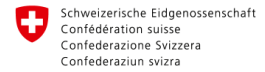




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Our sincere thanks go to the survivors, victims, families of the disappeared, civil society representatives, international organisation representatives, experts, and national human rights institutions who participated in these consultations, as speakers and from the audience. Their invaluable insights and shared experiences are at the heart of the consultations, providing a unique understanding of the best practices, challenges, and recommendations in the fight against enforced disappearances.

CEDI would also like to thank everyone else who contributed to a successful event, including the interpreters in English and French, and everyone who helped prepare the consultations: Ms. Isatou Jammeh, Programs Officer at the Gambian Center for Victims of Human Rights Violations and member of CEDI's Advisory Board, the Secretariats and Members of the United Nations Committee on Enforced Disappearances and of the Working Groups on Enforced or Involuntary Disappearances, and the International Commission of Jurists for facilitating contacts.

Special thanks to Ms. Tatiana Avanthay, our Communications Consultant for ensuring that these online events ran smoothly.

CEDI is also grateful to its partners for their support.

1. Introduction

The first ever [World Congress on Enforced Disappearances](#), co-organised by [CEDI](#), the United Nations [Committee on Enforced Disappearances](#) (CED), the [Working Group on Enforced or Involuntary Disappearances](#) (WGEID), and the Office of the [High-Commissioner for Human Rights](#) (OHCHR), will take place on 15 and 16 January 2025 in Geneva, Switzerland. One of its objectives is to put families and CSOs back at the centre of the joint efforts for the ratification and implementation of the Convention.

To facilitate their contribution, CEDI organized a series of online regional consultations with victims, family members, civil society organisations, international organisations and national human rights institutions, in May and June 2024 to:

- Provide a space for stakeholders in the region to share experiences
- Gather their suggestions for the World Congress and the action plan that will be presented.

This report is based on the online regional consultation on Africa held on 16 May 2024, part of a series of exchanges conducted from May to June 2024. The report highlights best practices, challenges, and recommendations shared during these sessions, with the insights gathered aimed at informing the World Congress on Enforced Disappearances, drawing from experiences across multiple countries.

Programme:

- Introduction to the World Congress – *Speaker*: Claire Callejon, Project Manager, CEDI.
- The CED Convention: Ratification Status in the region. *Speaker* – Charlotte Campo, Human Rights Officer, OHCHR West Africa Regional Office.
- Panel I – *Facilitator*: Fidelis Kanyongolo, Member of the United Nations Committee on Enforced Disappearances.
 - Sudan – *Speaker*: Hala Al-Karib, Regional Coordinator, Strategic Initiative for Women in the Horn of Africa.
 - The Gambia – *Speakers*:
 - Isatou Jammeh Programs Officer, The Gambia Center for Victims of Human Rights Violations.
 - Sirra Ndow, Alliance of Victim Led Organizations and ANEKED.
 - Emmanuel Joof, National Human Rights Commission of The Gambia.
- Panel II – *Facilitator*: Aua Balde, Chairperson of the UN Working Group on Enforced or Involuntary Disappearances.
 - Kenya – *Speakers*:
 - Demas Kiprono, Executive Director, International Commission of Jurists, Kenya.
 - Wallace M Nderu, Program Officer, International Commission for Jurists, Kenya.
 - Eritrea – *Speaker*: Ismail Moussa, Eritrean Commission for Human Rights.
 - South Africa – *Speaker*: Annah Moyo-Kupeta, Executive Director, Center for Study of Violence and Reconciliation.

- Democratic Republic of the Congo – *Speaker*: Jean-Jacques Nganya, Director and Founder of Pax Christi Uvira asbl
- Conclusion – *Speaker*: Isatou Jammeh, Programs Officer, Gambia Center for Victims of Human Rights Violations and CEDI Advisory Board Member.

2. The CED Convention: Ratification Status in the region.

Mrs Charlotte Campo
Human Rights Officer
OHCHR West Africa Regional Office.

The adoption of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) on 20 December 2006 marked a significant milestone in the fight against this heinous crime. The Convention stands as the first legally binding instrument addressing enforced disappearances at a global level. Despite the substantial efforts made by various stakeholders, the ICPPED remains one of the least ratified human rights treaties.

Globally, only 75 of the 193 UN Member States have ratified the Convention. In Africa, out of 54 Member States, 21 have ratified it.¹ The countries that have ratified or accessed the Convention are Benin, Burkina Faso, Cabo Verde, Central African Republic, Côte d'Ivoire, Gabon, Gambia, Lesotho, Malawi, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, Seychelles, Sudan, South Africa, Togo, Tunisia, and Zambia.

Despite the low ratification rate, many African countries have pledged to join the Convention during various international engagements. For example, during the Universal Periodic Review (UPR) process and the Human Rights 75 initiative, several countries supported related recommendations. Fourteen countries, including Angola, Cameroon, Côte d'Ivoire, DRC, Djibouti, Ethiopia, Equatorial Guinea, Ghana, Guinea Bissau, Kenya, Liberia, Libya, and Mozambique, have made pledges to become party to the Convention, with some taking concrete steps towards ratification.

Currently, only Mali among the African States party to the Convention has accepted the competence of the Committee on Enforced Disappearances (CED) to receive individual and inter-State communications under Articles 31 and 32 of the Convention. While the CED Committee has received requests for urgent action from African states based on Article 30 of the Convention, these remain limited, with only 15 urgent actions registered by 31 March 2023.

Enforced disappearances represent a pressing issue within Africa. Despite being widespread, the practice is often underreported. The lack of comprehensive data on the prevalence of enforced disappearances hampers our understanding of the full scope of the problem. This data gap is influenced by various factors, including limited awareness of the issue, challenges related to the rule of law, lack of political will, and fear of reprisals when reporting cases.

However, existing data reveal that enforced disappearances in Africa have been used as tools of oppression to suppress dissent and shrink civic space. They occur in armed

¹ The data has been updated to the most recent accession to the ICPPED of Côte d'Ivoire.

conflicts, during civil unrest, in situations of emergency, in the context of counterterrorism, migration, and internal displacement, including during smuggling and trafficking and detention or deportation processes. A wide array of individuals is affected, from human rights defenders to ethnic minorities, migrants, journalists, and opposition leaders.

Enforced disappearances in Africa have been considered by various UN mechanisms, particularly the Working Group on Enforced or Involuntary Disappearances (WGEID). Among the thousands of cases under WGEID's review, only a tiny portion concerns African states. According to its 2021 report, out of 46,490 cases of enforced disappearances, only 4,765, just over 10%, relate to African countries. The highest number of reported cases on the continent are in Algeria (3,253), Egypt (308), Burundi (238), Sudan (177), Morocco (153), and Ethiopia (113).

A noteworthy development is the WGEID's visit in October 2023 to the African Union's judicial and human rights organs and other bodies. The outcome report, to be presented to the Human Rights Council in September, is highly anticipated. During the visit, the WGEID delegation engaged with the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, the African Committee of Experts on the Rights and Welfare of the Child, as well as the regional Courts of Justice of East Africa and ECOWAS. The delegation gathered information on legislative frameworks, relevant jurisprudence, and the regional context in which enforced disappearances occurred or may occur. The visit also allowed for an assessment of gaps, good practices, lessons learned, emerging trends, and specific features unique to the African continent, exploring potential solutions.

At the regional level, significant progress includes the adoption of the Guidelines on the Protection of All Persons from Enforced Disappearances in Africa by the ACHPR in May 2022. These Guidelines aim to reinforce international treaties and instruments, such as the CED, and encourage African Union Member States to ratify them as a positive measure to prevent enforced disappearances on the continent.

In conclusion, effectively addressing enforced disappearances requires a multifaceted approach, including stronger legislative frameworks, enhanced judicial cooperation, and increased capacity to monitor and report. The CED provides a robust legal framework to prevent and address enforced disappearances, and the commitment of African states to the treaty and its implementation is crucial in this fight. Therefore, it is essential to emphasise the importance of continued efforts to encourage States to ratify the Convention and bring cases to light.

PANEL I

Countries that have ratified the Convention for the Protection of All Persons from Enforced Disappearances

Facilitator

Mr. Fidelis Kanyongolo
Member
UN Committee on Enforced Disappeared

A. Sudan

Challenges in Reporting Cases of Enforced Disappearances of Women.

Ms. Hala Al-Karib
Regional Coordinator
Strategic Initiative for Women in the Horn of Africa.

Challenges:

- ***Lack of reporting channels:*** there is a significant absence of formal channels for reporting enforced disappearances, particularly for women.
- ***Underreporting of women:*** Despite visible cases of disappeared men, the number of reported disappearances of women remains minimal.
- ***Slow reporting:*** The process of reporting disappeared women is extremely slow, often taking a long time before a case is officially documented.
- ***Witness intimidation and reluctance:*** witnesses have reported seeing women being taken away, yet fear and societal pressures prevent them from coming forward.
- ***Stigma and denial:*** families often prefer to declare their missing female members as deceased rather than admit they were subjected to enforced disappearance. Since April, about 125 women have been forcibly disappeared; only 16% of this number were found, and many of those who are found do not speak about their experience.
- ***Link to sexual violence:*** there is a connection between enforced disappearances and conflict-related sexual violence, with many women being enslaved by armed militia.
- ***Lack of awareness:*** for this reason, there is an ongoing effort to spread awareness about the importance of reporting enforced disappearances within communities.
- ***Lack of institutional acknowledgement:*** community and institutional acknowledgement of enforced disappearances, especially of women, is severely lacking.
- ***Weak legal framework:*** The legal framework is insufficient to respond effectively to enforced disappearances, exacerbated by ongoing armed conflict and limited interest in women's issues.

- **Limited capacity of human rights organisations:** human rights organisations face constraints in addressing the complex issue of enforced disappearances due to limited capacity and resources.

B. The Gambia

The participation of victims-lead organisations in the domestication of the Convention and the Task Force.

Isatou Jammeh
Programs Officer
Gambia Center for Victims of Human Rights Violations

Challenges:

- **Domesticating the crime of enforced disappearances into national laws:** efforts to incorporate enforced disappearance into national laws are crucial. The Gambian Truth, Reconciliation and Reparations Commission recommended that enforced disappearance be included in domestic legislation. Collaboration with ECOWAS is considered to ensure that national crimes not yet domesticated in Gambian laws will still be prosecuted, alongside the development of a Special Accountability Mechanism.
- **Certificates of absence:** Without domestic legislation on enforced disappearances, families struggle to access certificates of absence, leading to difficulties in accessing resources or properties left by their loved ones.

Best practices:

- **Family engagement:** family members of victims play a critical role in raising public awareness and influencing decision-making through their activism. Their involvement is instrumental in fostering accountability and respect for human rights. The Truth, Reconciliation, and Reparation Commission recommended their participation, which must be guaranteed in the domestication process.
- **Special Accountability Mechanism:** the Gambian Government has passed a bill establishing a special court to prosecute national crimes not previously covered by domestic laws. In collaboration with ECOWAS, it will be able to initiate cases even if the crime of enforced disappearance has not yet been domesticated in the national jurisdiction.
- **Task Force establishment:** The “Enforced Disappearance Task Force” in Gambia has been created, incorporating diverse stakeholders such as members from the International Red Cross, civil society representatives, government ministry officials, including the Minister of Health, and other experts. This diverse composition ensures more comprehensive and coordinated efforts in addressing enforced disappearances, such as advocating for the domestication of the crime. The Task Force works directly with families to provide witnesses and information to the Special Prosecutor’s Office, aiding in the prosecution of cases.

Involvement of families and the importance of memorialisation

Sirra Ndow
Alliance of Victim-Led Organizations
and
ANEKED

Challenges:

- ***Lack of domestic legal framework:*** difficulty in prosecuting cases domestically due to gaps in legal frameworks and the necessity to resort to international courts for justice in some cases.
- ***Traumatising processes:*** the insensitive handling of forensic excavations and identification processes by authorities has several repercussions on families. Broadcasting sensitive events without adequate warning causes further trauma to them.
- ***Families' expectations:*** there are misunderstandings among families regarding the time and complexity of forensic investigations. Moreover, it happens that families have unrealistic expectations, for instance, about the timeline for receiving closure after remains are exhumed.
- ***Resource constraints:*** There are limited resources for conducting thorough forensic investigations and providing support to affected families. Furthermore, it is challenging to secure sufficient funding and expertise for effective advocacy and litigation efforts.
- ***Governmental support:*** There has been inconsistent support from governmental bodies in terms of facilitating and supporting families through the process, accompanied by delays and inadequate communication from State agencies that have exacerbated the families' suffering.
- ***Lack of understanding of enforced disappearance:*** there is a lack of knowledge on enforced disappearances and the impact that it has on victims and family members.
- ***Short-term enforced disappearance:*** It must be considered that short-term enforced disappearances represent a powerful tool for States to oppress.
- ***Unreported enforced disappearance:*** This happens when the Government lacks the structures to keep track of individuals, such as when they are arrested. For instance, in The Gambia, police stations are not connected, and there is no email address to contact them.

Best practices:

- ***Strategic litigation:*** Engaging in strategic litigation to uphold human rights and seek justice for enforced disappearance cases, as well as filing cases at regional courts (ECOWAS) when national systems are inadequate in the absence of the domestication of the crime of enforced disappearance.
- ***Supporting families in forensic investigation processes:***
 - Organising workshops and training sessions for families of disappeared persons to engage with forensic investigation processes.

- Providing comprehensive support and preparation to families at all stages of the forensic process.
- Advocating for improved forensic practices to ensure accurate identification of remains.
- Ensuring families are informed about the timeline and complexities involved in forensic investigations.
- The needs of families should be continuously assessed because they change over time.
- **Memorialisation process:** after the end of the regime, several memorialisation processes have been initiated, allowing victims and their families to share their stories. Among others, there is a permanent exhibition called “Memory House” that was created for the purpose of remembering.

Lessons learned from the domestication of the Convention.

Emmanuel Joof

National Human Rights Commission of The Gambia

Challenges:

- **Lack of domestication:** The Gambia has a dualist system, and even if it ratified the Convention, it has to be domesticated for it to be enforceable. This passage has not yet been made, and it is important to advocate domesticating the relevant provisions in Gambian national laws.
- **Retroactivity law:** even if the crime of enforced disappearance is domesticated, the issue of retroactivity arises; nevertheless, it can be overcome by the setting up of a hybrid court, a step considered by the Government to try people who have the greatest responsibility for human rights violations in the Gambia, including enforced disappearance. Such a Court could look not only at domestic laws but also at international criminal law.
- **Security issues:** a high number of security officers who were mentioned in the Truth, Reconciliation and Reparations Commission’s Report are still working in the Government. Some of them were sent on an administrative leave. However, this is a challenge that should be considered.
- **Certificates of absence:** this issue was raised during a multi-stakeholder meeting on monitoring of the Truth Commission recommendations. In the Gambia, there is the presumption of death after seven years. It is essential, for many issues related to succession and inheritance, that family members have certificates of absence. The National Human Rights Commission of The Gambia has discussed this with the Ministry of Justice and underlines the need to expedite the process.

Best practices:

1. **Creating a database:** the National Human Rights Commission of The Gambia created a database of verifiable statistics on the number of missing persons.
2. **Importance of adopting a victim-centred process:** the National Human Rights Commission of The Gambia looked at the experience of South Africa to better understand the importance of putting victims at the centre of the process. In this

regard, it is vital to train the media to understand the sensitivities behind these processes.

PANEL II

Other countries

Facilitator

Aua Balde

Chairperson of the UN Working Group on Enforced or Involuntary Disappearances

A. Kenya

The criminalisation of enforced disappearance and the importance of ratifying the Convention.

Demas Kiprono

Executive Director

International Commission of Jurists, Kenya,

and

Wallace M Nderu

Program Officer

International Commission for Jurists, Kenya

Challenges:

1. ***Different modalities:*** there are various avenues for enforced disappearances, one of them being the fight against terror; the second is crime in urban areas, where, over the years, people have been taken by unmarked cars from the streets and never seen again. The third and very recent one is persons suspected to be white-collar criminals, who are also picked up and never seen. Another emerging trend, still in its initial stages, involves cases found in the East African Court, where foreign countries within the Eastern African region are driving the disappearance of persons living and residing in Kenya as refugees but are perceived as enemies of those States and picked up and disappeared.²
2. ***There is no law criminalising enforced disappearances:***³
 - In the absence of an appropriate legal framework, the data collected by organisations are preserved but, at the moment, cannot be used in any legal proceeding on enforced disappearances.
 - Furthermore, enforced disappearances have their own connotation that distinguishes them from extrajudicial killings, kidnapping or the term 'going missing'. For instance, human remains were found in the river Yala, in the Western part of the country; some of these were people who had been reported missing. However, in the absence of a legal framework that criminalises enforced disappearances, there is no possibility to act comprehensively and prosecute this crime in the country. Enforced disappearances have their own connotation and must be distinguished from

² Mr. Demas Kiprono.

³ Mr. Wallace M Nderu.

kidnapping or going missing; the gravity of the practice of enforced disappearances must be reflected by a law that provides clear definitions.

- Without a legal framework, prosecutions represent a challenge and impunity for perpetrators of enforced disappearances is widespread.

3. **Lack of information:** when people forcibly disappeared are not found again, it is very difficult to gather comprehensive data, especially sufficient evidence to sustain a case within a court.⁴

Best practices:

1. **Declaration by the Government:** the reported decreasing number of the last two years has probably been the consequence of the fact that the new regime declared that it would not have supported enforced disappearances.⁵
2. **Disbandment of a unit within the Directorate of Criminal Investigation:** the decreasing number of reported enforced disappearances in Kenya from 2022 to 2023 could be attributed to the disbanding of a unit within the Directorate of Criminal Investigations, which was alleged to be implicated in these enforced disappearances.⁶
3. **Joint efforts:** creating an umbrella organisation, such as the Missing Voices Coalition, which is a consortium of human rights organisations that document enforced disappearances and represent a reliable source.⁷

B. Eritrea

The impact of enforced disappearances on survivors and families and the specific support needed

Ismail Moussa

Eritrean Commission for Human Rights.

Main challenge: **Difficulties in addressing the tremendous impact of enforced disappearances:** enforced disappearances have a massive impact on victims and family members, originating health issues, depression, anxiety, trauma, and forms of social isolation and exclusion. It can lead to child labour and exploitation as the result of children who have to look after the family, poverty, fear, grief, and uncertainty regarding the faith of their loved ones.

Recommendations:

1. Set up the regional global support mechanism for victims and impacted individuals;
2. Create an easier report mechanism in African countries. Some of these countries, such as Eritrea, have no internet access for people and reporting online is one of the challenges;
3. Advocate for the ratification of the Convention by all countries;
4. Create a global alliance for the ratification of the Convention and the Additional Protocol

⁴ Mr. Wallace M Nderu.

⁵ Mr. Demas Kiprono.

⁶ Mr. Demas Kiprono.

⁷ Mr. Demas Kiprono.

5. Regulate engagement of the Human Rights Council, the Committee and the Working Group.
6. Regular engagement with civil society organisations and capacity building for civil society organisations and judicial frameworks to have procedures to deal with enforced disappearance;
7. To advocate for regional causes to integrate the Convention within the legal framework.
8. Additional protocols to the Convention deal with and address previous enforced disappearance cases once a country ratifies the Convention; additional protocol which addresses enforced disappearances by non-State actors; additional protocol which addresses enforced disappearance during conflict or where an actor has no legal jurisdiction to address issues of enforced disappearances.

C. South Africa

Providing psychological support for victims and capacity-building training to State and non-State actors – best practices and lessons learned

Annah Moyo-Kupeta,
Executive Director
Center for Study of Violence and Reconciliation.

Best practices and lessons learned:

1. ***Provide support to victims in different modalities***: the use of forensics keeps hope alive for victims. It has been underlined that they are relieved by the idea that, even if they die, they will know that their missing relatives can still be found.
2. ***Provide psychological support***: psychological support is often missing, and accessing it is really important to victims and families of victims. There are different emotional statuses involved. Being able to equip civil society organisations and families with what they are going through is a process; linking them to people who have had similar experiences is very supportive and creates resilience. Making a referral system and ensuring that there is a support network is really important. Integrating this support in different processes is really important. Importance of accessing psychological support.
3. ***Inform families about the importance of memorialisation processes***: Let families understand that by processes, such as memorialisations processes, they are not giving up, but they are actually giving recognition to something that happened to their loved ones and that gives them a sort of satisfaction, knowing that their story has been told. We are still hopeful, but at least we are given a form of satisfaction.
4. ***Importance of considering all the impacts of enforced disappearances***: It is relevant to consider all the effects of enforced disappearances, such as the educational repercussions that they have at the educational level. For instance, in Zimbabwe, the laws in the country did not allow a child who did not have a death certificate from his father showing that his father passed away. The father had to come to register, so there was no chance for the child to register for the primary school certification without that certificate.

5. **Raising awareness:** claims conduct training and advocacy for victims and families about the mechanisms they can access on different organs that could assist victims and family members, such as the Working Group on Enforced Disappearances, as well as the Committee on Enforced Disappearances.

D. Democratic Republic of the Congo

Document cases, challenges and what is needed to overcome them.

Jean-Jacques Nganya

Director and Founder of Pax Christi Uvira asbl

Challenges:

- **Lack of reporting mechanisms:** absence of non-governmental organisations to which to report cases.
- **Funding issues:** lack of funding hampers documentation and operational efforts.
- **Security concerns:** security issues in the region restrict movement and information gathering.
- **Coordination problems:**
 - Lack of contact with relevant persons or institutions.
 - Inability to coordinate efforts effectively in the Great Lakes region.
 - Several armed conflicts exacerbate coordination difficulties.
- **Total omertà:** a culture of silence and non-reporting prevails, making it challenging to gather and disseminate information.

Recommendations:

1. **Strengthen networking and partnerships:**
 - Develop strong networks with NGOs and United Nations institutions.
 - Establish channels for regular communication and collaboration with these entities.

3. Conclusions

Isatou Jammeh

Programs Officer

Gambia Center for Victims of Human Rights Violations

CEDI Advisory Board Member

There have been recent developments. Among them, South Africa has ratified the Convention. Furthermore, Ousman Sonko, the former Gambian Interior Minister under Yahya Jammeh, has been sentenced by the Swiss Federal Criminal Court to 20 years in prison for crimes against humanity.

Good practices:

- **Families' engagement and multi-actor approach:** In The Gambia, the multi-actor Task Force ensures more comprehensive and coordinated efforts in addressing enforced disappearances and domesticating the Convention.
- **Legal framework:** The International Commission of Jurists (ICJ) in Kenya emphasises the importance of criminalising ED and the necessity of ratifying the Convention to ensure the legal framework is adequate.

- **Victim support:** Civil society provides various forms of support to victims, including legal, psychosocial, and moral support.
 - **ANEKED (Gambia):** Stresses the importance of memorialisation.
 - **SIHA Network (Sudan):** Focuses on reporting cases of enforced disappearances involving women and supporting families facing associated stigma.
 - **Eritrean Coordination:** Highlights the specific support required by survivors, particularly children and their families.
 - **CSV:** Provides psychosocial support and technical training for both State and non-State actors.
 - **DR Congo (Kivu):** Faces a problematic context with a lack of legal and financial support for reporting cases.

Challenges:

- **Awareness:** There is a need for increased awareness and knowledge about enforced disappearances in the region.
- **Confusion:** There is often confusion between ED and missing persons.
- **Under-reporting:** The Working Group on Enforced or Involuntary Disappearances (WGEID) highlights under-reporting and the low number of urgent action requests received by the UN Committee.
- **Legal and institutional:** Inadequate legal frameworks and a lack of avenues for victims to seek justice and reparation pose significant challenges.
- **Documentation and reporting:** There are difficulties in documenting and reporting cases of ED.
- **Support to victims:** Providing adequate support to victims remains a challenge.
- **Access to UN Mechanisms:** There are barriers to accessing UN mechanisms.
- **Coordination:** There is a lack of coordination and networking among stakeholders.

Recommendations for the World Congress on Enforced Disappearances:

- **Building networks:** Enhance networking at regional and global levels.
- **Capacity:** Develop and build the capacity of Civil Society Organizations to support victims.
- **Victim participation:** Encourage the participation of victims and their families in processes that affect them, such as the domestication of the Convention and search efforts.
- **Gender-based approach:** Implement a gender-based approach in all efforts.
- **Specific support:** Provide tailored support to meet the specific needs of survivors and their relatives, including long-term psychosocial, technical, and legal assistance.
- **UN engagement:** Increase engagement with UN mechanisms to encourage reporting and addressing short-term enforced disappearances by non-State actors.

ANNEXES

List of the annexes:

- Organisation pour le Développement International Social Solidaire Intégré (ODISSI),
“Contribution somment mondial sur les disparitions forcées – compréhension du passif humanitaire”.



La question dite du passif humanitaire ou tentative de génocide en Mauritanie

(Situation et proposition de règlement)

Objet : Contribution somment mondial sur les disparitions forcées –
compréhension du passif humanitaire

I. Contexte :

Le « passif humanitaire » est l'appellation pudiquement attribué à la tentative de « génocide » commis en Mauritanie. Cette question est la somme des arrestations arbitraires (civils et des éléments des forces armées et sécurité) suivis d'assassinats extrajudiciaires- de torture- des disparitions forcées- des rescapés dé-flattés de leurs boulots, des déportations-déguerpissements des populations, dévastations des villages -des meurtres des innocents, confiscation et destruction des papiers d'état civil, expropriation et accaparement des terres, à l'encontre des populations noires en Mauritanie entre 1986 et 1992.

Concept donné à ces événements par les experts de la Commission Africaine des Droits de l'Homme et des Peuples.

Dispositions des instruments juridiques internationaux en faveur de la re- qualification des faits et de leurs règlements :

(i) Définition génocide à l'art 2 de la Convention sur le génocide, premier traité sur les droits humains adopté par l'Assemblée générale des Nations Unies le **9 décembre 1948**- Art 1 & 2 de la CONVENTION - SUR L'IMPRESCRIPTIBILITE DES CRIMES DE GUERRE ET DES CRIMES CONTRE L'HUMANITE du 26 novembre 1968 - Art 6 & 7 du Statut de Rome créant la CPI en 2001.

(ii) Recommandations et observations issues du dialogue interactif de la Mauritanie avec les Institutions africaine (CADP)-Européennes (Union Européenne) et des Nations Unies- Limites au niveau national :

- Loi amnistie 93-023 du 14 Juin 1993 en faveur des bourreaux
- Manque de volonté politique manifeste depuis la chute de Taya le 03 aout 2005

Processus de recherche de solution :

- Dépôt plaintes en 1991-1992 à l'intérieur de la Mauritanie
- Résolution de la CADHP à ALGER en 2000 sur 6 points
- Recommandations du Comité CERD en 2004
- Les journées nationales de concertation et de mobilisation pour le retour organisé des réfugiés et le règlement du Passif humanitaire les 20-21 et 22 novembre 2007
- ✓ Accord tripartite HCR avec la Mauritanie et le Sénégal en novembre 2007 pour le retour organisé des déportés du Sénégal
- ✓ Création ANAIR

- ✓ Accord entre Président Mohamed ould Abdel Aziz (HCE) avec le COVIRE présidé par Sy Abou Bocar suite audience 11 novembre 2008(indemnisation financière ou soutien social) - document secret
- ✓ Attributions des retraites proportionnelles aux personnels des forces armées et de sécurité (militaires, gendarmes, gardes et policiers) -retour dans leurs fonctions des douaniers, des fonctionnaires civils et des agents des établissements publics de moins de 60 ans – Même instruction a été donnée aux établissements privés
- ✓ **Dénonciation du processus engagé par le Président Mohamed ould Abdel Aziz** pour les manquements de transparence, exclusion de plusieurs organisations des victimes et des martyrs civils, règlement circonscrit aux devoirs de « réparation, mémoire » exclus les devoirs de vérité et de justice ;
 - Tentatives de dialogue de Mohamed Cheikh ould Ghazouani à l'issue d'une audience accordée aux coalitions des OSC des victimes en avril 2022
- ✓ Mise en place d'une commission des délégués des deux parties pour une feuille de route sur 4 points (i) définir le contenu de la justice transitionnelle pour la Mauritanie, (ii) cartographie des sépultures, (iii) réparations financières, (iv)mettre en place des garanties de non-répétition ;
- ✓ Divergences de vision des osc des victimes sur le contenu de la JT en premier, ensuite la réponse de l'Etat du non prise en charge des devoirs de vérité et de justice ont créé une situation de crise entre CCR-E/USA et CCRM-M/CCVE. Des répercussions de cette crise sont remontées au sein de CCRM-E/USA

Notre vision pour le règlement :

II. **Proposition d'un mécanisme indépendant pour le règlement des questions de l'impunité des crimes.**

Afin d'engager la Mauritanie dans une voie sûre et pérenne pour son existence, sa cohésion et sa stabilité, il est impérieux que les autorités au pouvoir prennent la décision idoine d'un règlement global et définitif de cette question lancinante dite du « passif humanitaire », de toutes les répressions causées par des violences politiques et des inégalités sociales comme l'esclavage. Cette décision doit passer par la mise en place d'une **institution indépendante et autonome**, sous forme d'une **commission indépendante vérité, justice et réparation** (cvr), mécanisme basé sur les normes de la justice transitionnelle, qui a été expérimenté dans beaucoup de pays qui ont connu des conflits internes pour solder les passés douloureux et construire l'avenir avec sérénité.

1. **Dispositions :**

Adopter une loi organique ou une loi amendant la constitution, pour régir la création de la commission type « **vérité réconciliation** » et qui intègre les éléments ci-dessous :

A. **Mandat :**

- Enquêter sur toutes les violations des droits humains liées à des violences politiques de l'indépendance à la date d'adoption de la loi instituant la commission ;

- Accorder à la commission une durée requise pour mener efficacement sa mission : 2 ans minimum ;
- Prescrire à la commission la rédaction d'un rapport des travaux d'investigations, de proposer les réparations individuelles et collectives, d'élaborer des recommandations sur des réformes institutionnelles, administratives et politiques requises qui garantissent la non-répétition des violations pareilles ;
- Résultat : accorder une amnistie ou poursuites judiciaires ?
- Création d'un tribunal pénal pour les cas de crime contre l'humanité (torture et disparitions forcées)
- Garantir les moyens et une institution de suivi et/ou d'exécution pour la mise en œuvre des conclusions du rapport final de la commission ;

B. Typologie des violations :

- Les disparitions forcées ;
- Les exécutions extrajudiciaires ;
- Les déportations
- La torture ;
- Les arrestations arbitraires ;
- Les expropriations des terres dans la vallée du fleuve Sénégal ;
- Les confiscations des biens ;
- La discrimination dans les politiques linguistique et culturelle ;
- Les licenciements abusifs des fonctionnaires, des personnels des forces armées et de sécurité, des cadres et agents des établissements publics et parapublics ;
- La marginalisation de citoyens sur la base de leur identité ;
- Les violences sur les groupes politiques ;

C. Composition :

- 18 commissaires représentant les institutions suivantes :
 - ✓ Les organisations des victimes :6
 - ✓ Les Organisations des droits humains :3
 - ✓ Les personnalités indépendantes :2
 - ✓ L'ordre des Avocats :1
 - ✓ Les institutions nationales et internationales des droits humains (Commission Nationale des Droits humains, Bureau du Haut-Commissariat aux Droits de l'Homme) :2
 - ✓ Les institutions Etatiques en charge des droits humains et de médiation (Commissariat aux Droits de l'Homme à l'Action Humanitaire -Haut Conseil de la Fatwa et des Recours Gracieux- Agence Nationale TAAZUUR -Ministère de la Justice) :4

D. Principes :

- Dirigée par une personnalité indépendante (préférence une victime ou personnalité consensuelle),

- Se conformer sur les devoirs de :
 - i. Vérité : mener des enquêtes indépendantes et impartiales sur toutes les typologies de violations. Déterminer les auteurs de crime « Qui a fait quoi, quand, comment, où ». Identifier les chaînes de responsabilité. Déterminer la nature des auditions (publiques, secrètes, confrontation entre victimes-bourreaux ou auditions séparées), etc.
 - ii. Justice : créer un tribunal pénal pour les crimes ne pouvant être amnistiés-restaurer la justice à l’amiable pour les délits pouvant être réglé par consensus ;
 - iii. Réparation : individuelle en faveur des rescapés et ayants droit ; et collective pour les communautés ou zones ayant subi des préjudices pour donner suite aux conséquences des violences portées à leurs égards. Refonder les institutions sécuritaires, administratives- réformer les politiques pour plus d’équité dans le respect de la diversité.
 - iv. Mémoire : créer des mémoriaux et archives pour la mémoire collective pour la non-répétition des situations identiques ;
 - v. Inclusive : représentants de tous les acteurs concernés et créer des antennes au niveau national ;
- Indépendance : Accorder les moyens techniques (médecine légale...), financiers (budget...) et institutionnels pour l’indépendance de la commission ;
- Définir le cadre juridique ;
- Attention particulière aux principales populations victimes, et parmi elles, les couches les vulnérables ;
- Ouvrir toutes les archives nationales pour les besoins des enquêtes ;
- Soustraire les présumés auteurs de crime des postes de responsabilité des institutions étatiques devant interagir avec « la commission » ;

E. Procédures

Mener des consultations nationales afin que toutes les forces actives nationales adhèrent à la décision de la création de la commission.

III. Droit à la retraite d’ancienneté pour les personnels civils et des forces armées et de sécurité pour le règlement de la situation administrative

A. Argumentaire

Les plus graves violations des droits humains sont caractérisées par des répressions terribles exercées par les forces armées et de sécurité sur des fonctionnaires négro-africains (civils et militaires) ou de simples populations ont eu lieu en 1966, 1986, 1987, 1989, 1990 et 1991.

Les conséquences de ces dérives, qui sont, en général, le fait de l’Etat (ses corps constitués), ont engendré des torts pour des fonctionnaires et agents de l’Etat qui ont été renvoyés de l’administration, certains ont été tués, d’autres déportés au Sénégal ou au Mali sans aucune procédure prévue par la loi.

Les décisions prises pour justifier ces renvois et révocations (des fonctionnaires civils et militaires) qui ne sont, au demeurant que des « raisons d’Etat » ou des « faits du prince », l’ont

été sans aucune autre forme de procès ; en tout cas, en violation flagrante de la loi sur la Fonction Publique qui prévoit, pourtant, un certain nombre de mesures disciplinaires avant de prononcer la révocation du fonctionnaire.

Le fonctionnaire a des droits et des devoirs (cf. Chapitre II, Section 2, articles 14 à 23 de la loi n°93.09 du 18 janvier 1993 portant statut général des fonctionnaires et agents de l'Etat).

Or, il reste clair que ces sanctions prises à l'égard des victimes ne sont ni motivées, ni légales et souffrent, dans la plupart des cas, de justification à posteriori (on déporte, on renvoie, on révoque et, par la suite, on prend une décision pour entériner la mesure).

A titre d'illustration, en 1986, un document élaboré par des cadres négro-africains et intitulé « **LE MANIFESTE DU NEGRO-MAURITANIEN OPPRIMÉ** » avait valu à ses auteurs – et même de simples citoyens – le courroux du régime de l'époque qui, dans ses excès, avait eu la main lourde à travers une justice expéditive et aux ordres.

Les auteurs présumés ont été arrêtés, jugés et condamnés à des peines allant de 6 mois à 5 ans.

Le chef d'accusation invoqué contre les présumés est un délit de presse : or la Mauritanie a ratifié la Déclaration Universelle des droits de l'homme des Nations-Unies qui reconnaît à chaque individu la liberté d'expression et d'opinion.

En 1987, le Mouvement d'Officiers noirs avait eu l'intention de changer le pouvoir en Mauritanie. Leur tentative n'avait eu aucun commencement d'exécution, aucun Mauritanien n'a été blessé, tué, ni même été victime de quoi que ce soit de leur fait.

Pourtant, cela n'avait pas empêché le régime, par le biais de sa justice inféodée, de condamner à mort trois des présumés auteurs qui seront d'ailleurs exécutés le 6 décembre 1987 à Jreida (Nouakchott). Les autres ont été condamnés à des peines de prison allant de 5 ans à la perpétuité, d'autres seront révoqués sans aucune autre forme de procès.

Et tout ceci, en dépit du fait qu'en Islam, la Charia (qui est la source du droit mauritanien), on ne condamne pas les intentions mais plutôt les actes clairs, reconnus et établis.

Le pic des exactions contre les fonctionnaires civils et militaires a été atteint lors des événements de 1989 au cours desquels plusieurs d'entre eux ont été révoqués, déportés, renvoyés.

Et en 1990-1991, la sanglante purge au sein des forces armées et de sécurité a laissé des traces indélébiles : exécutions extrajudiciaires de plusieurs centaines d'éléments, blessés à vie, révoqués en masse. Là aussi, toutes les mesures iniques prises contre les victimes n'ont respecté aucune procédure, ajoutant ainsi une injustice à une autre injustice (accusations infondées et révocation sans justification).

Le 27 juillet 1991, une ordonnance d'amnistie est venue blanchir tous les détenus. Mais l'amnistie a eu peu d'effet sur la situation des anciens détenus : ils n'ont pas été réhabilités et la reconstitution de leur carrière n'a pas eu lieu. L'ensemble des fonctionnaires et agents de l'Etat ont été mis d'office à la retraite. Certains militaires ont eu une pension proportionnelle sur la base de 15 ans de service au lieu de 35 ans comme prévu par la Fonction Publique. Les policiers ont été mis à la retraite sur la base de leur dernier traitement d'activité. Les enseignants ont été traités de la même façon, à savoir le dernier traitement d'activité.

Plus tard, il y'a eu la réintégration d'un certain nombre d'enseignants, sans reprendre leur situation à la date de leurs révocations.

Aussi, en dépit de plusieurs omis, en 2013, quelques membres des forces armées et de sécurité ont bénéficié d'une retraite proportionnelle (15 ans), conformément à la Communication relative au règlement du dossier du passif humanitaire des personnels des forces armées nationales en date du 3 Janvier 2013 et l'extrait des décisions prises en Conseil des Ministres au cours de la séance du même jour.

... Malheureusement, pour couronner l'injustice faite aux victimes, leurs bourreaux avaient bénéficié d'une amnistie pleine et entière votée par le Parlement mauritanien (Loi n°93-23 du 14 Juillet 1993 accordant une amnistie pleine et entière « ... *aux membres des forces armées et de sécurité auteurs des infractions commises entre le 1^{er} Janvier 1989 et 18 Avril 1992... »*).

Ces atteintes aux droits et à la personne des fonctionnaires civils et militaires doivent donc être réparées, au-delà des règlements partiels et des amorces qui ont eu lieu sous les Présidents Sidi Mohamed Ould Cheikh Abdellahi et Mohamed Ould Abdel Aziz :

- Journées de concertation (en 2007)
- Rapatriement de déportés
- Prière de Kaédi
- Reconnaissance de l'Etat des torts faits aux victimes, etc.

B. Plaidoyer

Les formes de réparations administratives accordées aux personnels des forces armées et de sécurité, aux fonctionnaires-agents de l'Etat, aux personnels des établissements publics et parapublics, par le pouvoir à partir de 2011, sont incomplètes et différentes d'une tutelle à une autre.

Sur la base de l'argumentaire juridique ci-dessus, une **réhabilitation pleine et entière** doit être reconnue aux victimes ayant bénéficié de « réparation administrative » et **accorder une retraite d'ancienneté**, à celles, pour lesquelles le nombre d'années de service, sans interruption de la période hors service causée par la violation subie, permet de cumuler la durée requise pour le droit à la **pension complète**. Pour les victimes n'ayant pas remplies ces conditions, les cas soient étudiés pour compléter le nombre d'années restantes.

IV. La Question culturelle

Les différentes réformes de l'éducation en Mauritanie sont cristallisées par le statut des langues nationales et le choix de la langue officielle dans les politiques linguistiques. Nous notons que la loi n°61.095 du 20 mai 1961, modifiant la loi du 22 mars 1959 instituant la première Constitution de la R.I.M disposait à l'Article 3 que la langue nationale est l'arabe ; la langue officielle est le français. Les dispositions de l'article 3 de la loi n° 61.095 du 20 mai 1961, portant Constitution de la République Islamique de Mauritanie, est abrogée et

remplacée par la loi constitutionnelle n° 68-065 du 4 Mars 1968 qui dispose : « Art. 3. La langue nationale est l'arabe, les langues officielles sont le français et l'arabe. ».

Le statut des langues officielles ou nationales est passé sous silence dans les différentes chartes constitutionnelles qui ont régi les pouvoirs militaires du 10 juillet 1978 jusqu'à l'adoption par référendum le 12 juillet 1991 d'une nouvelle constitution.