



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 366th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 15 September 2021, at 3 p.m.

Chair: Ms. Lochbihler (Vice-Chair)

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*In the absence of Ms. Villa Quintana (Chair), Ms. Lochbihler (Vice-Chair) took the Chair.
The meeting was called to order at 3 p.m.*

Consideration of reports of States parties to the Convention (continued)

Initial report of Panama (CED/C/PAN/1; CED/C/PAN/Q/1; and CED/C/PAN/RQ/1)

1. *At the invitation of the Chair, the delegation of Panama joined the meeting via video link.*
2. **Ms. Castro** (Panama), introducing the initial report of Panama (CED/C/PAN/1), said that a national standing committee had been established pursuant to Executive Decree No. 7 of 2012 to oversee the country's compliance with its commitments under national and international human rights law and to follow up on the treaty bodies' recommendations. A number of legislative, judicial and public policy advances had been made, with the support of civil society, as part of ongoing efforts to address enforced disappearance, which, within the legal framework now in place, was treated as a complex form of human rights violation. The introduction of provisions expressly criminalizing enforced disappearance as a separate offence in line with international standards, the broadening of the criteria that must be met in order for victim status to be recognized and the legal recognition of the right to the truth were just some of the positive developments that had been achieved.
3. The legal obstacles that had previously impeded the identification and punishment of those responsible for offences of enforced disappearance were being progressively eliminated and cases were being reopened across the country. A conciliation procedure for the amicable settlement of complaints before the Inter-American Commission on Human Rights was also available to victims, and the Government of Panama, in conjunction with groups of families of disappeared persons, had stated its readiness to use that dispute resolution mechanism.
4. During the coronavirus disease (COVID-19) pandemic, there had been no suspension of the right to the remedy of habeas corpus. The Public Prosecution Service had continued to investigate crimes and initiate the relevant criminal proceedings, and the courts had continued to ensure the application of legal safeguards. The Ministry of the Interior, working in coordination with judicial institutions, had introduced temporary health and safety measures, as recommended by the Ministry of Health, to contain the spread of the virus among persons deprived of their liberty, and medical and physical examinations had been carried out to detect and treat other chronic illnesses and thus guarantee appropriate humanitarian treatment.
5. **Mr. López Ortega** (Country Rapporteur) said that he would appreciate clarification as to whether the State party intended to recognize the Committee's competence to receive and consider individual communications under articles 31 and 32 of the Convention in the near future.
6. He would like to know whether the 67 cases mentioned in paragraph 8 of the replies to the list of issues (CED/C/PAN/RQ/1) referred to the number of investigations that had been carried out or to the number of people who had been forcibly disappeared during the dictatorship. It would also be useful to know the exact number of victims within the meaning of article 2 of the Convention, the number of court cases opened and the number of convictions secured in offences of enforced disappearance. Noting that article 152 of the Criminal Code, which defined and established penalties for the offence of enforced disappearance, applied from 2016 onwards only, he asked which offences had been used to charge and convict the perpetrators of enforced disappearance during the military dictatorship and following the 1989 invasion of Panama by the United States of America, and how many convictions had been obtained. It would be interesting to know whether there was a centralized register of missing and disappeared persons in Panama and, if so, what information was included in the register entries. He would also like to know whether an inter-agency search commission, as envisaged in the National Strategy for Public Security, had been set up.
7. He would be grateful for information about offences related to enforced disappearance, such as abduction and illegal deprivation of liberty, committed by non-State

actors without the knowledge or acquiescence of the Government, including the number of cases reported and the steps taken to monitor and investigate those crimes. It would be interesting to know the number of trials that had taken place for such offences and their outcome. In particular, he wished to know: whether investigations had been carried out into reports of human rights abuses, including enforced disappearance, committed by criminal gangs operating around the migration route through the Darién jungle; what difficulties the State party had faced when attempting to conduct such investigations; which gangs were involved; and how many of their members had been convicted in Panama. It would be helpful if the delegation could confirm reports of mass graves containing remains of unidentified victims. If such graves existed, he wondered whether the State party took DNA samples to identify the victims and whether there was a protocol for searching for remains, identifying the victims' families and returning the remains to them. Noting that many such crimes occurred in the region bordering Colombia, he asked what cooperation mechanisms the two countries had established to coordinate their crime-fighting efforts.

8. He would appreciate information about how plea bargains were handled and how they were reviewed by the due process judge. He wished to know what role the victims played in plea bargains, including, in particular, whether their consent was required and their protection was a criterion that the due process judge had to consider before agreeing a plea bargain. He would also like to know how the State party met its obligations under article 6 (1) (b) (iii) of the Convention given that the State itself had failed to adopt sufficient measures to prevent or repress the commission of offences of enforced disappearance.

9. **Mr. Ravenna** (Country Rapporteur) said that he would welcome details of the restrictive measures that had been adopted to protect the general public during the COVID-19 health crisis. He wished to know how many court cases, if any, had been delayed or otherwise affected by such measures and which offences the cases had concerned. He would also appreciate details of the criteria that determined whether an offence should be treated as a continuous crime, especially in the context of cases of enforced disappearance that had occurred before the State party's ratification of the Convention.

10. With reference to paragraphs 39 and 40 of the State party's replies to the list of issues, he would appreciate further clarification of the procedures applicable to the suspension of public officials accused of involvement in an enforced disappearance and the exclusion of law enforcement or security forces from an investigation into an enforced disappearance when one or more of their members stood accused of the offence. He also wished to learn more about the different forms of protection afforded to victims of enforced disappearance, and, in particular, whether they were consonant with article 24 of the Convention. With reference to paragraph 51 of the State party's replies to the list of issues, he would be grateful if the delegation could clarify why the State party had submitted no requests for international judicial assistance in criminal matters in respect of cases of enforced disappearance, for example, that had occurred following the 1989 invasion.

The meeting was suspended at 3.45 p.m. and resumed at 4.05 p.m.

11. **Mr. Escartin** (Panama) said that the disappearances that had occurred during the dictatorship had taken place when enforced disappearance had not yet been expressly criminalized in national legislation. The events related to those disappearances had therefore been referred either to the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights. The State either had recognized or had determined to assume international responsibility for human rights violations in the case of *Rita Irene Wald Jaramillo et al. v. Panama* and in cases No. 13.017 C and No. 13.017 A, involving the families of victims of the military dictatorship. In all three cases, the State had established amicable settlements with the victims and their families, under which it had undertaken to deliver public apologies for and publicly acknowledge the events, provide financial compensation to the victims' families, and, in respect of case No. 13.017 C, conduct an investigation into the events, punish those found responsible and erect a monument to the memory of the victims. The amicable settlements in cases No. 13.017 C and No. 13.017 A were currently being implemented under the supervision of the Inter-American Commission on Human Rights.

12. In the case of *Heliodoro Portugal v. Panama*, the Inter-American Court of Human Rights, in its judgment of 12 August 2008, had attributed international responsibility to the State for the enforced disappearance and extrajudicial execution of Heliodoro Portugal and the lack of investigation into the events in question, and had ordered it to pay pecuniary and non-pecuniary damages to the victim's family, conduct an investigation into the events that had led to the violation and punish those found responsible, publish parts of the judgment in the Official Gazette and a newspaper with widespread circulation, publicly acknowledge its responsibility for the violation and provide appropriate medical and psychological support to the family of the victim, inter alia. The judgment was currently being implemented under the supervision of the Inter-American Commission on Human Rights. In total, 30 cases relating to events that had occurred during the military dictatorship had been referred either to the Commission or to the Court. One case – request No. 882-03 – was still pending the issuance of a substantive report by the Inter-American Commission.

13. Given that the invasion of 1989 had also taken place before enforced disappearance had been criminalized in national legislation, cases related to possible enforced disappearances alleged to have occurred during the invasion had likewise been referred to international bodies. For example, the case of *José Isabel Salas Galindo et al. v. United States* had been referred to the Inter-American Commission on Human Rights. During the invasion, at least 200 Panamanian civilians had lost their lives, had been injured or had suffered material damage as a result of the conflict with foreign military forces. Some individuals' whereabouts remained unknown as of the issuance of the Commission's report on the case. In the context of the invasion, the conduct described in article 2 could not, by definition, be attributed to the State of Panama; however, in line with its obligations under articles 3 and 9 of the Convention, the State had taken action to shed light on the events in question.

14. **Ms. Gozaine** (Panama) said that the conduct described in article 2 of the Convention could not be attributed to the State in the case of persons who died attempting to cross the Darién jungle in order to enter Panama illegally. The State was in no way involved in the deaths of such persons and no protection was offered by the State to persons who attempted to cross the border into Panama at illegal points of entry – there were no border controls on entry to Panama through the Darién region because the jungle was far too large and dense – but legal and medical assistance was provided to migrants in an irregular situation who entered Panama at legal points of entry. In 2021, the deaths of 41 persons who had attempted to cross the jungle into Panama had been reported by the deceased's families. Most of those persons had died by drowning, while the remainder had died as a result of natural causes or underlying health conditions. There had been no instances of enforced disappearance of migrants attempting to enter Panama illegally but, since 2020, around 160 crimes, including assault, theft and sexual assault, had been reported by migrants in an irregular situation who had entered Panama through the Darién jungle. However, in most cases, the migrants who had reported those crimes had already continued their journey onward into Costa Rica by the time an investigation had been opened, making it impossible to resolve their cases. The remains of all persons who had died in the Darién jungle in 2021 had been located and returned to their families. Only around 1 per cent of persons who entered the country through the Darién jungle sought refuge in Panama; most wished to continue their journey northward.

15. **Mr. Almario** (Panama) said that, in 2021, over 30 investigations had been conducted into cases of alleged smuggling of migrants or trafficking in persons. In 2020, the members of eight organized crime groups had been convicted for their involvement in migrant smuggling. Theft, assault and sexual assault were the main types of crime reported by migrants in an irregular situation and the Public Prosecution Service had established specialized units that dealt specifically with crimes affecting such migrants. The Office of the Counsel General of Panama was a party to an international agreement concluded between the public prosecution services of various countries in South and Central America concerning cooperation in the prevention of migrant smuggling and the investigation and prosecution of the international criminal networks that facilitated the offence.

16. **Ms. De Castro** (Panama) said that the overriding purpose of the application of mitigating circumstances, as provided for in article 153 of the Criminal Code, in the context of a plea-bargaining arrangement was to help to find the victims, whether dead or alive. Their application thus met the criteria laid down in article 7 (2) (a) of the Convention, serving to

reduce the time taken to locate victims while also ensuring that the perpetrators were punished. Mitigating circumstances were established only where strictly necessary and where the benefits outweighed the costs, and were always subject to the oversight of a due process judge, who ensured that the sentence was commensurate with the gravity of the crime, the rights violated and their effect on the victim. Pursuant to a Supreme Court judgment of 31 July 2017, when a plea bargain was agreed, victims always had the right to express an opinion on the terms negotiated and to be kept informed. The terms of the agreement must safeguard their rights and the prosecutor had discretionary power to include reparations for the victims as part of the arrangement.

17. Whereas under the former semi-inquisitorial system prosecutors had had the authority to decide for themselves what interim measures should be imposed, under the adversarial system of criminal justice, when a public official was accused of involvement in an enforced disappearance, the Public Prosecution Service must apply to a due process judge for the imposition of interim measures, which might consist of suspension from duty or pretrial detention, according to the judge's choice. In order to safeguard the suspect's rights, the due process judge was required to verify that the facts of the case reported before trial met the minimum requirements for the interim measure in question, and the measure could be appealed before the courts. When investigating a case, prosecutors could take administrative measures to prevent certain public security officers from working on that case if the officers in question were believed to have links to possible instances of enforced disappearance.

18. **Mr. Ravenna** said that he would appreciate further clarification regarding the statement, in paragraph 31 of the replies to the list of issues, that the definition of enforced disappearance set forth in article 152 of the Criminal Code could not be applied to cases of enforced disappearance that had begun prior to the criminalization of the offence, even if they had come to an end thereafter or had not yet ceased, because Panamanian law prohibited the retroactive application of new legislation for all offences. He was curious to hear how the Government could make that argument, given that enforced disappearance was a continuous crime and that, under article 8 (1) (b) of the Convention, the term of limitation commenced from the moment when the offence of enforced disappearance ceased.

19. **Mr. López Ortega**, noting that, according to the delegation, because enforced disappearance had not been expressly criminalized at the time of the dictatorship, the only information that the State party could provide in respect of that period related to the 30 amicable settlements reached before the Inter-American Commission on Human Rights and Inter-American Court of Human Rights, said that he would like to know whether those 30 cases were the only registered cases of enforced disappearance during the dictatorship, and, in particular, whether there was any way for victims of enforced disappearance during the dictatorship to be recognized as such by the domestic authorities without involving the Court and the Commission. Noting also that, in paragraph 27 of the initial report, the State party referred to cases of enforced disappearances being prosecuted as intentional homicide, he asked whether, in view of the continuous nature of the crime, the definition of enforced disappearance set forth in article 152 of the Criminal Code could now be applied to those cases of intentional homicide. Greater clarity regarding the number of victims of enforced disappearance during the period following the United States invasion and information about any domestic investigations into those disappearances would also be helpful. It would likewise be useful to know the source of the figures provided in the replies to the list of issues.

20. Despite the fact that related figures were easily accessible on the Public Prosecution Service's website, the delegation had not provided the requested statistics on the number of abductions reported in Panama. It had also not fully explained why cases of trafficking of migrants in the Darién jungle had not been investigated as offences of enforced disappearance. He urged the Committee to provide more comprehensive responses to those questions.

21. It was noteworthy that the mitigating circumstances listed in article 153 of the Criminal Code did not include the provision of information on the whereabouts of disappeared persons' remains, which information was hugely important in alleviating relatives' pain. While it was true that the plea-bargaining agreements mentioned by the delegation could serve to alleviate pain, the Committee took the view that such agreements entailed major procedural difficulties.

22. He would appreciate further information about the powers of due process judges. While it was clear that their duties included ensuring proportionality of punishment, the relevant legislation did not mention their role, if any, in protecting victims' rights. The Supreme Court judgment referred to by Ms. De Castro apparently established the right of victims to be heard and to be kept informed, but clarification was needed as to whether victims could oppose a plea bargain and participated actively in the negotiation of terms. Similarly, while it appeared that, based on the Supreme Court judgment, prosecutors had the power to include reparations for victims in the plea bargain, it was unclear whether reparations were a required element or could be included only with the victims' consent.

23. The Committee was still awaiting a response to its question about legislation and measures adopted to address the criminal responsibility of superior officers who ordered the commission of an enforced disappearance.

24. The State party appeared to state, in paragraph 39 of the replies to the list of issues, that the suspension from duty and pretrial detention of a State official under investigation was conditional upon the approval of a due process judge. He wished to know whether such approval was a discretionary power enjoyed by the Public Prosecution Service or a requirement established by law. Referring lastly to the scope of the definition of victim established in domestic legislation, he asked what rights were legally recognized to friends of the victims, as opposed to relatives, since they also had rights under the Convention in the context of both investigations and reparations.

25. **Mr. Albán-Alencastro** said that he too was concerned that the exclusion from an investigation of security forces with possible links to acts of enforced disappearance appeared to be conditional. He would appreciate clarification as to whether an entire law enforcement or security force could be excluded when one or more of its members had been involved in committing the offence, rather than just the individuals specifically implicated. The exclusion of the entire force was important, not only because of the potential for obstructing the investigation but also because of the mistrust that its involvement could generate.

26. Recalling that, according to the National Migration Service, 41 disappearances in the Darién jungle had been reported to date in 2021 and the victims' remains had been recovered and returned to their families in all cases, he noted that the Convention required the Government to keep records of all disappearances reported and any related search and recovery activities for every year since 2011, the year of its ratification. He would therefore like to know whether the authorities maintained a register of disappeared migrants and recovered bodies that covered all years going back to 2011; whether any signs of mass graves had been identified; what data could be used to identify recovered human remains; and whether any specific protocol was used in the search for those migrants. Lastly, he would like information about cooperation between the Panamanian authorities and other States in the investigation of disappearances of migrants, the search for and recovery of their remains and their return to their families.

27. **Ms. De Castro** (Panama) said that the delegation was awaiting the latest figures on abductions from the statistics department of the Public Prosecution Service but that, in the meantime, relevant information could be found on the Service's website. As mentioned previously, in Panama, cases of enforced disappearance that dated from the time of the dictatorship had been investigated, tried and punished as cases of intentional homicide, since enforced disappearance had not been expressly criminalized in national legislation at the time when the offences had occurred and the Constitution prohibited the retroactive application of changes in the law. Various steps had been taken to reopen proceedings since enforced disappearance had been defined in the Criminal Code as a separate offence of a continuous nature, but it was important to remember that the acts of enforced disappearance previously investigated as intentional homicides had occurred in the 1960s and that the rights of the persons implicated needed to be protected while at the same time ensuring that victims suffered no further harm; a just balance between the rights of the accused and those of the victims must therefore be found.

28. The Code of Criminal Procedure permitted the use of plea-bargaining agreements under which judges could agree a reduction in sentence, prior to the trial, if the suspect cooperated in the investigation and the search for those responsible. Such agreements did not

necessarily exempt their beneficiaries from punishment; rather, they provided for mitigating circumstances to be applied in proportion to the extent to which they had assisted the investigation. The Public Prosecution Service had issued a guide to plea-bargaining agreements, which could be consulted on its website. The guide stipulated that due process judges were under an obligation to consult victims before any plea-bargaining agreement was adopted and that victims' views must always be taken into account. There had been cases in which the terms negotiated between the judge and the accused had not been acceptable to the victims – even when the agreement provided for reparations to be made – and, in such cases, the judge did not necessarily validate the agreement. On the other hand, there had also been cases in which victims had received reparation in application of a plea-bargaining agreement before the terms had been validated by a judge. In the exceptional case that reparations were not agreed through the criminal channel, victims had the possibility of seeking reparation through civil proceedings.

29. Public servants implicated in criminal offences were immediately removed from office pending investigation and trial but were not necessarily placed in pretrial detention. In accordance with the relevant international instruments, interim measures were adopted when circumstances required. In any case, the risk that a public servant facing charges might impede or interfere with investigations was minimized by the fact that investigations were handled by the Public Prosecution Service, not by the police, and that the prosecutor leading the investigation had the authority to select the members of the investigative team, to ensure that all involved complied with ethical codes of conduct and standards, to withhold information from implicated officers and to exclude them from developments.

30. **Ms. Guerra** (Panama) said that 14 of the 67 cases of enforced disappearance that had occurred during the military dictatorship and had been investigated and tried as offences against life and bodily integrity, and, specifically, intentional homicide, had resulted in convictions. Six cases were still active and awaiting hearings, and the Service was ready to investigate any further cases that were currently insufficiently substantiated to go to trial if the family members of the victims or other parties were able to provide sufficient evidence to build a case.

31. The December 20 Commission, established to investigate events that occurred during the United States invasion of 1989, had been working with the Office of the Chief Prosecutor for Offences of Homicide and Femicide to reopen investigations into the 333 cases of enforced disappearance referred to in paragraph 10 of the replies to the list of issues on the grounds that, in application of international principles governing terms of limitations, the cases were not time-barred. Exhumations had been carried out in accordance with international guidelines and the protocol on minimum standards for forensic investigation drafted by Colombian experts on the basis of their extensive experience in successfully identifying victims. The Institute of Forensic Medicine was currently examining DNA samples drawn from 33 of the victims and would be comparing them against the DNA of family members with a view to securing a definitive identification.

32. **Ms. Gozaine** (Panama), reiterating that, on the basis of the definition contained in articles 2 and 3 of the Convention, there had been no cases of enforced disappearance involving migrants who had entered Panama through the Darién jungle, said that information received from various prosecutors' offices nonetheless indicated that criminal offences in which migrants were the victims certainly did occur in that region, as well as disappearances and deaths due to natural causes. Whenever such incidents were reported by family members, the staff of the National Border Service launched an immediate search, if necessary in coordination with the naval and air services, with a view to rescuing sick or injured persons and recovering the bodies of the deceased, and to date the authorities had successfully recovered the remains of all persons who had been reported to have died or gone missing in the jungle region.

33. It was important to bear in mind, however, that irregular migrants entering the country through the Darién Gap were usually unregistered and unreported – there being no official border crossing points in the jungle – and that it was consequently impossible to keep accurate records. Where possible, the Colombian authorities provided lists of migrants' names, but those lists were inevitably incomplete and often were not received until several days after the migrants in question had entered Panama. Negotiations were under way with

Colombia to consider whether a biometric data register might be established that would facilitate and enhance the exchange of information between the two countries, and the delegation would welcome any suggestions that might help to improve the situation. To date in 2021, approximately 80,000 migrants had entered Panama, and most of them had continued north towards Costa Rica.

34. **Ms. Marchosky de Turner** (Panama) said that the Supreme Court had provided an uninterrupted service throughout the COVID-10 health crisis in order to ensure the protection of vulnerable persons such as children, adolescents and persons deprived of their liberty. The Constitutional Court had also continued to sit, holding online hearings in which prisoners, prosecutors, victims, lawyers and other stakeholders had been able to participate via digital platforms, with special protocols being used to ensure correct identification. There had been no significant delays in the processing of cases and most were now again being heard in person. COVID-related guidance had been issued for judicial and prison staff that called for priority to be given to pregnant women, persons with disabilities and older persons and for particular care to be taken to ensure that the virtual technologies and procedures increasingly being used to guarantee access to justice were properly explained to vulnerable groups.

35. To date in 2021, the judicial authorities had held more than 800 public hearings, while continuing to provide timely helpline assistance to persons deprived of their liberty and members of their families. Alternatives to deprivation of liberty such as community work orders and partial release schemes had been used where possible to minimize prison numbers during the pandemic, and special measures, including, where necessary, isolation, had been introduced to ensure the safety and well-being of those who were remanded in custody or were required to return to prison each night. Prosecutors had been instructed to review pretrial detention orders and to seek to ensure a just balance between the right to a fair trial and the right to be tried without undue delay within the context of the pandemic. They had also been called on to monitor the use of information and communications technology platforms and the measures taken to ensure their fairness, legality and accessibility. The success of the judiciary's efforts to ensure continuity of service was evidenced by comparing statistics for 2019, a "normal" year, with statistics for 2020, an "exceptional" year. The Supreme Court had processed 148 habeas corpus cases, involving 249 separate court sittings, in 2019, and 141 cases, involving 230 court sittings, in 2020.

36. Applications for constitutional *amparo*, which were also heard before the Supreme Court, had continued to be processed throughout 2020. In one such case, the plaintiff had questioned the constitutionality of a decree introducing provisions that, in the plaintiff's view, restricted the right to a free trial and, more specifically, lawyers' ability to exercise their duties and support clients who had been apprehended or detained, noting that those restrictions had been exacerbated by the COVID-19 emergency measures. The plaintiff had claimed that the right to a defence was dependent on lawyers' having free, unrestricted access to defendants deprived of their liberty and that placing restrictions on lawyers' movements undermined citizens' right to the full protection of the law and increased the risk of a case being prejudiced or compromised.

37. In its decision, the Court had observed that lawyers and other judicial officers, including staff of the Ombudsman's Office, had been exempted from many of the lockdown measures, including those restricting freedom of movement and in-person meetings. However, it had found that the measures concerned were justified in that they were comparable with those adopted in other States to help to curtail the spread of COVID-19, and that the movement of lawyers could not be considered more important than the common good and must therefore be subsidiary to all efforts to protect public health. The Court had also cited resolution No. 1/2020 of the Inter-American Commission on Human Rights, which recommended measures that States should adopt to ensure full respect for human rights while addressing and containing the pandemic, and, in particular, recommended that States should not suspend trials and other legal procedures that constituted essential safeguards of due process, fair trial and other rights, and had expressed its full support for the principles set out therein.

38. **Ms. Ávila** (Panama) said that the Government was currently considering whether to accept the Committee's competence to receive and review individual communications as part of a wider examination of the possibility of accepting the competence of a number of treaty

bodies to receive communications concerning Panama. A decision was expected in the near future.

The meeting rose at 5.55 p.m.