



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

Distr.: General
24 June 2022
English
Original: French
English, French and Spanish only

Committee on Enforced Disappearances

**Additional information submitted by Gabon under
article 29 (4) of the Convention***

[Date received: 2 February 2022]

* The present document is being issued without formal editing.



Contents

	<i>Page</i>
I. Introduction	3
II. Implementation of recommendations	3
A. General information	3
1. Competence of the Committee under articles 31 and 32 of the Convention	3
2. National human rights institution	3
B. Definition and characterization of enforced disappearance as an offence	5
1. Non-derogability of the prohibition of enforced disappearance	5
2. Incorporation of the definition and characterization of enforced disappearance as an offence in the Criminal Code	5
3. Criminal responsibility of superiors	7
4. Order from a superior	7
5. Trafficking in persons	7
C. Criminal responsibility and judicial cooperation with regard to enforced disappearance	9
1. Extraterritorial jurisdiction in cases of enforced disappearance	9
2. Military courts	9
3. Investigations and alleged arrests and disappearances during the post-election crisis	10
4. Protection of complainants, witnesses, relatives of the disappeared person and their defence counsel as well as persons participating in the investigation	10
D. Measures to prevent enforced disappearances	11
1. Non-refoulement	11
2. National preventive mechanism	12
3. Secret detention and fundamental legal safeguards	12
E. Measures to provide reparation and to protect children against enforced disappearance	14
1. Right to prompt, fair and appropriate reparation and compensation	14
2. Legal situation of disappeared persons and that of their relatives	14
3. Legislation on the wrongful removal of children	15

I. Introduction

1. Pursuant to article 29 (1) of the Convention, the Government of Gabon hereby submits the present report to the Committee.
2. This report takes into account the concluding observations made by the Committee at its 223rd meeting, on 13 September 2017 (with reference to [CED/C/SR.221](#) and [CED/C/SR.222](#)). These concluding observations concern the following:
 - General information
 - Definition and characterization of enforced disappearance as an offence (arts. 1–7)
 - Criminal responsibility and judicial cooperation with regard to enforced disappearance (arts. 8–15)
 - Measures to prevent enforced disappearances (arts. 16–23)
 - Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)
3. The report was drawn up and validated by the National Committee for the Drafting of Human Rights Reports, using an inclusive and participatory approach based on the general guidelines regarding the form and contents of reports to be submitted by States parties.

II. Implementation of recommendations

A. General information

1. Competence of the Committee under articles 31 and 32 of the Convention

Additional information relating to paragraph 7 of the concluding observations
([CED/C/GAB/CO/1](#))

4. It is taking longer than expected for Gabon to declare that it recognizes the Committee's competence under articles 31 and 32 of the Convention. However, the Government is working to complete this process more quickly.

2. National human rights institution

Additional information relating to paragraph 9 of the concluding observations

5. To give effect to this recommendation, which has been made by a majority of the human rights mechanisms, Gabon has drafted a bill on the reorganization of the National Commission on Human Rights. This bill will shortly be examined by both chambers of the parliament.
6. The purpose of the bill is to strengthen the mandate of the National Commission on Human Rights in the light of the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It will also establish an independent mechanism for visiting places of deprivation of liberty, as required by article 17 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Gabon ratified in September 2010.
7. This bill is the result of a long, inclusive process involving the Government and civil society, with technical support provided by the Office of the United Nations High Commissioner for Human Rights, the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Association for the Prevention of Torture. It is structured around 58 articles divided into six chapters containing provisions on general matters (chapter I), functions (chapter II), organizational matters (chapter III), operations (chapter IV) and penalties (chapter V), with miscellaneous, final and interim provisions set out in chapter VI.

8. The most noteworthy developments it envisages concern the Commission's mandate, functions, composition and organization. It will also establish mechanisms for submitting complaints to the Commission and a system of penalties.

9. With regard to the mandate, the bill strengthens the Commission's independence. Article 6 defines the Commission as an independent, pluralistic and non-political authority that supports democracy. Article 3 provides that the Commission, in carrying out its functions, is subject only to the rule of law and may not receive orders from any State agency.

10. The mandate is reinforced by the establishment within the Commission of a national mechanism for the prevention of torture, which will help to provide better guarantees of the rights of persons deprived of their liberty and to protect them in places of detention (ch. II, sect. 3).

11. The bill – particularly in chapter II – broadens the scope of the Commission's functions and establishes a clearer distinction between functions intended to promote human rights, which involve establishing a national human rights culture (art. 7), and those related to protection, which concern the rule of law, the administration of justice and the fight against impunity (art. 8).

12. The Commission will have greater powers to conduct investigations into all human rights issues and will have free access to any sources of information required for its work.

13. However, the most significant innovation provided for by this bill is the establishment of a mechanism for the prevention of torture, specifically responsible for dealing with all forms of torture and other cruel, inhuman or degrading treatment or punishment, to carry out its work in all places of deprivation of liberty, without restriction, in accordance with article 4 of the relevant treaty.

14. Where prevention is concerned, the Commission's functions include:

- Regularly monitoring the treatment of persons deprived of their liberty with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment
- Making recommendations with a view to improving their treatment and situation and preventing torture and other cruel, inhuman or degrading treatment or punishment
- Initiating a dialogue with the competent authorities about possible measures to be taken
- Publishing annual reports and visit reports

15. Chapter III of the bill provides for a reduction in the membership of the Commission, which will go from having 12 members, at present, to 9 (art. 14). The bill also provides for a change in the members' status. While the current law provides that members serve as representatives of an institution or organization, the bill establishes that members will serve in their personal capacity (art. 16). The principle of gender parity will now be observed as part of a fully transparent appointment process (arts. 14–16).

16. The members will now be appointed for a five-year term, renewable once (art. 19), and will carry out their duties on a full-time and exclusive basis (art. 16) after taking an oath before the National Assembly (art. 18). They will also enjoy the immunities granted to members of other institutions of the Republic and may not be prosecuted for criminal offences or serious crimes unless they are caught in flagrante delicto and the decision to prosecute them is authorized by the bureau of the Commission after their immunity has been waived (art. 25).

17. In line with their change in status, the members of the Commission will receive remuneration, enjoy benefits related to their functions and have the same privileges as members of other, similar institutions.

18. From the organizational point of view, the Commission will comprise four bodies rather than three, as at present. These bodies are the plenary commission, the executive bureau, the permanent subcommissions and the permanent secretariat (art. 26).

19. The plenary commission will replace the current general assembly and will report to the president of the Commission. It will be the Commission's policymaking and decision-making body.

20. Where operational matters are concerned, the bill provides for the strengthening of the Commission's independence, in that it grants it the authority to manage its budget independently. To this end, a specific budget line, managed by a public accountant appointed for the purpose, will be included in the Budget Act. The independence of the Commission is bolstered by the fact that the Commission is not required to record the identities of persons who submit complaints to it or who work with it in the course of its activities.

21. The bill defines the procedure that must be followed and the conditions that must be met for a natural or legal person to submit a claim to the Commission regarding human rights violations (art. 42). It sets out the procedures for handling such complaints and the measures that the Commission may take to put an end to alleged violations if they are found to have occurred.

22. In order to ensure that the Commission can carry out its work undisturbed, the bill provides for a series of criminal penalties to be handed down to persons who obstruct it in the performance of its duties, who threaten, insult or assault its members or who pressure, intimidate, threaten, assault or take reprisals against persons providing it with information.

B. Definition and characterization of enforced disappearance as an offence

1. Non-derogability of the prohibition of enforced disappearance

Additional information relating to paragraph 11 of the concluding observations

23. The Government is currently working to include this question in the wide-ranging reform of national law. It should be noted, however, that the Criminal Code contains provisions criminalizing similar acts and practices that form part of the constituent elements of the offence of enforced disappearance. These include arbitrary arrest and unlawful detention committed by anyone without an order from the competent authorities and in circumstances other than those provided for by law (Criminal Code, art. 250).

24. Article 250 provides that the offence of arbitrary arrest or unlawful detention is committed when anyone arrests, abducts, detains or holds one or more persons without an order from the competent authorities and in circumstances other than those provided for by law.

25. The same article provides that such offences are punishable by 20 years' imprisonment and a fine of up to 20 million CFA francs (CFAF).

2. Incorporation of the definition and characterization of enforced disappearance as an offence in the Criminal Code

Additional information relating to paragraph 13 of the concluding observations

26. Gabonese law does not currently contain any provision establishing enforced disappearance as a separate offence within the meaning of article 2 of the Convention. However, an act of enforced disappearance would violate the fundamental rights enshrined in international and regional provisions that are directly applicable in Gabonese law (in particular, the right to liberty and security of person enshrined in article 9 of the International Covenant on Civil and Political Rights and in articles 4, 5 and 6 of the African Charter on Human and Peoples' Rights). It would also violate national provisions criminalizing similar acts and practices, such as arbitrary arrest and unlawful detention (Criminal Code, art. 250) and child abduction (Criminal Code, art. 275), which form part of the constituent elements of the offence of enforced disappearance.

27. In order to bring national criminal law into conformity with ratified treaties, and to punish misconduct that is not yet covered by the laws in force, the Government began reforming the Criminal Code and the Code of Criminal Procedure in March 2021. The

commission responsible for carrying out this reform has amended book three of the Criminal Code, which concerns offences against the person, to include a title on enforced disappearance and a title on torture.

28. As part of the process of implementing the Rome Statute of the International Criminal Court, Act No. 006/2020 of 30 June 2020, amending Act No. 042/2018 of 5 July 2019 establishing the Criminal Code, incorporated the offences of genocide, crimes against humanity and war crimes, which are defined in the terms set out in articles 6, 7 and 8 of the Rome Statute. The offence of enforced disappearance was introduced in article 227 as a crime against humanity. According to this article, enforced disappearance committed as part of a widespread or systematic attack directed against any civilian population constitutes a crime against humanity.

29. Article 227 of the Criminal Code provides that:

A crime against humanity is constituted by any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- Murder
- Extermination or the mass and systematic practice of summary executions
- Deportation or forcible transfer of population
- Enslavement
- Enforced disappearance of persons
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity
- Torture
- The crime of apartheid

30. As to the question of who may be considered to have committed the offence, it should be noted that, in some cases, crimes against humanity, as defined in article 7 of the Rome Statute, may be committed by non-State actors. Article 7 (2) specifies that an attack against a civilian population constitutes a crime against humanity when it is perpetrated “pursuant to or in furtherance of a State or organizational policy to commit such attack”.

31. In national law, genocide, crimes against humanity and war crimes are punishable by life imprisonment and a fine of up to CFAF 1 billion (Criminal Code, art. 229). This penalty is applied to enforced disappearances constituting crimes against humanity.

32. International criminal law contains a customary rule specifically relating to the imprescriptibility of serious violations of international humanitarian law (i.e., those involving genocide, crimes against humanity or war crimes).

33. In Gabonese criminal law, this imprescriptibility is established in article 229-5 of the Criminal Code and article 660 of the Code of Criminal Procedure, from which it may be concluded that crimes against humanity are not time-barred.

Additional information relating to paragraph 14 of the concluding observations

34. The Criminal Code establishes maximum sentences, leaving it up to the courts to determine individual punishments for convicted persons (Criminal Code, art. 11) within the limits of articles 45 ff., which establish the minimum lengths of sentences. In Gabon there is already an established legal basis that ensures that enforced disappearance will be penalized, although particular arrangements can always be made, both to specify aggravating circumstances and to ensure that an appropriate penalty is handed down.

35. Article 8 of the Code of Criminal Procedure already provides that lawmakers may declare that certain offences are not time-barred. The establishment of enforced

disappearance as a separate offence in line with article 8 of the Convention should not conflict with national legal standards.

36. Article 8 provides that, for criminal offences other than those that are imprescriptible by law, prosecution must be initiated within 20 years of the date on which the offence was committed or discovered, or within 20 years of the date on which the victim reaches the age of majority in the case of sexual offences punishable by law for which no investigation or prosecution has been initiated in the meantime.

3. Criminal responsibility of superiors

Additional information relating to paragraph 16 of the concluding observations

37. Article 6 of the Convention requires the criminalization of various forms of participation in an enforced disappearance and determines that superiors should be held criminally responsible.

38. Currently, criminal law does not recognize the concept of the superior; rather, it refers to abettors, persons who give orders, accomplices and perpetrators.

39. The Government is considering incorporating the notion of the criminal responsibility of superiors or, failing that, the notion of complicity by omission. However, as the failure to provide help (Criminal Code, art. 248) and the obstruction of justice (Criminal Code, article 170 ff.) are penalized, it will be possible to include superiors as punishable persons once the offence has been established in law, thus bringing the national law into line with the Convention.

4. Order from a superior

Additional information relating to paragraph 18 of the concluding observations

40. Article 52 of the Criminal Code provides that persons who carry out an act at the behest of a legitimate authority may not be excluded from criminal responsibility if that act is manifestly unlawful. Gabonese criminal law is therefore in conformity with article 6 (2) of the Convention. However, in making enforced disappearance a separate offence, the legislature will explicitly establish that an order from a superior may not be invoked as a ground for exclusion from responsibility.

5. Trafficking in persons

Additional information relating to paragraph 20 of the concluding observations

41. Trafficking in persons was established as an offence in the Criminal Code by Act No. 042/2018 of 5 July 2019, which adopted the Criminal Code, and is the subject of the third title (arts. 225–225-7) of the current Criminal Code. This development may be seen as another form of prevention, since the criminalization of an act by the legislature always has a preventive effect.

42. Article 225 of the Criminal Code provides that:

Trafficking in persons is the recruitment, transport, transfer, accommodation or reception of a person in exchange for remuneration or any other consideration, or for the promise of remuneration or other consideration, in order to place that person at the disposal of an identified or unidentified third party for the purpose of:

- Allowing the commission against the person of the offences of procuring, sexual assault, the exploitation of begging or subjection to living or working conditions inconsistent with human dignity
- Or compelling the person to commit any offence or assisting him or her to immigrate or emigrate

43. Articles 225-1 to 225-7 set out the penalties for perpetrators of trafficking and their accomplices.

Penalties

44. Article 225-1 provides that perpetrators of trafficking in persons are liable to up to 7 years' imprisonment and a fine of up to CFAF 100 million.

45. Perpetrators are liable to up to 10 years' imprisonment and to a fine of up to CFAF 100 million when the offence is committed in any of the following circumstances:

- The victims, their family members or persons closely associated with them are subjected to threats, coercion, violence or deceit
- The offence is committed by a legally recognized, natural or adoptive ascendant of the victim or by a person with authority over the victim, or who abuses such authority
- The perpetrator takes advantage of a vulnerability related to age, illness, infirmity, a physical or mental impairment or a pregnancy that is apparent or that is known to the perpetrator
- The offence is committed against a person who is abroad, or upon a person's arrival in the country
- The offence is committed in order to subject the victim to servitude or slavery or to remove one or more of the victim's organs

Penalties for trafficking a minor

46. The penalties for this category are set out in the last part of article 225-1, which provides that trafficking in minors is punishable by up to 15 years' imprisonment and by a fine of up to CFAF 100 million.

47. Article 225-2 of the Criminal Code provides that perpetrators of trafficking in persons are liable to up to 20 years' imprisonment and a fine of up to CFAF 100 million when the offence is committed in at least two of the circumstances set out in points 1 to 7, below:

1. There is more than one victim;
2. The victim is abroad, or upon the victim's arrival in the country;
3. Contact between the victim and the perpetrator is established by means of an electronic communications network broadcasting messages;
4. The victim is directly exposed to an immediate risk of death or injury likely to result in permanent mutilation or disability;
5. The victim is subjected to an act of violence resulting in total incapacity to work for more than eight days;
6. The perpetrator's job involves combating trafficking in persons or maintaining public order;
7. The offence has caused the victim to suffer serious physical or psychological harm.

48. Trafficking in minors is punishable by 20 years' imprisonment when the offence is committed in any of the circumstances listed in points 1 to 7, above.

49. Article 225-3 provides that the offence is punishable by 30 years' imprisonment and a fine of up to CFAF 50 million when it is committed by an organized gang.

50. Perpetrators of trafficking in persons are liable to 30 years' or life imprisonment, and a fine of up to CFAF 50 million, when torture or barbarous acts are used to commit the offence.

51. Article 225-4 provides that legal persons found to be criminally responsible for the offences defined in this title of the Criminal Code, in addition to the fine, incur the prohibitions provided for in articles 26 ff. of the Code.

52. Article 225-5 provides that attempts to commit the offences defined in this title of the Criminal Code are punishable by the same penalties.

53. Article 225-6 provides that Gabonese law is applicable to offences defined in this title of the Criminal Code when they are committed outside the country by a Gabonese national.

54. Article 225-7 provides for exemption from punishment for anyone who has sought to commit the offences defined in this title of the Criminal Code but who has alerted the administrative or judicial authorities and thereby prevented the offences from being committed and, where possible, enabled other perpetrators or accomplices to be identified.

55. The custodial sentence applicable to the perpetrators of, or accomplices to, one of the offences defined in this title is reduced by half if they have alerted the administrative or judicial authorities and thereby prevented the offence from being committed, or prevented it from resulting in death or permanent disability and, where possible, enabled other perpetrators or accomplices to be identified.

56. When the penalty is life imprisonment, it is reduced to 20 years' imprisonment.

57. These changes to national law have had an impact on cooperation between Gabon and the countries of origin, mainly Benin and Togo. As a result, two bilateral agreements on trafficking in children were signed in 2018 and perpetrators of trafficking have been brought before the criminal courts.

C. Criminal responsibility and judicial cooperation with regard to enforced disappearance

1. Extraterritorial jurisdiction in cases of enforced disappearance

Additional information relating to paragraph 22 of the concluding observations

58. An examination of the Criminal Code, the Code of Criminal Procedure, Organic Act No. 009/2019 of 5 July 2019 on the organization of the judicial system and Organic Act No. 008/2019 of 5 July 2019 establishing the organization, composition, competence and functioning of the courts of law does not reveal any conflict between the rules governing jurisdiction in criminal matters in Gabon and articles 9 and 11 of the Convention. These laws establish the conditions governing the prosecution of offenders at the national level.

59. The same is true at the international level, since the Code of Criminal Procedure (arts. 624 ff. on extradition and arts. 636 ff. on cooperation with the International Criminal Court) and international conventions on judicial cooperation (the Convention on Judicial Cooperation for the Execution of Judgments and Extradition between France and Gabon, of 23 July 1963, and the Agreement on Judicial Cooperation between the Member States of the Central African Economic and Monetary Community, of 28 January 2004) allow Gabon to surrender or transfer perpetrators of offences to foreign judicial systems or international organizations that request it. In the light of the above, it can be seen that, once enforced disappearance has been criminalized, prosecution of the perpetrators will be guaranteed at the national and international level.

2. Military courts

Additional information relating to paragraph 24 of the concluding observations

60. The Code of Military Justice provides that the special military court is competent to hear only military offences (Code of Military Justice, arts. 3, 4 and 8 ff.). Offences under ordinary law committed by military personnel, whether acting alone or with the involvement of civilians, fall under the jurisdiction of the ordinary courts. Once enforced disappearance has been established as a criminal offence in Gabon, it will not be possible, under the law as it currently stands, to bring perpetrators before a military court, unless this possibility is explicitly provided for in future laws.

3. Investigations and alleged arrests and disappearances during the post-election crisis

Additional information relating to paragraph 26 of the concluding observations

61. An examination of the investigations and prosecutions initiated in connection with the violence that broke out after the presidential election of August 2016 reveals that 500 people were referred to the national prosecutor's office in Libreville.

62. According to a review of the investigation reports, conducted by the prosecutor's office:

- A total of 448 people were released because there were insufficient grounds on which to charge them.
- A total of 18 people were tried before the criminal court under the flagrante delicto procedure for looting, destruction of public or private property and armed or unarmed gathering, which are punishable under articles 79 ff. and article 333 of the former Criminal Code. The persons in question were sentenced to between 2 and 6 months of prison.
- Cases were dismissed for nine other people who had been charged with the same offences.

63. In addition, 25 people have been subjected to judicial investigations for various other offences.

64. Three of the accused persons have been placed in pretrial detention.

65. On 21 September 2016, while the national investigations were under way, the Gabonese State requested the International Criminal Court to conduct an investigation into the allegations of crimes against humanity and other offences committed in the wake of the presidential election of August 2016.

66. On 21 September 2018, the Office of the Prosecutor of the International Criminal Court issued a report on its preliminary examination of the situation in Gabon during the post-election period beginning on 31 August 2016. The investigation concerned crimes allegedly committed in Gabon that potentially fell within the Court's jurisdiction.

67. The report states that the Court, after conducting a thorough analysis of the facts and law, concluded that "the information available does not provide a reasonable basis to believe that the crimes allegedly committed in this situation fall within the Court's jurisdiction. Accordingly, there is no reasonable basis to proceed with an investigation."

4. Protection of complainants, witnesses, relatives of the disappeared person and their defence counsel as well as persons participating in the investigation

Additional information relating to paragraph 27 of the concluding observations

68. In the judicial system in Gabon, there is a clear separation between prosecuting bodies and trial courts. The preamble of the Constitution, and other later instruments, such as the Code of Criminal Procedure, guarantee victims the right to a fair trial, the key elements of which are the right to a defence, the principle of adversarial proceedings, the presumption of innocence and the impartiality of judges.

69. In principle, the Gabonese law enforcement system recognizes the right of victims of an offence to file a civil suit. This procedure allows them to participate in the proceedings and, if they so wish, to play an active role in the investigations and actions undertaken in that context (Code of Criminal Procedure, arts. 98 and 316 ff.).

70. The Government, with technical support from its development partners, is continuing its efforts to train its officials.

71. At the national level, the digitization of the centralized civil and criminal registration systems will strengthen cooperation and coordination between the various agencies responsible for conducting investigations. In addition, despite the budgetary constraints that

it faces, the State is making efforts to improve the working conditions of judicial staff and prosecution authorities so that they can carry out their work more effectively.

72. The I-24/7 system of the International Criminal Police Organization (INTERPOL) has facilitated cooperation between criminal investigation departments and provided the Gabonese Government with a sufficiently responsive tool that can be used in cases of enforced disappearance.

73. In order to ensure that officials belonging to the units of implicated persons are not in a position to participate in an investigation or indirectly influence the course of such investigations, either themselves or through third parties, articles 526 and 527 of the Code of Criminal Procedure provide that officials may be recused or subjected to misconduct proceedings under articles 329 ff. and 338 ff. of the Code of Civil Procedure.

Additional information relating to paragraph 29 of the concluding observations

74. At present, Gabon has not established a legal framework that guarantees the protection of all the categories of persons mentioned in article 12 (1) of the Convention. In order to address this issue, steps will be taken to criminalize enforced disappearances and any other misconduct that entails ill-treatment or intimidation directed at a person who has filed a complaint or given evidence.

D. Measures to prevent enforced disappearances

1. Non-refoulement

Additional information relating to paragraph 31 of the concluding observations

75. Extradition in Gabon is now governed by the provisions set out in the ninth book of the Code of Criminal Procedure (arts. 624–635).

76. These provisions provide for better oversight of the conditions governing the extradition procedure and the consequences of extradition.

77. Article 627 of the Code of Criminal Procedure provides that extradition requests must be granted if the offence giving rise to the request is punishable as a serious or less serious criminal offence under Gabonese law. Enforced disappearance must therefore be included as an offence in the Gabonese Criminal Code in order for the Government to be able to accept an extradition request relating to this offence.

78. Under Gabonese law (Code of Criminal Procedure, art. 628), extradition is not granted when:

- The offence is of a political nature, or the circumstances indicate that the extradition request is politically motivated
- The person sought would be tried in the requesting State by a court that does not provide fundamental procedural guarantees and protection for the rights of the defence

79. When the indictments chamber of the court of appeal finds that the legal requirements have not been met or that there has been an obvious error, it may, pursuant to the fourth paragraph of article 635 of the Code of Criminal Procedure, deny extradition by means of a reasoned opinion; the denial is not subject to appeal and is binding on the executive branch.

80. As part of the review of criminal law currently under way, the Government is considering explicitly incorporating into its national legislation a prohibition on expelling, returning or surrendering persons when there are substantial grounds for believing that they would face a risk of enforced disappearance.

81. In general terms, the prohibition against transferring a person under Gabonese jurisdiction to another State when there are substantial grounds for believing that such a person would be exposed to a real risk of harm, particularly to life or physical integrity, applies in time of peace as in time of armed conflict, regardless of the legal basis, the form (extradition, refoulement, transfer, etc.) and the modes of transfer. This is an international

standard which takes precedence over national law and whose direct applicability is not questioned by the Gabonese legislature.

2. National preventive mechanism

Additional information relating to paragraph 33 of the concluding observations

82. The measures taken by the State to establish a national mechanism for the prevention of torture are set out above, in the section on the National Commission on Human Rights. One of the most noteworthy developments envisaged in the bill on the reorganization of the Commission is the strengthening of its mandate through the establishment of a national mechanism for the prevention of torture.

83. The bill sets out the specific functions of the national preventive mechanism, known as the subcommission for the prevention of torture, whose financial autonomy is guaranteed by article 35. This article provides that the Commission's budget line includes a substantial sum specifically allocated to the subcommission, which manages the allocation independently, in accordance with its mandate and the internal rules of the Commission.

84. Administrative independence is ensured by the fact that there is a subcommission that serves as the national preventive mechanism, with its own role, staff and procedures.

85. Among the subcommission's tasks is the preparation of an annual report on the prevention of torture in places of deprivation of liberty, to be addressed to the President of the Republic, the chambers of the parliament, the Minister of Justice, the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and any other relevant agency.

3. Secret detention and fundamental legal safeguards

Additional information relating to paragraph 35 of the concluding observations

86. Gabonese law establishes that everyone living in the country has the right to liberty and security of person. This principle is established by the Constitution and by the regional and international human rights instruments ratified by Gabon.

87. Gabonese law ensures that deprivation of liberty must be an official and visible measure. The law establishes the conditions and the ways in which this measure is allowed and penalizes any violation of those provisions. The following forms of deprivation of liberty are legal:

- Police custody of an individual caught in flagrante delicto
- Pretrial detention
- Imprisonment after final conviction

Police custody

88. In accordance with article 56 of the Code of Criminal Procedure, a person may be held in police custody by order of an investigative police officer or the public prosecutor. Persons are held in police custody only in the facilities of the gendarmerie, police or another security force that has been granted investigative police powers.

89. As provided for in articles 51 ff. of the Code of Criminal Procedure, any person deprived of liberty enjoys, de jure and de facto, all the fundamental legal safeguards set forth in article 17 of the Convention from the very outset of their deprivation of liberty.

90. The presence of a lawyer is guaranteed by article 61 of the Code of Criminal Procedure, which provides for the right of persons in custody to meet with a lawyer for a period not exceeding one hour. Following the interview, the lawyer may present written observations that are appended to the case file. However, this provision does not guarantee the presence of a lawyer from the outset of police custody or for as long as the custody lasts.

91. In accordance with article 58 of the Code of Criminal Procedure, investigative police officers must inform persons being held in custody of their rights, which include:

- The right to communicate with counsel
- The right to inform a family member, another person of their acquaintance or their lawyer or doctor of the measure to which they are being subjected

92. Generally speaking, persons deprived of their liberty receive visits from their families or other persons of their choosing whenever they so request. This right may be exercised regardless of the type of deprivation of liberty.

93. The information referred to in article 18 (1) of the Convention is included in the records appended to the investigation file. Counsel has access to that file and may receive a copy thereof. Moreover, this information may be communicated to any person who has a legitimate interest in it, including the detainee's relatives or representative.

94. The law requires investigative police officers to keep a special custody record, known as a police register, indicating the detainee's identity, the authority that ordered the deprivation of liberty, the reasons for the detention, the state of the detainee's health when taken into custody, the start and end of the period of police custody, the times of questioning and rest periods and the nature of the offence (Code of Criminal Procedure, art. 62).

95. To ensure compliance with all these legal safeguards, the public prosecutor's office, in accordance with its mandate, pays regular, unannounced visits to investigative police units.

96. All these measures are helping to bring about a progressive improvement in the protection of the rights of persons deprived of their liberty, as set out in articles 17 and 18 of the Convention.

Pretrial detention and sentencing

97. The rules governing pretrial detention and sentencing are more flexible when it comes to respect for the guarantees set out in articles 17 and 18 of the Convention. There are fewer restrictions on access to information, to communication and to persons deprived of their liberty, provided that everything is done in accordance with the prison administration which organizes the procedures for visits and maintains visit registers.

98. With regard to verification of pretrial detention or prison terms, the law provides that the investigating judge, the president of the indictments chamber, the president of the criminal court, the public prosecutor and the prosecutor general of the court of appeal may, for the purposes of an investigation or the execution of a judgment, issue any necessary order related to the detention regime in the prison (Code of Criminal Procedure, art. 550).

99. With regard to convicted persons sentenced to prison, article 558 provides that prisons must be visited by the investigating judge once every three months and by the president of the indictments chamber, the public prosecutor and the prosecutor general of the court of appeal whenever they deem it necessary. Presidents of criminal courts visit accused persons who are detained in the detention facilities of the court's jurisdiction.

100. With regard to the maintenance of the register, article 559 of the Code of Criminal Procedure provides that:

Upon receiving rulings, conviction orders or judgments, committal orders, detention or commitment warrants or summonses that require pretrial detention, the prison director is required to enter in the prison register the identity of the detainees or convicted persons, any relevant information about them and the type of order calling for the detention.

Where the performance of the penalty is voluntary, the prison governor must copy into the register the relevant information from the conviction order or judgment submitted by the prosecutor general of the court of appeal or by the public prosecutor.

In all cases, the prison director must report the detention to the prosecutor general of the court of appeal or the public prosecutor.

Where release orders are concerned, the date of the prisoner's release and, if applicable, the text of the applicable law or the decision giving rise to the release must

also be entered in the prison register. Article 561 provides that article 555 is applicable to persons held in pretrial detention.

101. Prison officers are subject to penalties if they violate article 560 of the Code of Criminal Procedure, which provides that:

No prison officer may, on pain of being prosecuted for arbitrary detention, receive or detain any person except on the basis of a conviction order or judgment, a committal order, a detention or commitment warrant or a summons that requires the recipient to be placed in pretrial detention;

Any prison director or officer who has received the release order provided for in the preceding paragraphs from the public prosecutor's office and who has detained an accused person in violation of this release order shall be prosecuted for arbitrary detention and shall be liable to the penalties provided for by law (Code of Criminal Procedure, art. 136).

E. Measures to provide reparation and to protect children against enforced disappearance

1. Right to prompt, fair and appropriate reparation and compensation

Additional information relating to paragraph 37 of the concluding observations

102. Article 11 of the Code of Criminal Procedure provides for the right to reparation. It provides that any person with an interest may file a civil suit in order to obtain reparation for harm suffered. According to article 11:

The purpose of a civil action is to provide reparation for the harm directly caused by felonies, misdemeanours or infractions. Any natural or legal person who has directly suffered such harm is entitled to bring a civil action.

Such action may also be initiated by any duly registered association whose statutes include the following objectives:

- Combating discrimination based on national, ethnic, racial or religious origin
- Defending or assisting children who are in danger or victims of any form of abuse
- Combating all forms of sexual violence
- Defending and ensuring respect for human rights
- Defending wildlife

103. Gabonese law does not currently provide for guarantees of non-repetition.

2. Legal situation of disappeared persons and that of their relatives

Additional information relating to paragraph 39 of the concluding observations

104. The reform of the legal framework currently under way will enable the Gabonese State to comply with this recommendation. Nevertheless, it should be pointed out that the legal corpus currently includes laws that address similar cases. This is essentially the purpose of articles 121 ff. of the Civil Code, which contain provisions relating to missing persons and the legal regime applicable to them, although they do not address social protection or financial matters.

105. Article 121, which governs the procedure to be followed when a person is missing, provides that:

If it is necessary to provide for the administration of all or part of the assets of persons who, without having established a power of attorney for this purpose, have ceased to appear at their home or residence, and whose whereabouts are unknown, the matter

shall be decided by the civil court, meeting in chambers, at the request of the persons concerned.

In such cases, the competent court is the one responsible for the place where the presumed missing persons had their home or, failing that, where they lived, or had their assets.

The court shall authorize the necessary administrative measures and appoint the person responsible for carrying them out, subject to the conditions that it establishes. It may appoint a special executor for one or more matters. If it deems it justified, it may also entrust the provisional administration of all the presumed missing persons' assets to their spouse or to one or more of their heirs.

106. Article 126 provides that, at the request of the public prosecutor's office, the provisional executor or the parties concerned, the court decides whether to deduct a sum from the income, and possibly also from the assets entrusted to the provisional executor in order to cover the expenses to which the presumed missing persons are liable by virtue of their marriage or family ties, including the setting up of support for their children.

107. Article 128 establishes sufficient guarantees to cover the management of the disappeared person's assets:

At the request of the public prosecutor's office or a concerned party, the court may at any time revoke the mandate of provisional executors and replace them with another executor.

108. Article 129 provides for sufficient guarantees for the missing person in the following terms: if the powers of the provisional executor are not revoked, they cease to have effect when the rightful claimants take effective possession of the assets or when the presumed missing persons return, unless they, in making their existence known, annul such powers beforehand by revoking the provisional executor's mandate or by giving power of attorney to another representative. The guarantees or other securities that they provide in support of this management cease to have effect one year after the accounts have been settled.

3. Legislation on the wrongful removal of children

Additional information relating to paragraph 41 of the concluding observations

109. In general terms, Gabonese criminal law already covers any infringement of the filial or emotional bond of children with their parents (Criminal Code, art. 275). Although this offence is not specifically related to enforced disappearance, it appears to correspond to the meaning of article 25 (1) of the Convention. Nevertheless, in view of the seriousness of the act of enforced disappearance, an effort can be made to provide for more appropriate penalties.

110. In order to ensure that national law is in compliance with the Convention on the Rights of the Child, the Children's Code (Act No. 003/2018 of 8 February 2019) provides for the legal protection of children against any form of violence, harm, physical, psychological or sexual abuse or abandonment or negligence amounting to ill-treatment or exploitation (art. 84).

111. Several kinds of conduct contributing to the enforced disappearance of a child are classified as offences under articles 275 ff. of the Criminal Code.

112. Namely, article 275 of the Criminal Code provides that:

Whoever, by abducting a child, concealing a child from registration, substituting a child for another or attributing a child to a woman who did not give birth to that child, conceals or attempts to conceal the child's civil status, or destroys or attempts to destroy the evidence of the child's existence or filiation, shall be liable to a term of imprisonment of up to 10 years and a fine of up to CFAF 2 million.

The concealment of these offences is subject to the same penalties as the commission of the offences.

113. Similarly, article 276 provides that:

Anyone responsible for a child, who fails to relinquish the child to persons who have a claim to custody shall be liable to a term of imprisonment of up to 5 years and a fine of up to CFAF 1 million.

114. Article 278 of the Criminal Code provides that:

Any person who, by fraud or violence, has abducted minors or had them abducted, or who has moved, removed or transferred them from the premises in which they had been placed by the authority or department to which they had been entrusted, shall be liable to a term of imprisonment of up to 10 years and a fine of up to CFAF 1 million.

If the guilty party is paid, or has intended to demand, a ransom from the persons under whose authority or supervision the minor was placed, the penalty shall be 30 years' imprisonment.

When the abduction is followed by the death of the minor, the sentence shall be increased to life imprisonment.
