



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

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## Committee on Enforced Disappearances Twenty-first session

### Summary record of the 368th meeting

Held at the Palais Wilson, Geneva, on Thursday, 16 September 2021, at 3 p.m.

*Chair:* Ms. Lochbihler (Vice-Chair)

## Contents

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

*Initial report of Panama (continued)*

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*The meeting was called to order at 3.10 p.m.*

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

*Initial report of Panama (continued)* (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. **Mr. López Ortega** (Country Rapporteur) said that it would be useful to receive a detailed description of the procedure used to determine whether there were substantial grounds for believing that persons facing expulsion or deportation would be in danger of being subjected to enforced disappearance in their State of destination, including information on the authorities responsible for making that determination and the information consulted in the process. He wished to know whether, in cases where there were substantial grounds for believing that a person facing extradition would be in danger of enforced disappearance if returned to the requesting State, the State party would accept diplomatic assurances from that State, and, if so, on what conditions. He would also like to know what remedies were available to persons facing extradition or deportation and whether such remedies had a suspensive effect. More information on the situation with regard to refolement at the State party's borders with Colombia and Costa Rica would likewise be welcome.
3. With regard to measures taken in response to the coronavirus disease (COVID-19) pandemic, he would be interested to learn whether it was possible for the safeguard of habeas corpus to be suspended and, if so, in what circumstances; and whether the State party would consider taking steps to bring national legislation regulating that area into line with the Convention. He would welcome further information about how the imposition of measures to curb the spread of COVID-19 had affected persons deprived of their liberty both in prisons and in holding centres, including, in particular, their ability to communicate with their families, lawyers and, where applicable, consular representatives. A more detailed explanation of the general communication policy applicable in places of deprivation of liberty would be helpful.
4. He would be grateful for clarification of the scope and content of article 252 of Executive Decree No. 393 of 2005. In particular, he was concerned that the practice of making prisoners cover the cost of their telephone calls or call collect if they did not have enough money might lead to inequality among the prison population. Were persons with insufficient resources allowed to communicate with the outside world through other means? In that connection, he would be interested to know whether the State party had considered introducing new communication technologies such as digital platforms that allowed for communication at little to no cost for the user.
5. The Committee had received reports that, in some cases, the families of persons deprived of their liberty had not been informed when their relatives had been transferred from one place of detention to another. It had also received reports of persons being held in incommunicado detention and of migrants deprived of their liberty being prevented from communicating their detention to persons outside of the holding centre and from receiving visits. He would appreciate the State party's comments on those reports. In addition, he would welcome a detailed description of the registers of persons deprived of their liberty kept within the prison system, including an indication as to whether they contained all the information referred to in article 17 (3) of the Convention.
6. According to reports received by the Committee, the national mechanism for the prevention of torture had recently been denied immediate and unrestricted access to places of deprivation of liberty and had experienced difficulties when attempting to conduct unannounced visits to, for example, the detention facilities at the National Air and Naval Service base on the island of Punta Coco. He would be grateful for the State party's comments on those reports. Moreover, he would appreciate further information on the composition of the national preventive mechanism and on the conformity of the State party's legislation with article 22 of the Convention.

7. Lastly, he would appreciate information on efforts to provide specific training on the Convention to all law enforcement personnel, military officers, public security forces, medical personnel, forensic doctors and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges and other officials responsible for the administration of justice.

8. **Mr. Ravenna** (Country Rapporteur) said that he would be interested to know whether the State party had plans to bring the definition of victim contained in its national legislation into line with the definition contained in the Convention, which was very broad in scope. He wondered whether the State had ever negotiated reparation agreements directly with the families of victims of the military dictatorship and would be grateful, in that connection, if the State party could clarify whether the Government had the power to grant reparations directly, without the involvement of the international human rights system. If so, detailed information on the number of persons granted reparation directly and the types of reparation granted would be welcome.

9. It would be useful to learn whether the State party maintained a centralized DNA database to facilitate the identification of the human remains of victims of enforced disappearance during the military dictatorship and the 1989 invasion of Panama by the United States of America. It would also be useful to receive an update on the steps taken to identify the 33 victims of the 1989 invasion whose remains had been discovered but whose identity had not yet been established.

10. With reference to paragraphs 104 and 105 of the State party's replies to the list of issues submitted by the Committee in relation to the initial report of Panama ([CED/C/PAN/RQ/1](#)), he would welcome clarification of the economic, social and property rights afforded to the families of victims of enforced disappearance who had not obtained a declaration of absence or presumed death. More detailed information about the regime applicable to declarations of presumed death in respect of disappeared persons would also be helpful. Lastly, he would be interested to learn whether the State party planned to bring its legislation into line with article 25 of the Convention.

11. **Mr. Albán-Alencastro** said that he would welcome more information on the forms of reparation, aside from monetary compensation, that were provided for in the State party's legislation. He would also appreciate information, including statistical data, on the number of victims of enforced disappearance who had received reparations outside the scope of amicable settlements established at the international level, including details of the type of reparations provided and whether they had been granted on an individual or a collective basis.

12. **Ms. Janina** said that she wished to know whether the State party had a specific programme for assisting women victims of enforced disappearance and whether it adopted a gender perspective in its approach to collecting data on and handling cases of enforced disappearance.

*The meeting was suspended at 3.40 p.m. and resumed at 3.55 p.m.*

13. **Ms. Novoa** (Panama) said that, before the COVID-19 pandemic, persons deprived of their liberty had been able to receive in-person visits from their lawyers. However, in June 2020, it had become compulsory for such meetings to take place via video link and, although permission for in-person visits had been re-established in September of that year, there were still more virtual than in-person meetings because lawyers preferred the former. Despite the public health measures introduced in response to the pandemic, the State had guaranteed that all international organizations and the national preventive mechanism would retain the right to visit prisons and had provided them with technical and material assistance.

14. Standardized legal, medical and psychosocial files were kept for all prisoners. The files were updated regularly and transferred with the prisoner if they were sent to another place of detention. Prisoners' personal data and legal information was also held electronically in a centralized prison information system. Legal files were updated as soon as new information, such as judgments, became available. Under rule 93 (11) of the Ministry of the Interior and Justice staff regulations, administrative penalties, including dismissal in the event of multiple offences, could be imposed upon any State official found to have tampered with prisoner files. In addition, officials could be held criminally responsible for such acts.

15. Public telephones were available in all places of detention and, upon arrival, persons deprived of their liberty were permitted to communicate with an individual of their choice. Foreign nationals were allowed to communicate with their consular authorities. To date, there had been no complaints or reports concerning failures to give effect to those guarantees. A team of dedicated staff and two telephone hotlines were available to ensure that detainees' relatives could obtain information about them.

16. **Mr. Castrejón** (Panama) said that reports that the national preventive mechanism had been denied access to the detention centre in the National Air and Naval Service base on the island of Punta Coco were inaccurate; the authorities did allow the mechanism to visit the base, but access had to be arranged in advance with the Ministry of Public Security.

17. All four Panamanian security services provided bimonthly training for their agents on a wide range of human rights issues that included the Covenant and all other international human rights treaties, as well as torture and gender issues. A dedicated section of the Ministry of Public Security had specific responsibility for issues of gender and domestic violence and had run a number of programmes within the various security services. The national police force also now had a division dedicated to gender issues.

18. **Ms. Aida Castro** (Panama), responding to a question raised during the previous day's meeting ([CED/C/SR.366](#)), said that, under the former semi-inquisitorial system of criminal justice, the scope of the definition of "victim" had been limited to those directly affected or their relatives, but the definition had been expanded significantly upon the introduction of the adversarial system of criminal justice; in particular, article 79 (6) of the Code of Criminal Procedure had extended the definition to include any person harmed physically, mentally or emotionally as a result of actions that breached the criminal legislation in force. The new definition was based on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

19. Articles 331 to 333 of the Code of Criminal Procedure established a wide range of protection measures for victims, including psychological and psychiatric support and, when all else failed, assistance to enable them to move to another country where their safety could be guaranteed. Within the Public Prosecution Service, dedicated units staffed with multidisciplinary teams of social workers and psychologists provided care for victims and witnesses in line with a procedural protocol requiring that the care provided should have a gender focus.

20. **Ms. Guerra** (Panama) said that the Government had been able to gather DNA samples from the victims in 15 of the 16 cases of enforced disappearance that had been reopened. In total, the remains of 32 alleged victims had been exhumed, and DNA samples had been taken from 30 relatives to help with their identification. In addition to the central database covering the entire national population, a specific database of relatives of victims of the military regime and the period following the invasion had been established. The Government was also working with the University of Texas and the Government of Costa Rica on separate projects to find DNA matches for recent and past victims.

21. **Ms. Ávila** (Panama) said that, as detailed in paragraph 13 of the initial report ([CED/C/PAN/1](#)), article 55 of the Constitution allowed for certain constitutional safeguards, including those derived from international human rights law, to be suspended in the event of a state of emergency being declared. However, the Government of Panama did not have the power to temporarily suspend the right to the remedy of habeas corpus in such circumstances.

22. **Mr. Herrera** (Panama) said that, since most migrants transiting through Panama entered the country through the Darién Gap, a number of Government agencies with a presence in that province had joined forces to offer protection to unaccompanied child migrants, including accommodation in special protection units while investigations took place and applications for asylum or refugee status were considered. In the case of children travelling with other persons, the directorate responsible for coordinating the comprehensive protection system, in collaboration with other State institutions, verified the nationality of the children and their relationship to the persons accompanying them in order to ensure that they were travelling with actual relatives. If that was not the case, the children were reported to the migration authorities and the National Border Service as unaccompanied child migrants. The rights and well-being of child migrants were protected in accordance with Act No. 15 of

6 November 1990, through which Panama had ratified the Convention on the Rights of the Child, and in the best interests of the child in question. According to official figures, 217 child migrants had transited through Panama in the period 2016–2021. In 2021 to date, 82 unaccompanied child migrants had entered the country, of whom 28 had been housed in protection units and 7 had since been reunited with their families.

23. **Ms. Marchosky de Turner** (Panama) said that the declaration of absence was a civil document that did not involve a presumption of death while the declaration of presumed death had legal effects relating to the administration of the property and rights of the missing person. The authorities did not issue declarations of presumed death automatically; rather, they were issued only when an application had been made by a concerned party and when the conditions set out in article 57 of the Civil Code had been met. Under article 59 of the Civil Code, inheritance proceedings could be initiated following the issuance of a declaration of presumed death. Both types of declaration could be issued only with the involvement of the Public Prosecution Service, which took steps to safeguard the interests of the parties concerned. Decisions to issue either type of declaration could be reviewed by a court. Under article 152 of the Criminal Code, the offence of enforced disappearance was not subject to any statute of limitations and was considered to be a continuous or ongoing offence until the victim's fate or whereabouts had been determined.

24. Victims of enforced disappearance were entitled to the assistance of a public defender or a lawyer of their choice, as were persons facing extradition proceedings. Under article 93 of the Code of Criminal Procedure, the authorities were required to inform persons deprived of their liberty of the reasons for their detention, their right to communicate with persons of their choice and their right to receive health care and legal assistance. The legal authorities were empowered to hand down suspended sentences or to impose alternative measures to custodial sentences such as probation. Denial of access to health care was considered to be a violation of an inmate's rights. Technical facilities were installed in prisons to enable defendants deprived of their liberty to participate in hearings via video link and to communicate with their lawyers and family members.

25. **Mr. Ravenna** said that he would like to know how child migrants registered as being unaccompanied entered the country and, in particular, whether they entered through airports, border checkpoints or through the Darién Gap. He wondered whether such children were migrants whose final destination was Panama or whether they were passing through the country on their way to destinations further north. He would be interested to hear whether declarations of absence were always issued prior to declarations of presumed death.

26. **Mr. López Ortega** noted that the fact that, in order to be able to initiate certain legal proceedings, the family members of disappeared persons were required to obtain a declaration of their relative's presumed death placed a terrible emotional burden on them when they were attempting to determine their relative's whereabouts. He therefore wished to know whether legislative measures would be taken to enable victims of enforced disappearance to initiate legal proceedings related to family matters without having to request a declaration of presumed death in order to remedy that situation.

27. He wondered whether comprehensive reparations for enforced disappearance were available only through the Inter-American Commission on Human Rights or whether they could also be awarded by national authorities. He would also like to know exactly how many victims of enforced disappearance had been registered and how many of them had obtained reparations. An explanation of the apparent contradiction between the delegation's claim that the guarantee of habeas corpus and other relevant legal safeguards could not be suspended and the fact that article 55 of the Constitution provided for such suspension in emergency situations would likewise be helpful.

28. The Committee welcomed the precise information provided by the delegation on online and face-to-face communications between prisoners and their lawyers but would be interested to have accurate figures for the total prison population so that it could calculate the proportion of prisoners who had benefited from legal assistance. It was still not clear whether the authorities maintained records of persons detained in places other than prisons, such as migrant holding centres, and whether legal assistance was made available to those persons. He wished to know whether any specific regulations provided for the punishment of officers

working in prisons or other places of detention who failed to fulfil their Convention obligations. The delegation might also indicate whether training on the Convention was provided to prison officers, judges, prosecutors and other persons working in the justice system. Information on the composition of the national mechanism for the prevention of torture and on any cases in which the rights of persons deprived of their liberty had been violated would be welcome.

29. **Mr. Albán-Alencastro** said that he wished to know whether foreign nationals deprived of their liberty were able to make free-of-charge telephone calls to family members living in their country of origin. He asked whether the Government would consider reforming the Constitution to ensure that the guarantee of habeas corpus could not be suspended under any circumstances. He wondered whether national legislation provided for other forms or reparation, aside from compensation, for victims of enforced disappearance and whether any victims had been granted reparations by any means other than through the Inter-American Commission on Human Rights.

30. **Ms. Gozaine** (Panama) said that persons who were refused entry to national territory were returned either to their country of origin or their country of residence. During the expulsion procedure, which was processed by the Ministry of Foreign Affairs, they were at all times guaranteed access to consular assistance and all international protection mechanisms available in Panama. Before deportation, the National Migration Service notified the consulate of their country of origin or residence and the persons facing deportation had the right to appeal and to pursue any other legal remedies available. They were informed of the deportation route that would be taken so that they had the opportunity to express any concerns. For example, deportees originating from Iraq who had claimed that they would fear for their lives if they had to travel via Turkey had been accompanied by Panamanian officials to ensure that they arrived safely at their destination. At present, the National Migration Service did not keep a list of States considered to be unsafe for deportation or expulsion; however, the Ministry of Foreign Affairs had a set of criteria by which to judge the safety of each country on a case-by-case basis.

31. Illegal migrants crossing into Panama through the Darién jungle enjoyed all legal safeguards, including the right to non-refoulement. When the National Migration Service was informed that a migrant wished to claim asylum, the relevant authorities were notified and the claimant received full protection while their application was processed. Foreign nationals under the protection of the State of Panama, including refugees, asylum seekers and victims of human trafficking, were not subject to deportation or expulsion by the National Migration Service. Mechanisms were available whereby migrants could contact their families free of charge after crossing the border into Panama.

32. **Ms. Marchosky de Turner** (Panama) clarified that the statute of limitations had been eliminated for the crime of enforced disappearance and that the declaration of presumed death was a civil procedure that had been established precisely for purposes of succession and inheritance.

33. **Mr. Falcón** (Panama) said that the extradition procedure was regulated by the Code of Criminal Procedure. First, the Ministry of Foreign Affairs made a decision to extradite, which was subject to appeal before the courts. In the absence of an appeal or if the extradition decision was upheld, the choice of whether or not to proceed with deportation was made by the executive branch. The Government could request diplomatic assurances from the State requesting extradition and would refuse deportation under article 520 of the Code of Criminal Procedure if it was likely that the person concerned would be subjected to torture or other cruel, inhuman or degrading treatment or would not be guaranteed a fair trial in criminal proceedings in that State. Extradition could also be denied under the Constitution and article 518 of the Code of Criminal Procedure if it was believed that the human rights of the deportee would be violated. Persons who had been detained with a view to deportation had access to various legal remedies and were released if their appeal was successful.

34. Victims of enforced disappearance during the dictatorship could choose either to seek an amicable settlement or to take their case to court. Reparations included not only financial damages but also public apologies and the construction of monuments. A total of 30 people had been recognized as victims of enforced disappearance during the dictatorship, based on

official documents available from that time. There had been 67 court cases concerning enforced disappearance, 14 of which had culminated in convictions for the crime of intentional homicide. The Government had complied, or was in the process of complying, with all orders to provide compensation to victims of enforced disappearance issued by the Inter-American Commission on Human Rights.

35. **Mr. Pittí** (Panama) said that the National Office for Refugees processed applications for international protection and referred them to the National Commission for the Protection of Refugees. Migrants' right to claim asylum was guaranteed. Before the COVID-19-related state of emergency had been declared, the National Office for Refugees had reinforced its presence in Darién province so as to be better equipped to identify and provide care to refugees in the region bordering Colombia, and Panama had been one of only a few countries that had continued to provide assistance to migrants during the pandemic. The Office worked with NGOs including the Norwegian Refugee Council and the Centro de Asistencia Legal Popular (People's Legal Assistance Centre) to provide free legal assistance to refugees, while agencies including the National Migration Service offered support at official and unofficial points of entry to anyone who wished to claim asylum. The Office also collaborated with the National Institute for Women and the National Secretariat for Children and Adolescents, working to guarantee the rights of women and child migrants and assist them with asylum claims. Training on international human rights law, the mechanism for the identification of persons in need of international protection and immigration legislation was provided in cooperation with the Office of the United Nations High Commissioner for Refugees.

36. **Mr. Almarío** (Panama) said that training programmes on human rights and human rights instruments such as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) were provided within the Public Prosecution Service and the justice system with the support of the Gender and Access to Justice Unit and the Secretariat for Human Rights, Gender and Access to Justice. The programmes were part of the permanent curriculum at schools for prosecutors and judges and were also offered in police and judicial intelligence units. The Office of the United Nations High Commissioner for Human Rights in Panama had trained a group of prosecutors to enhance awareness and understanding of the Convention among all members of the judiciary. Specific training on the human rights of migrants was provided throughout the country, including in the border provinces of Darién, Chiriquí and Bocas del Toro.

37. **Ms. Ana Luisa Castro** (Panama) said that the Government remained committed to promoting and protecting human rights and would continue to make progress in implementing the Convention and guaranteeing respect for the rights to truth, reparations and non-repetition for all victims of enforced disappearance. In that spirit, the delegation stood ready to address any issues that the Committee might wish to raise after their constructive and very positive dialogue.

*The meeting rose at 5.45 p.m.*