Committee recommends that the State party should ensure that the protection standards enshrined in the Convention are also fully respected when the State is involved in military operations abroad.**

30. The Committee takes note of the State party's assurance that there is no secret detention in France, owing to the prohibition against arbitrary detention combined with the precise conditions in which a person may be deprived of liberty. The Committee expresses its concern about the frequent use of police custody, its monitoring by the prosecution instead of a judicial authority and the fact that it may be extended several times in cases involving crimes of terrorism. The Committee is also concerned that aliens in administrative detention waiting to leave the country may have access to a judge only after five days. Lastly, the Committee remains concerned that the prohibition against communicating with the outside world under article 145-4 of the Code of Criminal Procedure may be extended to 20 days. The Committee takes note of the powers of the Human Rights Defender and the Controller General of Places of Deprivation of Liberty concerning the holding centres and areas and administrative detention centres. The Committee is concerned about the legal provision, to date never applied, to establish ad hoc holding areas under article L221-2 of the Code on the Entry and Residence of Aliens and the Right of Asylum in the version introduced by the law of 16 June 2011. The Committee considers that if such a regime were applied in practice it would be difficult to provide legal guarantees applicable to the detainees or for the national mechanism for the prevention of torture to monitor ad hoc holding areas effectively.

31. **The Committee recommends that the State party should establish the right of appeal before a sitting judge to ensure that coercive measures are lawful and to enable detainees to be present in court. The Committee also recommends that a sitting judge should rule on the extension of police custody beyond 24 hours and should limit that possibility. The Committee recommends that any person in pretrial or administrative detention should have the right to communicate with the outside world and that this right should not be restricted beyond 48 hours. The Committee recommends that the State party should repeal article L221-2 of the Code on the Entry and Residence of Aliens and the Right of Asylum in the version introduced by the law of 16 June 2011 as far as detention procedures in ad hoc holding areas are concerned.**

32. The Committee recognizes the legal significance of respect for the privacy of any person detained. Nevertheless, given that the "refusal to acknowledge the deprivation of liberty or ... concealment of the fate" of the disappeared person are components of enforced disappearance, the right of any person with a legitimate interest to collect and receive information on the fate of a person presumed disappeared must be recognized.

33. **The Committee recommends that the State party should establish a mechanism to guarantee that any person with a legitimate interest has the right and a real possibility of access to information concerning the person presumed disappeared referred to in article 17, paragraph 3, in accordance with article 18, paragraph 1, and that this person may lodge an appeal with the court to obtain the relevant information.**

Measures of compensation and protection of children against enforced disappearance (arts. 24 and 25)

34. The Committee expresses concern that French criminal law provides that the victim must have suffered direct and personal harm and that the two conditions are more restrictive than that under article 24, paragraph 1, of the Convention, which refers to both the disappeared person and any individual who has suffered harm as the direct result of enforced disappearance. While recognizing that the criminal legislation of the State party provides for the transmission of general information on procedural matters to the family of the victims, the Committee remains concerned that the victims' right to know the truth regarding the circumstances of the enforced disappearance is not explicitly granted in French law. The Committee is also concerned that French legislation provides for financial compensation as reparation to victims and does not ensure other forms of reparation specified under article 24, paragraphs 4 and 5, of the Convention, in particular, restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition.

35. The Committee recommends that the State party should take adequate legislative measures to adopt a definition of victim that complies with the definition set out in article 24, paragraph 1, of the Convention, recognizing a victim as any person who has suffered harm as the direct result of enforced disappearance, without requiring that such harm should also be personal. The Committee recommends that the State party should make explicit provision for the right of victims to know the truth regarding the circumstances of an enforced disappearance, in accordance with article 24, paragraph 2, of the Convention, without needing to be represented by a lawyer. The Committee also recommends that the State party should take measures to broaden forms of reparation, in particular restitution, rehabilitation, satisfaction and guarantees of non-repetition, in accordance with article 24, paragraph 5, of the Convention.

36. The Committee notes the State party's position about the appropriateness of French criminal legislation for the prevention and punishment of the disappearance of a child or the falsification or destruction of documents and of the procedures set out in the Code of Civil Procedure for the annulment of an adoption decree in exceptional cases in which the judge acting in good faith was misled. The Committee expresses concern about the State party's view that the implementation of article 25, paragraph 1, of the Convention does not require specific provisions applicable to the situations resulting from the commission of enforced disappearances.

37. The Committee recommends that the State party should incorporate the acts described in article 25, paragraph 1, of the Convention into Bill No. 736 as offences specifically related to enforced disappearance and punish them with appropriate penalties that take into account the extreme seriousness of the offences. The Committee also recommends introducing an explicit provision into the Code of Civil Procedure that an appeal for review of adoption decrees should cover adoption that originated in an enforced disappearance as a legal basis for the appeal. The Committee recommends that the State party should ensure, in all cases, that the best interests of the child are a primary consideration, in accordance with article 25, paragraph 5, of the Convention, and that a child who is capable of forming his or her own views has the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

D. Dissemination and follow-up

38. The Committee recalls the obligations assumed by States on ratifying the Convention and, accordingly, calls upon them to ensure that all necessary measures are taken, regardless of the authority of the State party that orders those measures and of their nature, in full conformity with the obligations arising from the ratification of the Convention and other relevant international instruments. In this regard, the Committee urges the State party to specifically guarantee the effectiveness of investigations into all cases of enforced disappearance and full compliance with the rights of the victims as enshrined in the Convention.

39. The Committee emphasizes the brutal impact of enforced disappearances on women and children. Women victims of disappearance are particularly vulnerable to sexual and other forms of violence, and women belonging to the family of a disappeared person are subjected to violence, persecution and reprisals. As for child victims of enforced disappearance, they are particularly vulnerable to identity substitution. The Committee therefore stresses the need for the State party to guarantee that women and child victims of enforced disappearance receive specific protection and assistance.

40. The Committee encourages the State party to ensure the wide dissemination of the Convention, of its report submitted under article 29, paragraph 1, of the Convention, of the written replies to the list of issues prepared by the Committee and of the present concluding observations, with a view to raising awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations in the State party, and the broader public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of families of victims, in the implementation of these concluding observations.

41. The Committee, noting that the State party's core document was submitted in 1996 (HRI/CORE/1/Add.17/Rev.1), invites the State party to update it in accordance with the requirements set out in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a core document and treaty-specific documents (HRI/GEN/2/Rev.6).

42. In accordance with the Committee's rules of procedure, the State party should submit, no later than 19 April 2014, relevant information on the implementation of the Committee's recommendations in paragraphs 23, 31 and 35 above.

43. Pursuant to article 29, paragraph 4, of the Convention, the Committee requests the State party to submit, no later than 19 April 2019, specific and updated information on the implementation of all its recommendations and any new information on compliance with the obligations under the Convention, in a document prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party, in preparing its report, to promote and facilitate the participation of civil society, in particular associations of families of victims.