



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Costa Rica under article 29 (1) of the Convention*

I. General information

1. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications (arts. 31–32).
2. Please provide information on the powers and authorities of the Ombudsman's Office with respect to cases of enforced disappearance and on the activities of the Office as they relate to the Convention and give examples. Please indicate whether the Office has received any complaints concerning rights and obligations under the Convention; if it has, please describe the action taken and its results.
3. Please also provide information on the process involved in the preparation of the State party's report (CED/C/CRI/1), in particular with regard to any consultations held with representatives of civil society.
4. With reference to paragraph 22 of the State party's report, please specify whether the provisions of the Convention can be directly invoked and/or applied by domestic courts and, if they can, please provide examples.

II. Definition of the criminal offence of enforced disappearance (arts. 1–7)

5. With reference to paragraph 20 of the State party's report, which states that none of the provisions on states of emergency in the Costa Rican legal system permit acts that would undermine individuals' freedom of movement, please specify the rights that may be restricted if a state of emergency is declared and, in particular, indicate whether and to what extent the rights recognized in article 37 of the Costa Rican Constitution may be suspended. Please also provide information on any steps taken by the State party during the coronavirus disease (COVID-19) pandemic to ensure that its policies and actions comply with its obligations under the Convention, in particular with regard to articles 1, 12, 17, 18 and 24 (arts. 1, 12, 17, 18 and 24).
6. Bearing in mind that bill No. 20187 frames the offence of enforced disappearance solely in the terms used in the Rome Statute of the International Criminal Court, please indicate whether the State party plans to amend the Criminal Code to specifically define enforced disappearance as an offence that includes all the elements and requirements called for by the Convention. Furthermore, since enforced disappearance is not defined as a discrete offence, please provide information on how the Convention is actually implemented at present; specifically, please indicate the legal provisions under which individuals engaging

* Adopted by the Committee at its twenty-first session (13–24 September 2021).



in the conduct described in article 2 of the Convention are identified, prosecuted and punished (arts. 1–2).

7. Regarding paragraph 33 of the State party's report, which indicates that the offence of enforced disappearance is directly applicable because the Convention has direct effect in domestic law, please explain how it would be possible for criminal proceedings to be initiated on a charge of enforced disappearance at present, given that that no such offence has been defined in the Criminal Code (arts. 1–2).

8. Taking into account that paragraph 34 of the report specifically refers to the offence of kidnapping for extortion (Criminal Code, art. 215) as an offence similar to enforced disappearance, please provide information on the application of this offence in cases where an arrest, detention or abduction is not carried out for ransom or for political, sociopolitical, religious or racial reasons. As the report also refers to the offence of concealment of detainees by the authorities (Criminal Code, art. 190), please indicate the nature of the responsibility that would be borne by a person who, while not part of a government entity or an agent, commits this offence with the authorization, support or acquiescence of the State (arts. 1–2).

9. Please indicate whether any complaints have been lodged or any cases have been pursued that relate to the commission of any of the actions described in article 2 of the Convention by persons or groups of persons acting without the authorization, support or acquiescence of the State, including disappearances of migrants and disappearances committed for the purpose of trafficking. Please give examples of specific cases and provide information on the number of complaints made, the investigations conducted and their outcomes, the penalties imposed on the persons responsible and the reparation provided to the victims (arts. 3, 12 and 24).

10. Taking into account article 36 of the Criminal Code, which limits the exemption from responsibility for due obedience to cases in which an order does not entail a clearly punishable offence, please describe the procedure that a subordinate must follow to demonstrate the illegality of an order and indicate which authority the subordinate must notify of his or her disagreement, who is responsible for resolving the disagreement and how it is ensured that the subordinate will not be subjected to sanctions or reprisals (art. 6).

11. In the light of paragraphs 42, 46 and 48 of the State party's report, please indicate: (a) how the State party plans to establish, under domestic law, the criminal responsibility of any person who orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an act of enforced disappearance; and (b) whether the State party intends to specifically establish, under domestic law, the criminal responsibility of superiors in the terms required under the Convention (art. 6).

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

12. With reference to paragraphs 59 and 60 of the State party's report, please specify the statute of limitations that applies to enforced disappearance as a continuing offence (art. 8).

13. With reference to paragraph 62 of the State party's report, please: (a) specify whether articles 4 to 6 of the Criminal Code should be deemed to also cover offences committed on board a ship or aircraft registered in Costa Rica; and (b) explain how, in the absence of an expressly defined offence under domestic law, article 7 of the Criminal Code is applied to cases of enforced disappearance while ensuring that the State party exercises jurisdiction irrespective of the nationality of the perpetrator and the place where the offence was committed (art. 9).

14. With reference to paragraphs 30 and 84 of the State party's report, please explain how it is ensured in practice that all cases of enforced disappearance are investigated ex officio, even if there has been no formal complaint. In addition, please provide information on how it is ensured that a search is immediately initiated when an offence of enforced disappearance comes to light (art. 12).

15. Taking into account the definition of a victim contained in article 70 (a) and (b) of the Code of Criminal Procedure, please: (a) explain how the State party guarantees the right of a disappeared person's family members and loved ones to report the facts and to participate actively in proceedings as bearers of the procedural rights granted to victims in article 71 (3) of the Code of Criminal Procedure; (b) specify the criteria used to apply the provisions of article 71 of the Code of Criminal Procedure and Act No. 8720 on Protection for Victims, Witnesses and Other Persons Involved in Criminal Proceedings to victims of enforced disappearance other than the disappeared person; (c) clarify the roles of the Victim and Witness Protection Unit of the Judicial Investigation Agency and of the Crime Victim Support and Protection Office of the Public Prosecution Service and describe how the two entities work together; and (d) provide information on the procedures that victims must follow in order to gain access to protection measures and indicate whether any persons involved in cases of enforced disappearance have benefited from such measures (art. 12).

16. Please indicate whether there are any mechanisms in place to exclude from the investigation into a suspected case of enforced disappearance any members of law enforcement or security forces who are accused of having committed the offence or having been involved in its commission. Please also indicate whether, under domestic law, the suspension from duty of a State official suspected of involvement in the commission of an offence of enforced disappearance takes effect from the outset of the investigation and remains in place throughout it; if it does, please provide information on the applicable law (art. 12).

17. With reference to paragraphs 92, 93, 95 and 96 of the State party's report, bearing in mind that enforced disappearance is not defined as a criminal offence under the Criminal Code, please provide information on the steps taken to ensure that enforced disappearance is designated as an extraditable offence in all treaties with other States, whether or not they are parties to the Convention and irrespective of the place where the offence was committed. Please also describe any potential obstacles to extradition that might exist under national law, extradition treaties or agreements concluded with third countries with regard to enforced disappearance. Please also indicate whether enforced disappearance has been included in extradition treaties concluded after the entry into force of the Convention (arts. 9 and 13).

18. With reference to paragraphs 102 to 105 of the State party's report, please provide information on the domestic laws that apply to the requests for legal assistance or cooperation provided for under articles 14, 15 and 25 (3) of the Convention and on any restrictions or conditions that may be placed on these requests. Please also provide information on the number of requests for international cooperation that the State party has received or made in connection with cases of enforced disappearance since the entry into force of the Convention (arts. 14, 15 and 25).

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

19. With respect to paragraphs 106 and 108 of the State party's report, please provide detailed information on the measures taken to ensure strict compliance, in law and in practice, with the principle of non-refoulement under article 16 of the Convention. In particular, please: (a) provide information on any legislation prohibiting the expulsion, return, surrender or extradition of a person when there are substantial grounds for believing that that person could be subjected to enforced disappearance and on the mechanisms and criteria used in determining whether such a risk exists and in assessing it; (b) indicate whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, specify who is authorized to file the appeal, indicating the authority that it must be brought before and the procedure that must be followed, and whether the appeal has suspensive effect; (c) provide information on mechanisms to ensure that each case is assessed individually before an extradition, surrender, return or expulsion is carried out; and (d) indicate whether the State party accepts diplomatic assurances where there are substantial grounds for believing that a person would be in danger of being subjected to enforced disappearance (art. 16).

20. With reference to paragraphs 68 to 75 of the State party's report, please provide information on any exceptions to which the right of persons deprived of their liberty to communicate immediately with counsel, their family or any other person of their choice is subject. Please also provide information on the measures taken to guarantee that, in practice, as soon as they are detained or transferred from one place of detention to another, all persons deprived of their liberty immediately have access to a lawyer, can inform a family member or any other person of their choice of their deprivation of liberty and, in the case of foreign nationals, can communicate with their consular authorities. Please indicate whether there have been complaints or reports concerning failures to give effect to these guarantees and, if so, please provide information about the proceedings launched and their outcomes, including any sanctions imposed (art. 17).

21. Please also describe in detail the domestic legal provisions relating to solitary confinement or incommunicado detention (para. 79 of the report), particularly with regard to judicial intervention and the rights granted to persons being held incommunicado, and, if applicable, explain how domestic law is consistent with article 17 of the Convention (art. 17).

22. Please provide further information on habeas corpus proceedings and indicate what matters can be appealed, what the procedural deadlines are for such proceedings and whether the judge in the case can visit places of deprivation of liberty. Please also indicate whether the suspension of habeas corpus is one of the restrictions that may be imposed if a state of emergency is declared (arts. 1 and 17).

23. With respect to the national mechanism for the prevention of torture, please: (a) indicate whether it has the authority to conduct regular visits, including during the COVID-19 pandemic, to all places where there may be persons deprived of their liberty, regardless of the nature of those places, including migrant detention centres, juvenile detention centres and mental health institutions; (b) provide information on the laws in place that allow it to have immediate, unrestricted access to all places of deprivation of liberty and to carry out unannounced visits, including during the COVID-19 pandemic; and (c) describe the measures taken to ensure that it has the necessary resources to fulfil its mandate effectively and independently. Please also indicate whether any other national or international entities or organizations have access to places of deprivation of liberty and specify the conditions to which such oversight visits are subject (art. 17).

24. With reference to the records mentioned in paragraphs 113, 135 and 136 of the State party's report, please clarify what records are kept on persons deprived of their liberty, including in juvenile detention centres, police stations, migrant detention centres, mental health institutions and other places where there are persons deprived of their liberty. In addition, please: (a) indicate how existing records are linked with each other in order to facilitate the search by family members and loved ones for persons deprived of their liberty; (b) specify what information is included in these records and on the forms and in the Centralized Criminal Register of the Judicial Investigation Agency mentioned in paragraphs 118 and 119 of the report and provide information on the relevant legislation; (c) provide information on measures taken to ensure that all records are immediately updated and properly monitored, including during the COVID-19 pandemic; and (d) indicate whether the Directorate-General of the Ministry of Public Security has implemented the recommendation of the national mechanism for the prevention of torture mentioned in paragraph 114 of the report (art. 17).

25. With reference to paragraphs 115, 119 and 121 of the State party's report, please explain how access is ensured, including during the COVID-19 pandemic, to the information mentioned in article 18 (1) of the Convention for any person with a legitimate interest, in addition to the relevant authorities. Please also describe the measures taken to prevent and impose sanctions for the conduct described in article 22 of the Convention (arts. 18 and 22).

26. In relation to paragraphs 141 and 142 of the State party's report, please indicate whether the State party plans to provide specific training on the Convention to civilian and military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of his or her liberty, including judges, prosecutors and other officials responsible for the administration of justice (art. 23).

V. Measures to protect and ensure the rights of victims of enforced disappearance (art. 24)

27. With respect to paragraphs 145 and 159 of the State party's report, please indicate whether, in addition to the warning system established by Act No. 9307, a mechanism is in place to immediately launch emergency searches for disappeared persons and specify the time frames, protocols and/or procedures observed by the authorities in searching for, locating and releasing disappeared persons and, in the event of their death, identifying and returning their remains (arts. 12 and 24).

28. Please provide information on the steps that the State party intends to take to bring the definition of a victim contained in article 70 of the Code of Criminal Procedure into line with the definition that appears in the Convention. Please also: (a) provide information on the procedures available to victims of enforced disappearance for obtaining compensation and full reparation and the time limits applying to those procedures; (b) specify the types of reparation available to victims; (c) indicate what authority is responsible for providing compensation and/or reparation; and (d) indicate whether access to compensation and/or reparation is contingent on the issuance of a judicial decision (art. 24).

29. Please provide information on existing legislation in areas such as social welfare, financial matters, family law and property rights pertaining to the legal status of disappeared persons whose fate has not been clarified and to that of their family members (art. 24).

VI. Measures to protect children against enforced disappearance (art. 25)

30. Please provide detailed information on the laws applicable to the acts described in article 25 (1) of the Convention and indicate whether there are plans to define those acts as specific offences under the Criminal Code. Please also provide information on: the procedures in place for reviewing and, if necessary, annulling any adoption or placement that originated in an act of enforced disappearance; measures for restoring a child's identity, including his or her nationality, name and family relations, while upholding the best interests of the child; and any limitations that may apply (art. 25).
