



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
1 September 2021
English
Original: Spanish
English, French and Spanish only

Committee on Enforced Disappearances

Twenty-first session

13–24 September 2021

Item 5 of the provisional agenda

Consideration of reports of States parties to the Convention

Replies of Panama to the list of issues in relation to its report submitted under article 29 (1) of the Convention*

[Date received: 31 August 2021]

* The present document is being issued without formal editing.



I. General information

1. Consultations were held with government institutions to examine whether Panama would or would not be able to recognize the competence of the Committee on Enforced Disappearances.
2. The National Human Rights Commission forwarded the questions regarding the powers and activities of the Ombudsman's Office to that entity, which provided the following responses:
3. Under article 4 of Act No. 7 of 1997, the Ombudsman's Office is empowered to investigate acts or omissions by authorities and public servants that give rise to violations of the rights set forth in title III of the Constitution, other constitutional rights or rights provided for in treaties, conventions and declarations that have been signed and ratified by Panama.
4. Activities of the Ombudsman's Office:
 - (a) The Ombudsman's Office has produced reports putting forward recommendations regarding violations of the human rights of persons deprived of their liberty who are being held in custody outside the prison system and who are under the authority of the National Police;
 - (b) According to article 11 of Act No. 55 of 2003 on the reorganization of the prison system, persons in pretrial detention must be held in locations different from those used to hold individuals who are serving sentences or are subject to security measures that involve deprivation of liberty. However, cases have been identified in which persons have been sent directly to centres where sentences are served, rather than to pretrial detention centres, prior to a final conviction having been handed down;
 - (c) Furthermore, many of these persons have been in pretrial detention for longer than the allowable period of six months or one year without a final judgment having been issued in their case.
5. While preparing this report, the National Commission consulted several State institutions to obtain relevant information. However, a review of the files relating to the drafting of the report revealed no evidence of formal consultations with civil society organizations.
6. The Supreme Court of Justice has held that human rights conventions are to be considered a source of constitutional law. In other words, the Court has accorded constitutional rank to such conventions. In decisions such as that handed down on 30 July 2008, the Court has indicated that "under the theory of a corpus of constitutional law, the validity of which has, through the courts, now become accepted in the Republic of Panama, international human rights treaties to which the Republic of Panama is a party can rise above the rank of ordinary law, which they achieve through ratification, to reach constitutional rank". Since the Convention is a human rights instrument that has been duly ratified in accordance with the procedure established by law, it forms part of the group of conventions that are considered a source of constitutional law.
7. Court records show that most of the cases involving disappeared persons date from the time of the dictatorship and the 1989 invasion. The fact that these events predated the entry into force of the Convention has not prevented the courts from drawing on the Convention in their reasoning in important decisions, such as decisions to reopen cases or to refuse applications to have criminal prosecution declared time-barred. There are cases where the country's high courts have invoked the Convention as the basis for decisions ordering the resumption of investigations. The high courts have valued the Convention as a human rights instrument that establishes a right to know the truth and that provides that the practice of enforced disappearance constitutes a crime against humanity, which means that no statute of limitations may apply to it.

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

8. Using the definition of enforced disappearance contained in article 152 of the Criminal Code, as amended by Act No. 55 of 2016, the Government can report that, during the period of dictatorship between 1968 and 1989, 67 cases were taken up, investigated and brought before the courts. Some of those cases resulted in convictions on homicide charges, as enforced disappearance had not yet been established as a separate offence.

9. In addition, the Truth Commission reported that there are 40 disappeared persons on whom no files have been found and no further information is available.

10. The disappearance of some 333 persons – 302 men and 31 women – was recorded during the events known as “the Invasion” of 20 December 1989. That figure has remained unchanged through 2021.

11. Human remains of most of those victims were found and later identified. It has been inferred from the facts that the dictatorship was involved in almost all cases.

12. It should be stressed that Panama recognizes the international and inter-American human rights law rules and has incorporated them into its legal system. Consequently, during states of emergency, the authorities may not suspend habeas corpus guarantees, in accordance with the provisions on judicial procedure set out in articles 25 (1) (remedy of *amparo*) and 7 (6) (habeas corpus) of the American Convention on Human Rights. Under article 27 (2) (suspension of guarantees) of that convention, those judicial guarantees cannot be suspended because they are essential for the protection of rights and liberties that, under the same article, also cannot be suspended.

13. During the public health emergency brought on by the infectious coronavirus disease (COVID-19), the constitutional guarantees set out in articles 21 and 22 have not been suspended.

14. Panama recognizes that no progress has been made in amending article 55 of the Constitution with respect to habeas corpus.

15. During the COVID-19 pandemic, the Public Prosecution Service continued to carry out its criminal prosecution duties under article 220 of the Constitution and to investigate all offences; the judicial branch continued to monitor compliance with due process guarantees.

16. In addition, the Ministry of the Interior began working with institutions in the judicial sector to adopt temporary health protection measures, in accordance with recommendations by the Ministry of Health, to mitigate the spread of the virus among the prison population.

17. Act No. 55 of 2003, which reorganized the prison system, regulates the admission protocol for persons deprived of their liberty, under which they are identified not only physically but also digitally, in the Prison Information System. Their personal details are recorded in the System, allowing them to be identified individually. During the admission process, medical and physical assessments are carried out in order to confirm and record the general state of health of the person in question, with a view to detecting chronic diseases and providing specialized follow-up care for those diagnosed with them while ensuring the appropriate humane treatment.

18. Additional measures have been taken to respond to the COVID-19 pandemic: admission protocols now include specialized examinations and mitigation measures have been implemented in every prison in the country.

19. In March 2020, when the existence of a pandemic was declared, out-of-prison activities for persons deprived of their liberty were temporarily suspended as a preventive measure, as were judicial proceedings other than those where the physical presence of the person deprived of his or her liberty was required by law, with biosafety and security protocols being observed at all times.

20. A protocol was prepared to safeguard the right of persons deprived of their liberty to communicate with their families and defence lawyers by means of virtual meetings and, in

the case of foreign nationals deprived of their liberty, international telephone calls. In-person visits resumed once out-of-prison activities started up again.

21. According to data from the Directorate-General of the Prison System, as at 13 August 2021, the country's various prisons housed 18,930 persons deprived of their liberty, of whom a total of 3,425, or 18.1 per cent of the total population, have contracted COVID-19. A total of 3,336, or 97.4 per cent, have recovered; there are 83 recorded active cases; 5 persons deprived of their liberty have been hospitalized; and 9 have died from COVID-19.

22. As part of an inter-institutional effort, various strategies to mitigate contagion have been devised and implemented. These include swab tests, tracing measures, sanitizing drives, the creation of isolation areas for people who test positive for COVID-19 and vaccination.

23. Eight executive decrees on reducing sentences were issued in response to COVID-19, leading to the release of 387 people – 103 women and 284 men – who had served two thirds of their sentence, suffered from a chronic illness or were over 60 years of age.

24. A total of 188 foreign nationals deprived of their liberty have been voluntarily repatriated to their respective countries of origin.

25. A database known as the 2018/19 Prison Census has been available since October 2019 and was updated through December 2020 thanks to the efforts of the Office of the Comptroller General of the Republic and the United Nations Office for Project Services. According to the census, the majority of persons deprived of their liberty – 90.4 per cent – are Panamanian nationals, while foreign nationals account for 9.6 per cent.

26. In the definition of enforced disappearance set out in article 152 of the Criminal Code, the phrase “thereby impeding recourse to the applicable legal remedies and procedural guarantees” should be understood as referring to a consequence of the act of enforced disappearance.

27. Investigations are initiated automatically. Suspects may be charged with offences against liberty and enforced disappearance in its various forms under title II, chapter I, of the Criminal Code. They will be investigated and tried for the acts of which they are accused. If, with a proper defence, they are found guilty after a public trial, the penalty imposed can range from 1 to 20 years' imprisonment.

28. It is possible for the accused not to be charged and for the case to be dismissed if he or she testifies in court against other individuals implicated or otherwise fulfils the terms of an agreement to cooperate with the prosecutor's office, so long as the agreement is not rendered void by corruption or triviality. No offence is excluded from the scope of article 220 of the Criminal Code, which must be interpreted literally, in favour of the accused, who is being investigated and tried, and in a manner consistent with his or her legal and constitutional rights and safeguards.

29. Any person who orders the commission of an offence of enforced disappearance is charged as a perpetrator or joint perpetrator, in accordance with article 43 of the Criminal Code, depending on the facts of the case and the evidence in the investigation file. The articles on commission of and complicity in offences may apply, as the offence may be committed by act or omission.

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

30. The provisions of title I, chapter II, of the current Criminal Code deal with the territorial application of the law and address the requirements of article 9 (1) and (2) of the Convention.

31. In accordance with article 31 of the Constitution, criminal laws have no retroactive effect with respect to enforced disappearance or any other offence.

32. There are still persons who were reported disappeared during the military dictatorship whose whereabouts remain unknown and for whom human remains have yet to be identified. By a ruling dated 19 June 2019, 14 case files, on 14 persons who had been disappeared during

“the Invasion” of 21 December 1989, were ordered reopened on the basis of articles 1992, 2031 and 2044 of the Judicial Code and in accordance with articles 15 and 24 (3) of Act No. 27 of March 2011, by which Panama adopted the Inter-American Convention for the Protection of All Persons from Enforced Disappearance, where it states that no statute of limitations applies to crimes against humanity:

“Article 15. States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

...

“Article 24. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.”

33. Other Supreme Court decisions, such as that of 28 March 2017, whereby the Court denied an appeal lodged in connection with a claim that criminal prosecution was time-barred, and that of 27 August 2014, whereby it denied an appeal in a case of disappearance and homicide, also demonstrate the application of the rule that no statute of limitation applies to the offence because it is a crime against humanity. In both the cases mentioned, the disappearances were carried out during the military dictatorship.

34. If an act of enforced disappearance comes to light, an investigation is launched immediately with the support of subsidiary bodies of the National Police.

35. With respect to the protocols and/or procedures that have been developed for searching for, locating and releasing persons subjected to enforced disappearance, both during and after the military dictatorship, and for identifying and returning their remains in the event of death, the Institute of Forensic Medicine and prosecutor’s offices jointly apply the Minimum Forensic Standards for the Search for Disappeared Persons and the Recovery and Identification of Corpses, which are based in part on the Inter-American Convention on Forced Disappearance of Persons, adopted in Belém do Pará in 1994, and endorsed by the International Red Cross.

36. The Institute of Forensic Medicine and Science, in coordination with the high-level prosecutor’s office set up to clear cases in the metropolitan area, has continued to identify the human remains of victims of the dictatorship by comparing their DNA with that of victims’ relatives. The following figures can be provided: there are four victims for whom death certificates have been issued and who have been identified by comparing their DNA with family members’, and 16 victims for whom such comparative DNA analyses still have to be carried out.

37. Protection measures can be applied directly by the prosecutor leading the investigation, the due process judge or the trial court when the circumstances so warrant, as provided for in articles 331, 332, 333 and 336 of the Code of Criminal Procedure. They can extend to relatives of the disappeared person even when they are not involved in the criminal proceedings.

38. Psychologists from the Victim Protection Unit were ordered to support victims’ families in the 14 cases that had been reopened for the identification of victims’ remains, with guidance from the International Red Cross.

39. The suspension from duty of a public servant accused of committing an offence of enforced disappearance is not immediate. The due process judge must first order an interim measure of provisional detention, which, if ordered, can be kept in place throughout the proceedings, as long as there is no change in the accused’s legal situation that would warrant the replacement of the interim measure with one that is less severe.

40. The prosecutor can decide not to involve law enforcement or security forces when one or more of their members are facing charges as perpetrators or accomplices in a case of enforced disappearance.

41. Article 516 of the Code of Criminal Procedure applies in cases of enforced disappearance involving extradition. The article provides that treaties take precedence in terms of procedure and that, in their absence, domestic law applies (Code of Criminal Procedure, third book, title IX) or the principle of international reciprocity.

42. The Inter-American Convention on Forced Disappearance or the International Convention for the Protection of All Persons from Enforced Disappearance provide the legal basis for extradition in a case of enforced disappearance if the request for extradition comes from another State party.

43. With respect to the bilateral treaties to which Panama is a State party, it should be noted that the treaties entered into by Panama since 1928 (Colombia, Spain, Costa Rica, Peru, Ukraine, Paraguay, Brazil, Mexico and Uruguay) have not included a catalogue of extraditable offences. Instead, they have included a general requirement under which an offence must carry a minimum custodial sentence in order to qualify for extradition: 1 or 2 years' imprisonment if in the prosecution phase or a remaining term of imprisonment of at least 6 months to 1 year if a sentence is already being served. Accordingly, the offence of enforced disappearance can give rise to extradition under those treaties.

44. Similarly, in cases where the principle of international reciprocity is invoked, article 517 of the Code of Criminal Procedure applies a general requirement like the one mentioned above and sets the following thresholds for offences: if in the prosecution phase, the offence must carry a minimum sentence of 1 year and, if there has been a conviction, a remaining term of imprisonment of at least 6 months must be served.

45. Title IX, in the third book of the Code of Criminal Procedure, governs active, passive and transit extradition. Specifically, the title sets out the procedural requirements for the following stages of the passive extradition process, which has both legal and administrative features: the preliminary phase (apprehension of the person sought, provisional detention and provisional seizure of property); formalization; the examination of the extradition request and the making of a decision (mandatory and discretionary grounds for refusing an extradition request); the challenging of the request through the raising of objections; and the surrender of the person. The title also provides for a simplified extradition procedure and deferred and temporary surrender (simple and conditional surrender).

46. In addition, under article 518 (7) of the Code of Criminal Procedure, any offences that Panama has agreed not to consider political offences for purposes of extradition under multilateral conventions or bilateral treaties or agreements will not be considered as such, in compliance with article 13 (1) of the Convention.

47. Finally, since 24 July 2011, the date on which the Convention entered into force for Panama, Panama has entered into a bilateral extradition treaty with one State party to the Convention (Dominican Republic). That treaty includes the general requirement of a minimum custodial sentence for extradition, as described above.

48. Requests for legal assistance or cooperation made under articles 14, 15 or 25 (3) of the Convention are handled in accordance with Act No. 11 of 2015 on international legal assistance in criminal matters, published in Official Gazette No. 27752, and in keeping with the following principles and requirements: compliance with treaty obligations, observance of minimum formal requirements, confidentiality, application of the law of the forum State to the processing of the request and the verification of the validity of the acts carried out, and the translation into Spanish and certification of the request.

49. Act No. 11 of 2015 sets out a non-exhaustive list of the various types of assistance that may be requested (including searching for and locating individuals) and also includes a general formulation that allows for other forms of cooperation, provided that they are compatible with domestic law. The Act also provides for the possibility of submitting letters rogatory to the State party electronically as a faster alternative means of making a request, provided that, unless otherwise agreed, the original is received within a certain time frame.

50. Act No. 11 of 2015 does not provide for refusals of requests for legal assistance. Rather, additional information is to be sought if deemed necessary. The potential for providing the widest possible range of assistance is subject to the domestic law requirements relating to each measure. There will also be limitations if the measures requested are contrary

to fundamental principles of the law of the forum State and the basic tenets of respect for human dignity.

51. Regarding requests for international legal assistance in criminal matters in cases of enforced disappearance, since 24 June 2011, the date on which the Convention entered into force for Panama, Panama has made no requests for legal assistance but has received and processed eight such requests.

52. Of these, two (from Ecuador and Colombia) were based on the Nassau Convention and the others (Colombia and Mexico) on bilateral treaties. One request was received in 2012, two in 2015, three in 2017, one in 2018 and one in 2019. In addition, consular assistance has been provided to Colombia and Mexico on a number of occasions in response to requests from their missions for information on persons who had disappeared in those jurisdictions.

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

53. With respect to the domestic legal rules for prohibiting extradition when there are substantial grounds for believing that the person in question may be subjected to enforced disappearance, title IX of the third book of the Code of Criminal Procedure, on passive extradition, provides for mechanisms that may be used by the executive branch in the preliminary phase, on the date of formalization and at the stage of examining and making a decision on the extradition request.

54. In addition, during the preliminary phase, the Ministry of Foreign Affairs has the power to verify that the request for provisional detention is well-founded before forwarding it on to the judicial branch (Code of Criminal Procedure, art. 525).

55. At the formalization stage, the Ministry of Foreign Affairs must verify that the documentation submitted meets the formal requirements established by law before it is submitted to the judicial branch for review in view of a formal arrest (Code of Criminal Procedure, art. 528).

56. When examining and making a decision on the extradition request, the Ministry of Foreign Affairs must examine the documentation submitted and state, in a ministerial decision, whether the request meets the applicable documentary and substantive requirements and whether the extradition request is well-founded (Code of Criminal Procedure, art. 524), particularly if there are mandatory or discretionary grounds for refusing the extradition.

57. Article 518 of the Code of Criminal Procedure sets out the mandatory grounds for refusing extradition. The third of those grounds is that, in the opinion of the executive branch, the person sought may be tried in the requesting State for an offence other than the one for which the extradition request was made or by a special or ad hoc court, unless sufficient diplomatic assurances are provided. The seventh is that the extradition is being requested for political reasons, but this is mitigated by the requirement that offences not be considered political offences for purposes of extradition if they are the subject of an international treaty obligation.

58. Article 520 of the Code of Criminal Procedure sets out the discretionary grounds for refusing extradition, which fall within the exclusive competence of the executive branch.

59. These are: (1) that the person sought may be subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting State; (2) that the person sought will not enjoy the minimum guarantees that should accompany a fair criminal trial in the requesting State; and (3) that a trial was held in absentia in the requesting State, and the person was convicted without having been notified or having had the opportunity to mount a defence.

60. Finally, once the challenge phase has been completed, the Ministry of Foreign Affairs is empowered, on behalf of the executive branch, to grant or refuse, as it deems appropriate, the extradition of the person sought (Code of Criminal Procedure, art. 536).

61. The procedure for challenging a decision authorizing passive extradition is governed by title IX of the third book of the Code of Criminal Procedure.

62. In this regard, the ministerial decision issued by the Ministry of Foreign Affairs stating whether the applicable documentary and substantive requirements have been met and whether the extradition request is well-founded must be served personally to the individual sought (Code of Criminal Procedure, art. 524). He or she has standing to appeal and may, within 15 working days from the date of service, file objections to the extradition with the Second Chamber of the Criminal Division of the Supreme Court. These will be heard in accordance with the Code of Criminal Procedure (Code of Criminal Procedure, art. 532).

63. The objections must be based on the grounds set out in an exhaustive list in article 533 of the Code of Criminal Procedure, which include that the extradition is contrary to the law or to a treaty to which the Panama is a party. If the objections are filed in a timely manner, the ministerial decision will not be implemented, in accordance with article 202 of Act No. 38 of 2000 on general administrative proceedings and article 995 of the Judicial Code.

64. Once the proceedings on the objections have been completed, the competent judicial authority will decide within the next five working days whether the objections raised by the person sought are well-founded (Code of Criminal Procedure, art. 534).

65. If the judicial authority finds the objections to be unfounded, the executive branch must issue an executive decision on the extradition request (Code of Criminal Procedure, art. 536). If fundamental safeguards are infringed, proceedings for the protection of constitutional guarantees (*amparo* action) may be brought against the decision, under book IV of the Judicial Code, before the full bench of the Supreme Court. The Court will allow the action immediately, if properly formulated, and request the government body against whom it is brought to send a copy of the decision or else a report on the facts that are the subject of the action.

66. The respondent official must comply with the order within two hours of receiving it and immediately suspend execution of the decision, if it is being carried out, or refrain from carrying it out while the action is being heard and promptly inform the court in question.

67. In the days after the official complies with the order, the court will hand down a ruling refusing or granting the request for *amparo*, in accordance with the evidence on record. Notice of the ruling, once it has been handed down, will be served to the individual who brought the action and the official who issued the order giving rise to the action.

68. The fact that the passive extradition procedure provided for in title IX of the third book of the Code of Criminal Procedure has both legal and administrative features ensures that the judicial branch exercises its powers of judicial review over the process, thereby guaranteeing that each case is checked individually before the extradition moves ahead.

69. Accordingly, the Court of Appeal plays the role of due process court during the preliminary phase and while the request is being formalized, in accordance with article 41 (8) of the Code of Criminal Procedure.

70. Likewise, the Criminal Division of the Supreme Court plays a role in the challenge phase by reviewing the legality of the proceedings and their consistency with treaties, in accordance with article 533 of the Code of Criminal Procedure, which sets out the possible grounds for objections.

71. On 16 January 2018, the Government adopted Executive Decree No. 5, which made changes to the asylum system established under a previous law adopted in 1998. This is a positive development, as the new law reinforces the country's commitment to guaranteeing international protection and reaffirms its compliance with due process standards. The new law builds on the fundamental principles of protection by strengthening existing mechanisms for the prevention of refoulement, creates a regulatory framework for the recognition of refugee status and designates the authorities that are competent to review and make decisions on asylum applications.

72. In Panama, refugees and persons seeking refugee status have the right not to be returned to the country where the events that forced them to seek international protection occurred, not to be turned away upon entering the country and not to be punished for entering the country irregularly, as provided for in Executive Decree No. 5 of 16 January 2018.

73. Under Panamanian law, diplomatic assurances may be accepted in cases of passive extradition. Thus, when a request for extradition is being formalized in a case involving the death sentence, the law requires that the requesting State submit an attestation to the effect that the sentence will not be carried out as a form of diplomatic assurance (Code of Criminal Procedure, art. 521 (6)).

74. This is consistent with the obligation to refuse to extradite in cases where the offence in question carries the death penalty in the requesting State, unless the requesting State formally undertakes to apply a less severe penalty to the person sought (Code of Criminal Procedure, art. 518 (8)).

75. Similarly, at the stage of examining and making a decision on an extradition request, domestic law provides that the request must be refused if it is possible that the person sought may be tried for an offence other than the one for which the request was made or by a special or ad hoc court, and that diplomatic assurances that the person will be tried in a court normally authorized under the rules of judicial administration to rule on criminal matters may be accepted if deemed sufficient (Code of Criminal Procedure, art. 518 (3)).

76. Finally, while examining and making a decision on an extradition request, the Ministry of Foreign Affairs is authorized to ask the requesting State for additional information when it considers that the information provided to support the extradition request is insufficient to serve as the basis for a decision. During this period, the Ministry may request the diplomatic assurances mentioned above. The requesting State will have a fixed period of 30 days in which to provide the additional information requested (Code of Criminal Procedure, art. 524).

77. Prosecutors must ensure the right of the accused to communicate with a lawyer or his or her family from the very moment of arrest. This involves constitutional and legal rights that must be observed in a timely manner by the competent authority when ordering the arrest of a person allegedly linked to a case of enforced disappearance, before a due process judge, in accordance with article 32 of the Constitution and articles 4, 8, 10, 14 and similar of the Code of Criminal Procedure. This judge ensures that the actions taken are consistent with treaty obligations.

78. Adult prisons fall under the responsibility of the Directorate-General of the Prison System. They keep a register of all persons whose deprivation of liberty has been ordered by the courts, in accordance with the prison system regulations. The Punta Coco pretrial detention centre is overseen by the Directorate-General of the Prison System, and it follows the same admission protocols that have been established under the laws in force. The centres for adolescents in conflict with the law are governed by Act No. 40 of 1999 on the special regime for the criminal responsibility of adolescents. In other words, from the moment any person is deprived of his or her liberty, the authorities that have him or her in their custody are obliged to follow the protocols for obtaining the individual's personal details and identifying him or her.

79. The National Migration Service, as a State security agency, is governed by Decree Law No. 3 of 2008, the regulations for which were issued in Executive Decree No. 320 of 8 August 2008, and which was amended by Executive Decree No. 26 of 2009.

80. Under Decree Law No. 3 of 22 February 2008, all migration offences and penalties are administrative in nature and non-punitive. This decree law established migration policies that are conducive to the protection of human rights and represents a fundamental change from the previous migration law, Decree Law No. 16 of 1960.

81. The administrative penalties imposed by the National Migration Service vary according to the seriousness and nature of the offence and may take the form of warnings, fines, returns, cancellations and, as a last resort, deportation or expulsion.

82. Article 93 of Decree Law No. 3 provides for the creation of short-stay shelters to hold, under the Service's authority, foreign nationals over 18 years of age who have violated immigration laws. Executive Decree No. 320 sets out rules for the operation of the shelters and minimum standards and services, with a view to ensuring respect for human rights.

83. Minors are placed under the protection of the Ministry of Social Development, and notification is given to the diplomatic or consular representative of their country of origin or residence, if one is accredited in Panama, or, if not, to a friendly Government.

84. The National Migration Service currently has two shelters in the country – one for women, the other for men – which can hold up to 70 people. As this is not a large number, the Service carries out a rigorous national security assessment before making use of a shelter.

85. During migrants' stay in the shelters, they have the right to communicate with a lawyer and take steps to mount their legal defence and to communicate with their relatives and diplomatic or consular representatives of their country of origin or residence, if they are accredited in Panama, or, if not, of a friendly Government. They also receive government assistance from other bodies, such as the National Office of Refugee Affairs, the National Institute for Women and the Ombudsman's Office.

86. Furthermore, the National Migration Service, as the State's migration agency, informs diplomatic or consular representatives of the country of origin or residence of the migration status of the migrants in the shelters and of the administrative steps that will follow, which, in most cases, is expulsion or deportation.

87. The national mechanism for the prevention of torture in Panama began operating in 2018, focusing on places of detention under the authority of the State and taking as a reference the centres visited by the Subcommittee on Prevention of Torture during its 2017 visit. Article 8 (2) of Act No. 6 of 2017, which created the national mechanism for the prevention of torture, states that the mechanism is to have full, unimpeded access to places of deprivation of liberty and all their facilities and amenities, with no restrictions whatsoever.

88. The national mechanism for the prevention of torture has made 169 visits to:

- Prisons for men and women (74 visits: 51 to prisons for men and 23 to prisons for women)
- Detention and sentence enforcement centres for adolescents in the Province of Panamá (13 visits)
- Children's shelters (18 visits)
- Homes for older persons (55 visits)
- The temporary humanitarian assistance station in Peñita, Province of Darién (2 visits)
- The temporary detention centre located on the Air and Naval Service base on Punta Coco island (1 visit)
- Police stations (4 visits), and
- The temporary detention centre of the Police Investigations Directorate in Ancón (2 visits).

89. On some occasions, there have been delays in providing access to centres because of a lack of knowledge of the regulations governing the national mechanism for the prevention of torture. However, once the scope of the mechanism's mandate was understood, the visits were allowed to take place without further impediment.

90. Training sessions have been held for public officials working in the various centres under the authority of the State in order to raise their awareness of the mechanism's mandate.

91. Despite the foregoing, the visit to the temporary detention centre located on the Air and Naval Service base on Punta Coco island, conducted together with the Ombudsman's Office, had to be announced and coordinated in advance with the Ministry of the Interior and the National Air and Naval Service, which manages transportation facilities and some logistics facilities there, because the centre's geographic location makes it hard to reach.

92. Similarly, the national mechanism for the prevention of torture has had access to the migrant reception centres in the Province of Darién, which it has visited twice. It is planning to visit administrative detention centres for migrants in the coming months but has not yet considered visits to mental health facilities.

93. Despite the economic impact that the pandemic has had on States around the world and, consequently, on public sector budgets, including the budget of the Ombudsman's Office, the national mechanism for the prevention of torture has continued and will continue to carry out its mandate effectively and independently through its visits to the various centres under the authority of the State.

94. On 24 February 2021, the Secretariat for Human Rights, Access to Justice and Gender of the Attorney General's Office held a virtual conference entitled "The Non-Applicability of Statutes of Limitations to Crimes against Humanity: Lessons Learned from the Truth Commission", in which 24 people – 11 women and 13 men – participated. The event lasted two hours.

95. The Prison Training Academy offers educational and training opportunities that are necessary for the effective provision of prison services. They are geared towards providing the technical and custodial staff of the Directorate-General of the Prison System and the Institute for Interdisciplinary Studies with the training tools they need to achieve the aims of their work. It has held various courses, workshops and training sessions for administrative, technical and custodial staff.

96. Additionally, in order to continue to promote the dignity of persons in State custody, a diploma course has been taught on the prevention of torture, other ill-treatment and cruel, inhuman or degrading punishment.

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)

97. In criminal matters, all offences under investigation give rise to civil liability for the harm caused by perpetrators, instigators or participants and those who have benefited from exculpatory circumstances, as provided for in article 128 of the Criminal Code. The actors mentioned in article 1645 of the Civil Code, including the State, decentralized State institutions and municipalities, which are liable when the harm is caused by the conduct of the public official tasked with undertaking the measure in question, in the exercise of his or her functions, are jointly and severally liable for the payment of damages.

98. Article 128 of the Criminal Code states that "the termination of criminal proceedings or the extinguishment of a sentence does not result in exoneration from civil liability". Therefore, a claim for damages arising from the commission of an offence is not precluded by the expiration of the statute of limitations, and especially not in cases of enforced disappearance, where no statute of limitations applies to either the criminal proceedings or the sentence.

99. Under the Constitution (art. 206 (2)) and by virtue of the legal category (Judicial Code, art. 97), the Third Administrative Litigation Division of the Supreme Court is competent to hear cases involving the State's or another public entity's liability for damages arising from offences committed by any public officials or entities in the exercise of their functions or on the pretext of exercising them.

100. A criminal verdict identifying the perpetrator(s) in a case of enforced disappearance is entirely sufficient for a claim for damages arising from the offence if the restorative measure described in article 122 of the Code of Criminal Procedure was not granted during the criminal proceedings. Under no circumstances is any action by a criminal court required in order for a civil claim to be allowed. A reading of article 152 of the Criminal Code (as amended by Act No. 55 of 2016) indicates, in line with article 2 of the Convention, that the involvement of an authorized agent is required in cases of enforced disappearance, since the criminal offence is carried out by agents of the State or by persons or groups of persons acting with the authorization, direct or indirect support or acquiescence of the State.

101. If domestic remedies have been exhausted without a response having been obtained, or if the response provided by the judicial authorities of Panama is defective, the victim may submit his or her claim to the inter-American human rights system.

102. Panama is also a State party to the American Convention on Human Rights and has recognized the competence of the inter-American human rights protection system. Therefore, once domestic remedies have been exhausted, alleged victims who feel that their fundamental rights have not been protected and that the State has not provided the required safeguards may bring a case against Panama in the inter-American system in order to obtain appropriate and satisfactory reparation.

103. The time period for filing a claim for compensation/reparation for harm arising from a case of enforced disappearance is indeed limited by the statute of limitations for criminal proceedings, as provided for under the law in force at the time that the events occurred. Under article 1706 of the Civil Code, once the judgment in the criminal case is final, the victim has one year to file the corresponding civil suit with a civil court.

104. Articles 50 and 57 of the Civil Code address declarations of absence and the presumption of death of the absent person, respectively. As these are civil proceedings (declaration of absence or presumption of death of the absent person), the claims involved in the proceedings are different from those in criminal proceedings. Consequently, civil proceedings relating to a declaration of absence or the presumption of death of the absent person create no obligations for the State beyond the recognition of the civil claims because the proceedings are merely declaratory. The State is, however, obliged to clarify the fate of the disappeared person once a criminal investigation into a case of enforced disappearance is initiated.

105. Under Panamanian law, the following proceedings can be initiated in response to the disappearance of a person:

- Declaration of absence
- Presumption of death of the absent person.

106. Both are declaratory proceedings that are classified under Panamanian law as non-adversarial civil proceedings (Judicial Code, arts. 1460 et seq.).

107. Panamanian law provides for provisional measures in cases where persons have disappeared from their homes and their whereabouts are unknown. These measures may be requested by a person with standing (a spouse, parent, child or grandparent) or by the judicial branch. Once a provisional measure has been requested, the court may appoint someone to represent the absent person (Civil Code, art. 47).

108. Proceedings for a declaration of absence are initiated before a civil circuit court. The basic requirement for the initiation of such proceedings is for two years to have elapsed without news of the absent person or since news of the person was last received or for five years to have elapsed if the absent person left someone in charge of his or her property. Once the time period has elapsed, the person may be judicially declared absent (Civil Code, art. 50).

109. Once proceedings for obtaining a declaration of absence are initiated, the following will occur:

- A guardian ad litem will be appointed to safeguard the interests of the absent person.
- A notice will be published in a newspaper with a national circulation, summoning anyone with news of the absent person to inform the court and anyone believing they have a right to act as guardian to appear at the proceedings (Judicial Code, art. 1461).

110. During these proceedings, the judicial branch safeguards the interests of the absent person (Judicial Code, art. 1466). A judicial declaration of absence will not take effect until six months after its publication in the Official Gazette (Civil Code, art. 52).

111. Proceedings for the presumption of death of the absent person are initiated before a civil circuit court. The basic requirement for the initiation of such proceedings is for five years to have elapsed since the absent person disappeared or since news of him or her was last received or for three months to have elapsed if his or disappearance was due to war, shipwreck, fire or any other disaster or accident. Once the applicable time periods have elapsed, the person may be judicially declared absent. The proceedings will have the following effects:

- Once the decision regarding the presumption of death is final, succession to the property of the absent person will be possible (Civil Code, art. 59).
- A guardian ad litem will be appointed to safeguard the interests of the absent person (Judicial Code, art. 1467).
- A notice will be published in a newspaper with a national circulation, summoning anyone with news of the disappeared person to inform the court (Judicial Code, art. 1467).
- The claim will be provisionally registered with the Public Registry (Civil Code, art. 1778 (2)).
- The judgment containing the declaration of the presumption of death on the basis of disappearance will be registered (Civil Code, art. 1776 (2)).
- In the judgment, the Civil Registry will be ordered to prepare the death certificate (Judicial Code, art. 1467).

112. There are currently no bills or preliminary bills under which legal measures, other than those that already exist in the Panamanian civil and judicial codes, are being proposed with respect to persons who have disappeared as a result of enforced disappearance.

113. Article 158 of the Criminal Code – which is in chapter I of book II, title II, on offences against liberty – criminalizes child abduction in the following terms:

“Article 158. Anyone who, for motives other than profit, removes minors or persons lacking capacity from the custody of their parents or guardian or of another person responsible for looking after, raising or caring for them, or who unduly detains them or removes them from the country without the authorization of those persons who have legal custody of them or in whose care they are shall be liable to punishment of 3 to 6 years’ imprisonment.”

114. Furthermore, article 205 of the Criminal Code states the following:

“Article 205. Anyone who deletes or alters the identity of a minor in civil registry records shall be liable to punishment of 3 to 5 years’ imprisonment. The same punishment shall apply to anyone who knowingly hands over a minor to a person who is not his or her parent or to anyone who is not authorized to take him or her.”

115. Panamanian civil law is silent on whether enforced disappearance can be a basis for annulling an adoption. The grounds for annulling adoptions are generic; given those general terms, a hypothetical case can therefore be imagined where an adoption is annulled because the child’s origins can be traced back to an act of enforced disappearance.

116. In terms of supranational rules, articles 20 and 21 of the Convention on the Rights of the Child, which deal with adoption, do not refer to enforced disappearance.

117. Articles 14 and 16 of the Inter-American Convention on Conflict of Laws concerning the Adoption of Minors refer questions relating to the annulment of adoptions to the law under which they were authorized; that is, Act No. 46 of 2013. This international convention also does not address the annulment of adoptions on the grounds of enforced disappearance.

118. As yet, no legislative action has been taken to bring national legislation into conformity with article 25 (4) of the Convention.
