



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

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## Committee on Enforced Disappearances

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

1. The Committee on Enforced Disappearances considered the report submitted by Japan under article 29 (1) of the Convention (CED/C/JPN/1) at its 257th and 258th meetings (see CED/C/SR.257 and 258), held on 5 and 6 November 2018. At its 271st meeting, held on 14 November 2018, it adopted the present concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the report by Japan under article 29 (1) of the Convention, which was prepared in accordance with the reporting guidelines, and the information contained therein. The Committee appreciates the constructive dialogue held with the high-level delegation.

3. The Committee thanks the State party for its written replies (CED/C/JPN/Q/1/Add.1) to the list of issues (CED/C/JPN/Q/1).

#### B. Positive aspects

4. The Committee commends the State party for having ratified almost all of the United Nations core human rights instruments, as well as the Rome Statute of the International Criminal Court.

5. The Committee welcomes the fact that the State party has recognized the competence of the Committee, under article 32 of the Convention, in respect of inter-State communications.

6. The Committee also commends the State party for the measures it has adopted in areas related to the Convention, including:

(a) The Action Plan to Combat Trafficking in Persons in 2014 and the establishment of a Council for the Promotion of Measures to Combat Trafficking in Persons;

(b) The amendment of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography and the Protection of Children, in 2014.

7. The Committee notes with satisfaction that the State party has extended an open invitation to all special procedure mandate holders of the Human Rights Council.

\* Adopted by the Committee at its fifteenth session (5–16 November 2018).



## C. Principal subjects of concern and recommendations

### 1. General information

8. The Committee considers that, at the time of adoption of the present concluding observations, the legislation in force in the State party to prevent and punish enforced disappearances was not in compliance with certain obligations incumbent on the States that have ratified the Convention. The Committee encourages the State party to implement its recommendations, which have been made in a constructive and helpful spirit, with the aim of ensuring that the existing legal framework and the way in which it is implemented by the State party's authorities is fully consistent with the rights and obligations contained in the Convention.

#### Individual communications

9. While noting the statement of the delegation that Japan is undertaking a comprehensive study on the viability of accepting individual complaints mechanisms in the treaty body system, the Committee remains concerned that the State party has not yet recognized the competence of the Committee to receive and consider individual communications under article 31 of the Convention.

**10. The Committee encourages the State party to recognize as soon as possible the Committee's competence to receive and consider individual communications under article 31 of the Convention, with a view to strengthening the framework for protection against enforced disappearances provided for in the Convention.**

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

#### Non-derogability of the prohibition of enforced disappearance

11. The Committee notes with concern that domestic law does not specifically provide for the non-derogability of the prohibition of enforced disappearance under any exceptional circumstances (art. 1).

**12. The Committee recommends that the State party take the legislative measures necessary to incorporate into domestic law an absolute prohibition of enforced disappearance, in line with article 1 (2) of the Convention.**

#### Offence of enforced disappearance

13. The Committee is concerned that national legislation does not specifically criminalize enforced disappearance as an autonomous offence in accordance with article 2 of the Convention. The Committee considers that the different criminal offences in the Penal Code of Japan are not sufficient to encompass all the constituent elements and modalities of the crime of enforced disappearance, as defined in article 2 of the Convention, and thus to comply with the obligation arising from article 4, which is closely related to other treaty obligations concerning legislation, such as those in articles 6, 7 and 8. As a rule, the Committee considers that reference to a range of existing offences is not enough to meet this obligation as the offence of enforced disappearance is not a series of different crimes, but rather a complex and single offence, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State through several criminal modalities, which violates various rights. The Committee is further concerned that national legislation does not specifically criminalize enforced disappearance as a crime against humanity in accordance with the standards provided for under article 5 of the Convention (arts. 2 and 4–8).

**14. The Committee recommends that the State party adopt the legislative measures necessary as soon as possible to ensure that enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and as a crime against humanity, in accordance with the standards provided for under article 5 of the Convention.**

### **Appropriate penalties and mitigating and aggravating circumstances**

15. The Committee is concerned that the penalties imposed for crimes invoked to deal with enforced disappearance vary greatly, ranging from three months' to life imprisonment, that they are not adequately consistent and that they do not take into account the extreme seriousness of the crime of enforced disappearance. It is further concerned that national legislation does not provide for mitigating and aggravating circumstances applicable to acts of enforced disappearance, as listed in article 7 (2) (a) of the Convention.

**16. The Committee recommends that the State party, when criminalizing enforced disappearance in national legislation, establish:**

(a) **Penalties for the crime of enforced disappearance that take due account of the extreme seriousness of the offence in accordance with article 7 of the Convention, while avoiding the imposition of the death penalty;**

(b) **Specific mitigating and aggravating circumstances provided for in article 7 (2) of the Convention, for the crime of enforced disappearance, ensuring that mitigating circumstances will in no case lead to a lack of appropriate punishment.**

### **Criminal responsibility of superiors and due obedience**

17. The Committee is concerned that national legislation does not expressly provide for holding any person who orders or solicits an enforced disappearance criminally responsible, nor does it expressly incorporate the criminal responsibility of superiors, as set out in article 6 (1) (b) of the Convention. The Committee regrets the lack of clear and sufficient information on the legislation that guarantees that persons who refuse to obey orders or instructions that prescribe, authorize or encourage enforced disappearance will not be punished (arts. 6 and 23).

**18. The Committee recommends that the State party take the legislative measures necessary to ensure that criminal legislation holds responsible any person described in article 6 (1) (b) of the Convention.**

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

### **Statute of limitations**

19. The Committee notes with appreciation that article 253 of the Code of Criminal Procedure provides that the statute of limitations to bring criminal proceedings commences from the moment when the crime ceases. However, the Committee is concerned that the statute of limitation that would apply to the crime of enforced disappearance ranges from 5 to 20 years, which is extremely short. It is further concerned that national legislation does not guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation given that, according to the statement made by the delegation of the State party during the consideration of the report, the statute of limitations for damages in tort is extinguished 20 years after the commission of the act (art. 8).

**20. The Committee invites the State party to provide that, once criminalized, the offence of enforced disappearance is not subject to any statute of limitations; if it is, the Committee recommends that the State party ensure, in line with article 8 of the Convention, that:**

(a) **The term of limitation for criminal proceedings brought in respect of enforced disappearances is of long duration and is proportionate to the extreme seriousness of the offence;**

(b) **The right of victims of enforced disappearance to an effective remedy is guaranteed during the term of limitation.**

### **Jurisdiction over offences of enforced disappearance**

21. The Committee notes that article 4-2 of the Penal Code establishes the State's competence to exercise jurisdiction over the offence of enforced disappearance, regardless

of the nationality of the perpetrator or victim and even when the offence is committed outside the territory of Japan. However, the Committee notes with concern that article 4-2 of the code only applies to crimes governed by a treaty (art. 9).

**22. The Committee recommends that the State party adopt necessary measures with a view to ensuring that the exercise of jurisdiction by the courts over the offence of enforced disappearance is fully guaranteed, in accordance with the obligations arising from article 9 of the Convention, in particular the principle of *aut dedere aut judicare* set out in that article. In this regard, the State party should ensure that no conditions that are not provided for in the Convention affect the exercise of jurisdiction by the Japanese courts, in conformity with article 9.**

#### **Reporting and investigating cases of enforced disappearance**

23. The Committee notes the information provided by the State party that no complaints have been raised with regard to cases of enforced disappearance. However, the Committee remains concerned that national legislation does not guarantee the right of any individual to report an alleged enforced disappearance to the competent authorities, irrespective of his or her relationship to the disappeared person. It is further concerned at obstacles that could hinder the prompt, effective and impartial investigation of alleged cases of enforced disappearance. These include the competence of military authorities under national law to investigate persons accused of enforced disappearance; the fact that the decision to investigate an offence is subject to the discretion of the relevant police officer; and restrictions in national legislation to accessing all the documentation and other information relevant to an investigation when it is official confidential information and in cases where such information may harm national interests. The Committee is also concerned about the lack of sufficient information on the relevant national legislation guaranteeing the authorities investigating an enforced disappearance access to all places of detention or to any other place where there are grounds to believe that a disappeared person may be present; the lack of a dedicated budget and personnel to investigate cases of enforced disappearance; and the lack of specific training on how to start and conduct investigations on cases of enforced disappearance for the authorities in charge of investigating such cases (arts. 11 and 12).

**24. The Committee recommends that the State party take all necessary legislative and other measures to:**

(a) **Guarantee the right of any person to report an alleged enforced disappearance to the competent authorities, irrespective of his or her relationship to the disappeared person; and ensure that appeal mechanisms be made available to the complainant in case the competent authorities refuse to investigate his or her case;**

(b) **Ensure that, where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, it undertakes a thorough and impartial investigation without delay, even if there has been no formal complaint;**

(c) **Ensure that all cases of enforced disappearance remain expressly outside military jurisdiction and can be investigated by ordinary courts only;**

(d) **Guarantee that the authorities in charge of an investigation into an enforced disappearance have access to all information and documentation relevant to their investigation;**

(e) **Guarantee that the competent authorities and institutions have access to all places of deprivation of liberty where there are reasonable grounds to believe that a person subjected to enforced disappearance may be present, irrespective of the nature of the place of deprivation of liberty;**

(f) **Provide adequate financial and human resources for the authorities in charge of investigating enforced disappearances;**

(g) **Provide the authorities in charge of investigating cases of enforced disappearance with specific training on how to start and conduct such investigations.**

**Situation of so-called comfort women victims of enforced disappearance**

25. Recalling articles 8, 12 and 24 of the Convention, the Committee wishes to emphasize the continuous nature of the crime of enforced disappearance and to reaffirm the rights of victims to justice, to reparation and to know the truth about the circumstances of an enforced disappearance, the progress and results of the investigation and the fate of the disappeared person, regardless of when the enforced disappearance was committed. In this respect, the Committee is concerned about the lack of statistical information on the number of so-called comfort women who may have been subjected to enforced disappearance, and about the absence of investigations, prosecutions and convictions of perpetrators of these cases. It is further concerned at reports of the removal of children born to these women and the refusal of the State to investigate such cases. The Committee remains concerned at reports of the concealment or failure by the State party to disclose related facts and materials regarding so-called comfort women. It is further concerned at the lack of adequate reparation for the victims in accordance with article 24 (5) of the Convention and regrets the State party's position that the issue "is resolved finally and irreversibly". This perpetuates impunity and denies victims their right to know the truth and to obtain justice, reparation and guarantees of non-repetition (arts. 1, 8, 12, 24 and 25).

**26. The Committee recalls the continuous nature of the offence of enforced disappearance and recommends that the State party:**

(a) **Generate accurate statistics on the number of the so-called comfort women who may have been subjected to enforced disappearance, conduct investigations and guarantee the rights to the truth and reparation;**

(b) **Ensure that all cases of so-called comfort women who may have been subjected to enforced disappearance, including cases involving the removal of children born to these women, are investigated thoroughly and impartially without delay, regardless of the time that has elapsed since they took place and even if there has been no formal complaint;**

(c) **Ensure that the alleged perpetrators are prosecuted and, if found guilty, punished in accordance with the gravity of their acts;**

(d) **Take the necessary measures to search for and identify any children born to so-called comfort women who may have been victims of wrongful removal, enforced disappearance and/or identity substitution and to ensure that they are returned to their families of origin, in conformity with article 25 (2) of the Convention;**

(e) **Ensure the disclosure of any information related to facts and materials;**

(f) **Ensure that all victims receive adequate reparation in accordance with article 24 (4) and (5) of the Convention and that this reparation takes account of gender issues;**

(g) **Guarantee the right to truth.**

**Judicial cooperation in criminal matters**

27. The Committee is concerned at the limitations and conditions in national legislation in relation to requests for judicial assistance or cooperation in the terms established by articles 14 and 15 of the Convention. In particular, bearing in mind that the crime of enforced disappearance is not codified in national legislation, the Committee is concerned that, under national legislation, assistance is not provided when the act constituting the offence for which assistance is requested would not constitute a crime under Japanese law if the crime was committed in Japan.

**28. The Committee recommends that the State party ensure that it provides the necessary judicial assistance to the authorities of other States parties that request it in connection with investigations into possible cases of enforced disappearance. The Committee encourages the State party to ensure that its authorities afford the greatest measure of assistance possible when they receive requests under article 15 of the Convention.**

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

##### **Expulsion, return, surrender and extradition mechanisms**

29. The Committee is concerned about the obstacles to extradition that exist in respect of the crime of enforced disappearance. These include: (a) enforced disappearance not being an extraditable offence in extradition treaties with States that are not a party to the Convention, given that the State party does not impose the obligation set out in article 13 (2) of the Convention; (b) the requirement of the principle of dual criminality in extradition treaties, bearing in mind that enforced disappearance is not codified as an autonomous crime in the Penal Code; and (c) the requirement of the principle of reciprocity in the absence of an extradition treaty. The Committee regrets the lack of information on the criteria and procedures applied to assess and verify a person's risk of being subjected to enforced disappearance in the country of destination before an expulsion, return or extradition takes place (arts. 13 and 16).

30. **The Committee recommends that the State party take all necessary measures to:**

(a) **Remove any obstacles to extradition that exist in national legislation, in conformity with article 13 (2), (3), (4) and (5) of the Convention;**

(b) **Ensure that there are clear and specific criteria and procedures in place to assess and verify a person's risk of being subjected to enforced disappearance in the country of destination before it proceeds to an expulsion, return or extradition, and that, if there is such risk, the person concerned is not expelled, extradited or returned.**

##### **Fundamental legal safeguards**

31. The Committee is deeply concerned about the conditions and restrictions in national legislation to the rights guaranteed under article 17 (2) (d) of the Convention in places of deprivation of liberty and about reports of non-observance of these rights. These include restricting the communication of the person deprived of liberty with any person of his or her choice and, in the case of foreigners, with consular authorities, from the outset of the deprivation of their liberty; the restriction of visits by a lawyer to certain days and times and in certain circumstances; the restriction of visits by family members or any other person of their choice; the attendance of prison staff and the taking of recordings during visits; the restriction, prohibition and examination of correspondence, including from a defence lawyer; and the prohibition of visits, communication and correspondence when these are in a language other than Japanese and the person deprived of liberty cannot bear the financial cost of translation or interpretation. The Committee is further concerned at the lack of measures in place to guarantee the independence and competence of the authorized mechanisms for visiting places of deprivation of liberty and to guarantee unrestricted access to all places of deprivation of liberty (art. 17).

32. **The Committee recommends that the State party guarantee:**

(a) **That all persons deprived of liberty in all places of deprivation of liberty have access to a lawyer from the outset of deprivation of liberty and can communicate without delay with and be visited by their relatives, counsel or any person of their choosing and, in the case of foreigners, with their consular authorities;**

(b) **The independence of the authorized mechanisms for visiting places of deprivation of liberty, including through the establishment of objective criteria for the selection of members and their unrestricted access to all places of deprivation of liberty and the provision of training on the Convention.**

##### **Remedies concerning the lawfulness of a detention**

33. The Committee is concerned at the lack of remedies available in line with article 17 (2) (f) of the Convention to challenge the lawfulness of deprivation of liberty, including that of persons in medical institutions and immigration detention facilities. The Committee takes note of the existence of the Habeas Corpus Act to challenge the lawfulness of a detention. However, it is concerned at the obstacles to the use of this remedy contained in

the Habeas Corpus Rules, in particular rule 4, and at the fact that a habeas corpus request can only be made by the person deprived of liberty and his or her counsel (arts. 17 and 22).

**34. The Committee recommends that the State party adopt the necessary measures to establish that the right to apply for habeas corpus may not be restricted under any circumstances and guarantee that any person with a legitimate interest may initiate the procedure, irrespective of the place of deprivation of liberty.**

#### **Registers of persons deprived of liberty**

35. The Committee takes note of the existence of a number of registers of persons deprived of liberty. However, it notes with concern that these registers do not contain all the information referred to in article 17 (3) of the Convention and regrets the lack of sufficient information on measures to ensure that all records of persons deprived of liberty are completed, updated immediately and monitored. The Committee notes with concern that national legislation does not guarantee access to the information listed in article 18 (1) of the Convention, given that the provision of this information is dependent on the person deprived of liberty. The Committee regrets that it has not received sufficient information on how national legislation addresses all the items described in article 22 (b) and (c) of the Convention, namely the failure to record a deprivation of liberty, the refusal to provide information and the provision of inaccurate information (arts. 17, 18, 20 and 22).

**36. The Committee recommends that the State party take all necessary measures to ensure that:**

(a) **All cases of deprivation of liberty, without exception, are entered in official registers and/or up-to-date records, including, as a minimum, the information required under article 17 (3) of the Convention;**

(b) **Registers or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and that, in the event of irregularities, the officials responsible are duly sanctioned;**

(c) **Any person with a legitimate interest has prompt and easy access to the information referred to in article 18 (1) of the Convention;**

(d) **The conduct described in article 22 (b) and (c) of the Convention is prevented or, if it does take place, that sanctions are imposed.**

#### **Training on the Convention**

37. The Committee notes that training on human rights is provided to some State agents. However, it is concerned that such training may not include specific training on enforced disappearance (art. 23).

**38. The Committee recommends that the State party continue its efforts to provide human rights training for State officials and, in particular, that it ensure that all law enforcement and security personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1) thereof.**

### **5. Measures to provide reparation and to protect children from enforced disappearance (arts. 24–25)**

#### **Definition of victim and right to receive reparation and prompt, fair and adequate compensation**

39. The Committee is concerned that the definition of “victim” set out in article 292-2 of the Code of Criminal Procedure does not include all the persons referred to in article 24 (1) of the Convention and regrets the delegation’s assertion that Japan does “not have any intent to revise the definition of victim in criminal proceedings”. It is further concerned that national legislation does not provide for a system of full reparation under the responsibility

of the State that includes all the measures of reparation provided for in article 24 (5) of the Convention. The Committee regrets the lack of information on the type of compensation and reparation awarded by the State to victims of enforced disappearance in cases where death has not occurred, the lack of information on the existence of, or steps taken to establish, mechanisms to ensure the right to know the truth about the circumstances of the enforced disappearance and the fate of the disappeared person, and the lack of information on how these mechanisms ensure the right of victims to be informed as to the progress and results of investigations and to participate in their proceedings (art. 24).

**40. The Committee recommends that the State party take the necessary measures to:**

**(a) Establish, in national legislation, a definition of “victim” that is consistent with article 24 (1) of the Convention in order to ensure that any individual who has suffered harm as the direct result of an enforced disappearance can exercise the rights set forth in this article;**

**(b) Establish a comprehensive system of reparation that takes into account the personal situation of the victims, such as their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability, that is fully in line with the provisions of article 24 (4) and (5) of the Convention, that is under the responsibility of the State and that is applicable even if no criminal proceedings have been initiated;**

**(c) Ensure that all victims of enforced disappearance can exercise their right to know the truth and to obtain justice, reparation and guarantees of non-repetition.**

#### **Legal situation of disappeared persons and their relatives**

41. The Committee is concerned that civil law requires that the disappeared person be presumed to have died even if his or her fate has not been clarified, and that a period as long as seven years needs to have elapsed since the disappearance in order to regularize the situation of his or her family members in fields such as social welfare, financial matters, family law and property rights. It is further concerned that, during these seven years, payments for the disappeared person’s pension and insurance still need to be made (art. 24).

**42. The Committee recommends that the State party adopt the legislative measures necessary to ensure that the legal situation of disappeared persons whose fate or whereabouts have not been clarified and that of their relatives is regularized in accordance with article 24 (6) of the Convention in fields such as social welfare, financial matters, family law and property rights without the need to declare that the disappeared person is presumed dead. In this connection, the Committee encourages the State party to provide, by law, for the issuance of declarations of absence by reason of enforced disappearance.**

#### **Legislation concerning the wrongful removal of children**

43. The Committee notes with concern that national legislation does not adequately address and specifically criminalize the actions relating to the wrongful removal of children referred to in article 25 (1) of the Convention. The Committee regrets that it has not received sufficient information on the procedures in place to review and, if necessary, annul the adoption of children that originated from an act of enforced disappearance and to guarantee the right of disappeared children to have their true identity re-established (art. 25).

**44. The Committee recommends that the State party:**

**(a) Review its criminal legislation with a view to incorporating as specific offences the acts described in article 25 (1) of the Convention and to providing appropriate penalties that take into account the extreme seriousness of the offences;**

**(b) Establish specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship that originated in an enforced disappearance.**

## **D. Dissemination and follow-up**

45. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when becoming party to the Convention and other relevant international instruments. The Committee particularly urges the State party to ensure the effective investigation of all enforced disappearances and the full satisfaction of the rights of victims as set forth in the Convention.

46. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

47. The State party is encouraged to disseminate widely the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of relatives of victims, in the actions taken in line with the present concluding observations.

48. In accordance with the Committee's rules of procedure, the State party should provide, by 16 November 2019 at the latest, information on its implementation of the recommendations contained in paragraphs 12 (prohibition of enforced disappearance), 14 (offence of enforced disappearance) and 32 (fundamental legal safeguards).

49. Under article 29 (4) of the Convention, the Committee requests the State party to submit, no later than 16 November 2024, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29 the Convention (CED/C/2, para. 39). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of relatives of victims, in the preparation of this information.