



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

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**Committee on Enforced Disappearances**

**Report submitted by Panama under article 29 (1)  
of the Convention, due in 2013\***

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## I. General information

1. The present document contains the initial report of the Republic of Panama to the Committee on Enforced Disappearances under article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance on the measures taken by Panama to give effect to the provisions of the Convention.
2. Panama ratified the Convention without reservations through Act No. 27 of 2011. The Convention entered into force for Panama on 24 June 2011.
3. The report drafting process was overseen by the national standing committee on the implementation of and follow-up to the national and international human rights commitments made by Panama.<sup>1</sup> The Committee's tasks include coordinating the preparation of reports that the State is required to submit to the United Nations human rights treaty bodies.
4. Consultations were held with institutions involved in the implementation of the Convention to gather information on the progress made, and the obstacles encountered, in effectively implementing the administrative, legislative and judicial measures needed to ensure that children and adolescents are protected against the sale of children, child prostitution and child pornography. Once the information had been collected, the national standing committee held a meeting to approve it; its members made their contributions in a collaborative fashion, with some members of civil society also present.
5. The present report was drafted in accordance with the revised guidelines regarding initial reports to be submitted by States parties under article 29 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/2) adopted by the Committee at its second session, which took place between 26 and 30 March 2012.
6. The information contained in the present report relates to the period 2013–2019, with some important references to 2010.

### A. General legal framework under which enforced disappearances are prohibited

7. The Constitution of the State of Panama contains five provisions on the juridical rights protected by the legal definition of enforced disappearance. The preamble to the Constitution states that the ultimate purpose of the Constitution is to guarantee freedom, democracy and institutional stability, as well as to promote human dignity.
8. The preamble is echoed in article 17, which states that the authorities have a duty to protect the lives of nationals and foreigners under Panamanian jurisdiction, to ensure the realization of individual and collective rights and duties and to comply with and enforce the Constitution and the law.
9. Given that enforced disappearance is an act that entails multiple offences, there are various constitutional provisions that protect the principal legal rights that it violates, including article 27 on the right to liberty, article 30 on the abolition of the death penalty and article 32 on due process.
10. The Criminal Code was amended by Act No. 55 of 2016 to bring the definition of the crime of enforced disappearance into line with international standards. Enforced disappearance in Panama is now an offence punishable with 15 to 20 years' imprisonment.
11. Various amendments were made to the Constitution in 2004; for example, a second paragraph was added to article 17 on the powers of the State authorities, according to which the rights and guarantees recognized in the Constitution should be regarded as minimum standards that are without prejudice to other provisions relating to fundamental rights and human dignity. The full bench of the Supreme Court of Justice has ruled on this provision

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<sup>1</sup> Executive Decree No. 7 of 2012 establishing the national standing committee on the implementation of and follow-up to the national and international human rights commitments made by Panama. *Gaceta Oficial* No. 26953-A.

several times and has indicated that the other rights referred to therein are the rights enshrined in the international human rights instruments that Panama has signed and ratified.

12. Upon its ratification and its entry into force on 24 July 2011, the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter “the Convention”) joined the rank of constitutional standards. It therefore takes precedence over national legislation.

13. Article 55 of the Constitution of Panama, on the declaration of a state of emergency, provides that in the event of a foreign war or an internal disturbance that threatens peace and public order, certain safeguards that are fundamental to the rule of law may be suspended. These safeguards include the right to freedom of movement, the rights of detainees, the remedy of habeas corpus, the inviolability of the home, the inviolability of correspondence and communications, freedom of expression, freedom of assembly and the right to own private property. No suspension of the effects of constitutional provisions may give rise to a temporary derogation of the prohibition of enforced disappearance that would allow the State to commit, support or tolerate enforced disappearances.

14. Panama recognizes and has incorporated into its domestic legislation international and inter-American human rights norms and the findings of the bodies responsible for interpreting their meaning and scope. Thus, in a state of emergency, the Panamanian authorities would not suspend safeguards such as habeas corpus, in view of the provisions of instruments such as Advisory Opinion OC-8/87 of 30 January 1987 of the Inter-American Court of Human Rights: according to this Advisory Opinion, the legal remedies guaranteed in article 25 (1) (*amparo*) and article 7 (6) (habeas corpus) of the American Convention on Human Rights may not be suspended under article 27 (2) (suspension of guarantees), because they are judicial guarantees essential for the protection of the rights and freedoms whose suspension article 27 (2) prohibits.

15. At the judicial level, the full bench of the Supreme Court of Justice has referred to the concept of “conventionality review” (the review of compliance with international conventions) in several of its decisions, for example, the decisions of 4 July 2012, 3 March 2015, 13 May 2016 and 28 June 2018. In the first of those decisions, the judges in the case ruled that:

“It is important to draw attention to the review of compliance with the Constitution and international conventions, which dictates that judges and magistrates must ensure, in every case, the observance and effective application of the Constitution and the American Convention on Human Rights, to which the State of Panama has acceded, to ensure that they are not undermined or annulled by the application of laws or proceedings that are contrary to their provisions, object or purpose. In other words, in accordance with the judgment of the Inter-American Court of Human Rights of 2000, the courts not only must review compliance with the Constitution but also, *ex officio*, the compliance of domestic legislation with the American Convention on Human Rights.”

16. According to article 207 of the Constitution, the Supreme Court of Justice, meeting in plenary, is responsible for preserving the integrity of the Constitution, which makes it the principal guarantor of the Constitution and its definitive interpreter, and also means that other judicial officials following constitutional guidelines can review compliance with international conventions in order to resolve cases involving the protection of human rights through the direct application of provisions of the Convention.

17. With respect to the administrative authorities, the Third Administrative Chamber of the Supreme Court of Justice incorporated the following doctrinal text in its decision of 29 June 2016:

“Regarding the importance of the application of international law by domestic judges, it has been noted that such application necessitates the review of compliance with international conventions, as Víctor Bazán and Claudio Nash highlight in their work *Justicia Constitucional y Derechos Fundamentales: Control de Convencionalidad*: ‘... review of compliance with international conventions by domestic judges (and other public authorities), which consists in verifying the compliance of domestic legislation applicable in concrete cases with the American

Convention on Human Rights and the interpretation thereof established by the Inter-American Court of Human Rights'.”

18. In making this statement, the Third Administrative Chamber reflects the ruling of the Inter-American Court of Human Rights in the case of *Gelman v. Uruguay* in 2010, according to which reviewing compliance with international conventions is a task that falls to all public authorities, not only the judicial branch.

19. Panama is a unitary State; therefore all laws, including the international treaties ratified by the State, apply throughout national territory (Constitution, art. 1).

20. The Public Prosecution Service, the judicial branch and the Ministry of Public Security are the relevant State entities in this area.

21. Given that enforced disappearance is a punishable act, whenever there is any suspicion that someone has fallen victim to the offence, Public Prosecution Service officials must initiate an investigation, either of their own motion or on the basis of a report or complaint, determine the whereabouts of the missing person, identify the alleged perpetrators and prosecute them in the courts, requesting the imposition of appropriate sentences, if warranted by the outcome of the legal proceedings.

## **B. Information in relation to each substantive article of the Convention**

### **Article 1**

22. Article 55 of the Constitution of Panama, on the declaration of a state of emergency, provides that, in the event of a foreign war or an internal disturbance that threatens peace and public order, certain safeguards that are fundamental to the rule of law may be suspended. However, no suspension of the effects of constitutional provisions may give rise to a temporary derogation of the prohibition of enforced disappearance that would allow the State to commit, support or tolerate enforced disappearances.

### **Article 2**

23. The definition of enforced disappearance set forth in the Panamanian Criminal Code is consistent with the definition set forth in the Convention.

24. The Code establishes the following:

“Article 152. The act of depriving one or more persons of their liberty, in whatever way, perpetrated 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, followed by an absence of information or a refusal to acknowledge that deprivation of liberty or to give information on the whereabouts of that person, thereby impeding recourse to the applicable legal remedies and procedural guarantees, shall be punishable with 15 to 20 years’ imprisonment.”

25. The offence shall be deemed continuing or permanent as long as the fate or whereabouts of the victim has not been determined. Criminal prosecution for the enforced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations.

26. This amendment to the Criminal Code was introduced by Act No. 55 of 30 November 2016, which was published in digital Official Gazette No. 28169-A of Thursday 1 December 2016.

### **Article 3**

27. In Panama, criminal proceedings have been brought in relation to what were clearly enforced disappearances that occurred in past decades. Common to these criminal proceedings is the fact that, when they were initiated, enforced disappearance had not yet been defined as a criminal offence, which is why they were treated, until latterly, as cases of intentional homicide. Since the entry into force of the Convention in July 2011, progress has been made and important decisions taken in these cases, for example:

- In one case, criminal proceedings were brought in relation to the disappearance of Everett Clayton Kimble, who was apprehended by officers of the National Police at the home of his partner, Magdalena Bernal, in early 1969 and subsequently transferred to a police station in David and has not been heard of since. In its Judgment No. 17 of July 2012, the High Court of the third judicial district convicted Abundio Moreno, sentenced him to 20 years' imprisonment and disqualified him from public service for a period of five years from the completion of his main sentence, having found him to be a joint perpetrator of the aggravated intentional homicide of Everett Clayton Kimble.
- A case has been opened in relation to the disappearance of Luis Antonio Quirós Morales, which occurred in Jacú, in the province of Chiriquí, on 19 August 1969. On 27 August 2014, the Criminal Division of the Supreme Court of Justice summonsed Mr. Manuel Antonio Noriega Moreno to appear in criminal court.
- A case was opened in relation to the disappearance of Heliodoro Portugal, who was detained on 14 May 1970 in a cafe in the Santa Ana district of Panama City. On 28 August 2014, the decision was made to bring criminal proceedings against Melbourne Constantino Walker Nevans, Manuel Antonio Noriega Moreno, Moisés Antonio Correa Alba, Aquilino Sieiro Murgas, Pablo Garrido Garibaldo, Lucinio Miranda Moreno, Pedro Antonio Del Cid and Gabriel Correa Jaramillo and to provisionally dismiss the charges against Heliodoro Villamil Quiróz and Eugenio Nelson Magallón.

28. It is important to note in relation to these cases that although enforced disappearance was not classified as an offence at the time of events, the State has nonetheless sought justice for every victim.

#### Article 4

29. As mentioned in the reply provided above with respect to article 2, Act No. 55 of 2016, published in Official Gazette No. 28169-A of Thursday 1 December 2016, amended article 152 of the Criminal Code to include a definition of the enforced disappearance of persons as a separate offence, in accordance with the definition set forth in the Convention.

30. The crime of enforced disappearance of persons, as defined in Panama, may be distinguished from other offences in that it involves the deprivation of liberty of a person by the State with the clear purpose of permanently excluding that person from society, including by hiding his or her corpse or remains in the event of his or her death, followed by a refusal to acknowledge that the disappearance has taken place or to provide information about where the person is detained or where his or her body is buried.

31. In other words, the conduct constituting the offence is conceptually different from restricting the liberty of a person for the purposes of blackmail, illegally detaining a person, depriving a person of liberty per se, taking a person's life, removing a minor from the care of his or her family, or inflicting pain or injury on a person.

32. The qualitative difference is that this conduct is more complex than that covered by other criminal offences and infringes a variety of juridical rights.

#### Article 5

33. Crimes against humanity are covered in title XV of the Criminal Code, the first chapter of which relates to violations of international human rights law. Article 441 provides that any person who, as part of a widespread and systematic attack on a civilian population, commits or has knowledge of and, having the means to do so, does not prevent the commission of enforced disappearance (among nine other types of conduct), shall be punished with 20 to 30 years' imprisonment.

- Information on the consequences provided for under domestic law in the light of applicable international law, with cross-references to the implementation in particular of articles 7 and 8 of the Convention.

34. With regard to the severity of penalties, as mentioned above, enforced disappearance carries a prison sentence of 15 to 20 years or 20 to 30 years when it is committed as part of a widespread or systematic attack on a civilian population.

35. With regard to mitigating circumstances for persons implicated in the offence who collaborate with the prosecution during criminal proceedings, the Panamanian legal system allows for the conclusion of plea bargains, which are provided for in article 220 of the Code of Criminal Procedure. A sentence bargain may therefore be concluded during the criminal investigation between the defendant and the prosecutor, provided that the defendant contributes to the clarification of the circumstances of the offence, helps to end its continued commission or to prevent the commission of further offences, or provides essential information that leads to the identification of the perpetrators of the offence or other persons implicated in it.

36. In exchange, the prosecutor will offer to commute or even to quash the sentence that would be imposed on the defendant for his or her participation in the offence. Plea bargains are reviewed by a due process judge. This judge is competent to interpret the Constitution and to decide whether the defendant should be convicted – in which case a sentence no longer than that agreed upon and no shorter than one third of the basic sentence carried by the offence will be imposed on him or her – or whether all charges against the defendant should be dropped and the case shelved. The plea bargain is suspended if the defendant is due to appear as a main witness for the prosecution in a trial.

37. The death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, older persons, persons with disabilities or other particularly vulnerable persons may be considered aggravating circumstances in a criminal case.

38. There are two moments during sentencing in which such circumstances may be considered. The first is during the determination of the base sentence, a process governed by article 79 of the Criminal Code, which requires the judge to consider such elements as the conduct of the perpetrator immediately before, during and after the event and any hierarchical relationship or power dynamic between the perpetrator and the victim.

39. The sentence may then be adapted further in accordance with article 88 of the Criminal Code, which provides a list of aggravating circumstances that must be applied by the judge once their existence has been established. These include abusing a position of authority or using methods that diminish the ability of the victim to defend him or herself or make such a defence impossible; inflicting cruelty on the victim; abusing authority, public trust or the powers inherent in the profession exercised by the perpetrator or the position he or she holds; being armed with a weapon or enlisting the help of third parties to commit the offence or to secure impunity; and committing the act against a person with a disability, when that disability makes the victim vulnerable, or against a person incapable of ensuring his or her own safety or health.

40. Under article 92 of the Criminal Code, the existence of aggravating circumstances increases the penalty by between one sixth and one third of the base sentence per aggravating circumstance, within the limits established in that article.

41. Under article 116 of the Code of Criminal Procedure, criminal proceedings brought in respect of enforced disappearance are not subject to terms of limitations.

#### **Article 6**

42. Enforced disappearance is as an offence under the Criminal Code and as such, as with all punishable acts and in accordance with domestic legislation, the criminal responsibility of the various types of participant is determined separately. The person(s) who commit the offence are classified as the perpetrator(s), the person who convinces the perpetrator to commit the offence is classified as the instigator, and anyone who contributes to the commission of the offence is classified as an accomplice (Criminal Code, arts. 43–47).

43. Incomplete forms of the offence include attempted offences, when the offender begins to commit the offence but is prevented from completing it by causes outside his or her control (Criminal Code, art. 48).

44. Where legislation and jurisprudence prohibit the invocation of superior orders, including orders from military authorities, as a justification for enforced disappearance, the State should provide information on their practical implementation.

45. Article 40 of the Criminal Code provides that, in cases involving members of the security forces, due obedience may be invoked as a ground for exemption from criminal responsibility, on the basis that the responsibility for acts performed by a serving officer lies with the superior officer who issued the order to perform those acts. The article establishes that this exemption is not applicable in cases involving the enforced disappearance of persons or crimes against humanity, which means that both the subordinate officer and the superior officer are held responsible for the offence.

46. Regarding whether domestic legislation allows the sanctioning of a superior who: knew, or consciously disregarded, information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance; who exercised effective responsibility for and control over activities which were concerned with enforced disappearance; and who failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.

47. As stated above, enforced disappearance is a crime. Article 83 of the Code of Criminal Procedure provides that public officials are required to report the commission of publicly actionable offences that come to their knowledge in the course of or in connection with the performance of their duties.

48. Article 155 of the Criminal Code establishes that the competent public servant who is aware of an unlawful arrest but fails to take, or delays, the necessary measure to bring about its cessation will be punished with 1 to 2 years' imprisonment or the equivalent in day fines or weekend detention.

49. Subordinate officials must refuse orders that would give rise to a clearly punishable offence or face criminal responsibility. Members of the public security forces who participate in the commission of an enforced disappearance will be held criminally responsible. Likewise, they have a duty and a right to oppose the commission of crimes against humanity.

50. As explained above, public servants are required to report acts of enforced disappearance. Subordinates must therefore report the act and submit their testimony in order to be able to request the application of the protection measures provided for in article 332 of the Code of Criminal Procedure by the Public Prosecution Service.

51. Claiming exemption on grounds of due obedience in a criminal trial involving an act of enforced disappearance will serve no purpose whatsoever, even for members of the public security forces, since such exemptions are expressly prohibited.

#### **Article 7**

52. The penalties provided for in the Panamanian Criminal Code for acts of enforced disappearance are 15 to 20 years' imprisonment, or 20 to 30 years' imprisonment when such acts are committed as a part of a widespread or systematic attack on a civilian population.

53. With regard to disciplinary sanctions, the Public Prosecution Service is governed by Act No. 1 of 6 January 2009 establishing the organizational structure of the Public Prosecution Service and repealing and replacing provisions of the Judicial Code. Article 70 (5) of that Act provides that a public servant may be dismissed if he or she is convicted of a punishable act or is found to have breached the code of ethics.

54. The maximum sanction provided for in the Criminal Code for a single act is 30 years' imprisonment. For multiple concurrent offences, the maximum sanction cannot exceed 50 years' imprisonment.

55. This issue has in part been addressed in the above reply to the questions on the implementation of article 5 of the Convention.

56. Nonetheless, with respect to mitigating circumstances, article 153 of the Criminal Code provides that the penalties established in the preceding article, which contains the definition of the crime of enforced disappearance, will be reduced by between one half and two thirds if, within two days, the perpetrators or their accomplices voluntarily offer or supply information that helps to uncover the whereabouts of the victim, provided that the

latter has not suffered physical or mental injury, or by between one third and one half if such information is provided after no less than two days but no more than 30 days.

#### **Article 8**

57. In the Panamanian legal system, the terms of limitations for criminal proceedings are set forth in the Code of Criminal Procedure. Article 116 of the Code lists certain crimes, including crimes against humanity and enforced disappearance, for which criminal proceedings are not time-barred.

58. Article 121 of the Criminal Code provides that the penalty for crimes against humanity and enforced disappearance is imprescriptible.

59. Article 152, which contains the definition of the crime of enforced disappearance, also provides that neither criminal proceedings nor penalties in cases of enforced disappearance are time-barred.

60. The law expressly establishes that the crime of enforced disappearance and crimes against humanity, including systematic enforced disappearance, are imprescriptible.

61. In Panama, this crime is imprescriptible.

62. The crime of enforced disappearance is deemed continuing or permanent as long as the fate or whereabouts of the victim has not been determined, pursuant to article 152 of the Criminal Code. During that time, criminal, civil and administrative proceedings recognized by the judicial authorities remain open.

63. A concrete example of this is the judgment of 28 March 2012 of the Second Chamber of the Criminal Division of the Supreme Court of Justice, which overturned judgment No. 57 of 8 September 2006 of the Second High Court of the first judicial district of Panama, declared that a term of limitations was not applicable to the criminal proceedings in the case of Pablo Garrido Garibaldo and Luis Del Cid – both of whom have been accused of committing offences against the life and personal integrity of Felix González Santizo – and ordered the continuation of the proceedings.

64. The events relate to the murder of Felix González Santizo on 15 October 1970, in the community of Quebrada Bonita in the district of La Chorrera. His body was never found.

65. In the event that the imprescriptible nature of criminal proceedings brought in respect of enforced disappearance is not recognized, the Constitutional Court may intervene through the application of the remedy of *amparo*, thus allowing the competent courts to review the validity of any measure that is clearly in contravention of criminal and procedural law (principles of legality and due process) or of international instruments.

#### **Article 10**

66. Domestic legal provisions establish the grounds on which pretrial detention and other precautionary measures may be applied in cases involving crimes such as enforced disappearance, including article 441 (9) of chapter I (violations of international human rights law) of title XV (crimes against humanity), which provides for a penalty of between 20 and 30 years' imprisonment.

67. Act No. 63 of 28 August 2008 applies to the crime of enforced disappearance, as it does to all offences under the Code of Criminal Procedure. Certain exceptional provisions also apply, such as article 116 on the non-applicability of terms of limitations, which provides that: "Criminal proceedings in respect of crimes against humanity and enforced disappearance are not subject to terms of limitations."

68. Article 239 (a) establishes an exception to the prohibition on the transfer of persons in pretrial detention for their involvement in crimes against humanity. Accordingly, such persons may be made to serve their sentence in a place other than the prison of the province or district in which the crime was committed.

69. Act No. 32 of 1995, adopting the Inter-American Convention on Forced Disappearance of Persons.

70. Act No. 27 of 30 March 2011, adopting the International Convention for the Protection of All Persons from Enforced Disappearance.

## Article 12

71. Criminal proceedings are a mechanism through which the Public Prosecution Service investigates offences. When a person is suspected of committing an offence, he or she is charged and tried, where appropriate. Persons found guilty are sentenced.

72. Proceedings comprise four stages: the investigation stage, the intermediate stage, the oral hearing and the enforcement stage.

73. During the investigation stage, the Public Prosecution Service investigates and prosecutes offences with the help of two subsidiary bodies, namely the Judicial Investigation Department and the Institute of Forensic Medicine and Science.

74. With regard to establishing the facts in cases of enforced disappearance, action taken during the investigation stage may lead to the rescue of a victim, but any evidence uncovered will not have probative value until it is presented during the oral hearing.

75. In order to establish the facts of the case for the purposes of attributing responsibility and imposing criminal penalties, an oral hearing must be held. At this hearing, evidence may be freely presented. This means that the circumstances of the punishable act may be proven by any permitted form of evidence and will be assessed in accordance with the rules of sound judgment, including logic, experience, common sense and scientific and technical expertise.

76. Enforced disappearance is a publicly actionable offence, which means that the Public Prosecution Service may initiate an investigation of its own motion whenever it has *notitia criminis*, that is, when it becomes aware of an alleged offence. There are also mechanisms through which citizens can provide the Public Prosecution Service with information relating to alleged punishable acts, which may lead to a criminal investigation. These mechanisms take the form of a report, which can be filed by someone with no connection to the act, or a complaint, which must be formulated by a victim of the offence (who may be a close relative of the direct victim or a non-profit association) with the intention of being a party to the criminal proceedings.

77. Criminal proceedings are grounded in a set of safeguards, principles and rules that fill any gaps in the Code of Criminal Procedure and serve as interpretation guidelines and norms that inform the decisions and conduct of justice officials. These principles include independence and impartiality, respect for human rights, equality of arms, objective investigation and cultural diversity. These rules are in place to ensure that there are no discriminatory barriers to the equal treatment of all persons before the law.

78. To prevent harassment and avoid exposing victims to further trauma, the Public Prosecution Service offers protection at all stages of the criminal proceedings. For this purpose, it has at its disposal a variety of victim protection measures, which are set out in articles 331, 332, 333 and 336 of the Code of Criminal Procedure.

79. Act No. 1 of 6 January 2009, establishing the organizational structure of the Public Prosecution Service and repealing and replacing provisions of the Judicial Code, establishes a disciplinary procedure that may be initiated against any Public Prosecution Service official who fails to comply with the disciplinary rules, without prejudice to any criminal or civil proceedings that may be brought in respect of the alleged illegal act.

80. This administrative procedure, which is overseen by a disciplinary council composed of high-ranking Public Prosecution Service officials, may lead to the imposition of a series of graduated sanctions, including dismissal, if the public servant is found to have committed a disciplinary offence.

81. Complainants who believe that the Public Prosecution Service has unjustly refused to investigate their case may file a complaint against the official who failed to initiate an investigation into the punishable act reported.

82. These mechanisms, which have been mentioned previously, are the protection measures provided for in articles 331, 332, 333 and 336 of the Code of Criminal Procedure. They can and must be applied by prosecutors, without prejudice to any subsequent review

by a due process judge, basically because action must often be taken swiftly in situations of violence and illegal acts affecting persons.

83. There have been no cases of enforced disappearance based on the definition of this crime against humanity – which is protected under international human rights law – as set out in the Criminal Code (Act No. 14 of 2007), which entered into force in 2008.

84. The Public Prosecution Service – the main body responsible for investigating criminal acts – is responsible for investigating cases of enforced disappearance.

85. The prosecutors of the Public Prosecution Service have the power and competence to initiate national investigations of their own motion into the enforced disappearance of persons.

86. The operating budget of the Public Prosecution Service for 2019 is 120,486,679 balboas and its investment budget is 13,915,042 balboas, making a total of 134,383,721 balboas.

87. As at May 2019, the institution had 4,332 employees throughout the country, including 923 prosecutors.

88. Public Prosecution Service officials face no legal or material barriers to access to places of detention where such access is required to investigate an act of enforced disappearance or assist a person subjected to it.

89. This is evident from Panamanian legislation, which contains two different sets of rules that are ultimately linked. The first set of rules relates to the constitutional and legal powers of the Public Prosecution Service and includes article 75 of the Code of Criminal Procedure on the obligation to cooperate, which provides that public and private entities have an obligation to cooperate promptly, effectively and fully with the orders of Public Prosecution Service officials acting in accordance with their mandate, on pain of incurring legal liability.

90. Similarly, article 388 of the Criminal Code provides that a penalty of between 5 and 10 years' imprisonment will be imposed on anyone, who through the use of physical force, threats, intimidation or the promise, offer or concession of an undue advantage, obstructs or impedes compliance with the official duties of a law enforcement official from one of the investigation agencies, the judicial branch or the Public Prosecution Service.

91. The second set of rules concerns prison-related matters, such as the rule enshrined in article 38 of Act No. 55 of 2003 on the reorganization of the prison system, which provides that all prison officials have an obligation to abide by the provisions established in the Constitution, penitentiary law, manuals, regulations, instructions and other instruments adopted or issued by the competent authorities.

92. In that connection, article 317 of Executive Decree No. 393 of 2006 regulating the Panamanian prison system provides that the Public Prosecution Service must be immediately informed of the commission of any disciplinary offence that might constitute a crime, without prejudice to the continuance of related disciplinary proceedings, and that any prohibited objects or substances whose possession may amount to an offence must be handed over to the authorities either together with the report on the events or at the time of their discovery.

93. During criminal proceedings, the due process judge may choose to apply personal protective measures, which involve the suspension until the end of the trial of some of the rights or juridical rights of the persons under investigation. These rights may be suspended only where necessary to ensure, for example, the physical safety of the victim or the accused or the effectiveness of the criminal proceedings.

94. Such protective measures include those set forth in article 224 (6) of the Code of Criminal Procedure, which provides for suspension from a public or private position when the employee has been accused of committing an offence on the job, and in article 224 (7), which provides for the mandatory cessation of any activity carrying the penalty of disqualification, in which case the licence or document accrediting the person's competence is withheld.

95. In Panama, there are basically two types of legislation that prohibit secret or unofficial detentions: constitutional provisions and legal provisions.

96. At the constitutional level, article 21 of the Constitution states that no one may be deprived of liberty except by written order of a competent authority, in accordance with the legal formalities and on grounds previously established by law, and that an offender caught in flagrante delicto must be handed over immediately to the authorities. No one may be detained for more than 24 hours except by order of a competent authority; anyone who violates this rule will be punished by loss of employment, without prejudice to the penalties established by law.

97. These constitutional guidelines are fleshed out in the relevant legal provisions.

98. Since the constitutional and legal provisions have general effect, the legal system does not allow for secret detention. Anyone engaged in such an act would be committing a criminal offence.

99. In application of the constitutional provisions, article 233 of the Code of Criminal Procedure provides that persons who are caught in flagrante delicto or who have escaped from a prison or any place of detention may be arrested without a warrant. In such cases, the arrested person must be immediately referred to the Public Prosecution Service, whose officials, under article 335 of the Code of Criminal Procedure, have 24 hours to refer him or her to the due process judge for review of the arrest.

100. Similarly, the Public Prosecution Service may order that a person be arrested and taken before an investigative officer when there is sufficient evidence to reasonably believe that he or she has participated in a crime. The Service has 24 hours to bring the person before the due process judge so that the judge may review the order (Code of Criminal Procedure, art. 235).

101. In addition, where appropriate, the due process judge may order the provisional detention of a person, as provided for in article 237 of the Code of Criminal Procedure.

102. The trial court may order that the accused be arrested and brought before an investigative officer to ensure that the oral proceedings can proceed (Code of Criminal Procedure, art. 361).

103. In cases where a trial jury hands down a guilty verdict, the judge imposes the appropriate precautionary measure (Code of Criminal Procedure, art. 448).

104. The provisions requiring prompt notification of and access to lawyers, doctors, family members and consular officials are described below.

105. Article 22 of the Constitution states that, inter alia, all persons placed under arrest must be immediately informed, in a manner which they understand, of the reasons for their arrest and of their constitutional and legal rights. It also stipulates that any person who is arrested shall have, from that moment, the right to assistance from a lawyer during police inquiries and judicial proceedings.

106. Article 10 of the Code of Criminal Procedure states that everyone has the right to counsel of his or her own choosing from the first investigative action until completion of the proceedings, and the right to communicate freely, directly and privately with such counsel.

107. Article 93 of the Code of Criminal Procedure establishes that accused persons are guaranteed all the rights set out in the Constitution, international human rights treaties and conventions ratified by Panama and the country's laws, from beginning to end of the proceedings. These include the rights:

- To be informed of the allegations and know the identity of their accuser or the source of the *notitia criminis*
- To be notified of the grounds for their detention and the identity of the official who ordered it, and to be shown, where appropriate, the arrest warrant
- To be assisted by counsel of their choosing or, if they are deprived of liberty, by the counsel proposed by their spouse, partner or close relatives or, failing that, by a public defender. To this end, they have the right to communicate by telephone upon request
- To have immediate and effective contact with the person, association, group or entity that they wish to inform of their arrest

- To be brought, as soon as possible, before the competent authority
- To submit documents and requests to the person in charge of their custody, who must immediately transmit them to the Public Prosecution Service or the relevant judge
- To not be held incommunicado and to be able to communicate at any time with their counsel
- To appear, on request, before the judge, duly assisted by their lawyer, to testify on the facts that are the subject of the investigation
- To receive visits and to communicate in writing or through other lawful means
- To have access to prompt medical care
- To be assisted by a translator or interpreter if they do not understand Spanish or have a limited ability to express themselves orally or in writing

108. With regard to consular notification, on the basis of article 14 of the Code of Criminal Procedure – according to which the rights and guarantees enshrined in the Constitution and in international human rights treaties and conventions should be regarded as common minimum standards that do not exclude other provisions relating to fundamental rights and human dignity – the Vienna Convention on Consular Relations of 1963 is directly applied in Panama.

109. Article 36 of this Convention establishes the right to consular notification.

110. Article 252 of Executive Decree No. 232 of 2006, which regulates the legislation on the prison system, provides that prisoners have the right to notify, from the time of their admission to prison, their family and lawyer, and, if they are foreigners, a representative of their country. To this end, the prison makes a telephone available for prisoners to make calls, allowing them to speak for five minutes for each authorized call. Prisoners who do not have enough money to cover the cost of the call may call collect. Article 252 also provides that, when a prisoner is transferred to another prison, the prison warden is required to notify the prisoner about the transfer and to inform the prisoner's relatives and the relevant authorities as necessary.

111. Specific measures are covered in the country's procedural law, as described above.

112. The Panamanian judicial system provides, for the cases described in this paragraph, the remedy of habeas corpus, which is primarily regulated by articles 2574–2614 of the Judicial Code. This is described as a remedy for any individual arrested for reasons or in a manner that are not provided for in the Constitution or the law, as a result of an action taken by the authorities, civil servants or a public corporation of any organ or branch of government. Its purpose is to bring that person immediately and publicly before the judicial authorities for review and a decision on whether the detention or imprisonment in question is justified and, if this is not the case, to release him or her and restore matters to the previous state. It is an informal summary procedure, which can be submitted by the aggrieved person or any other person acting on his or her behalf without the need for a power of attorney. The judicial authorities with jurisdiction to adjudicate in first instance are the higher courts of appeal; appeals against their ruling are heard by the Criminal Division of the Supreme Court.

113. Act No. 55 of 2003 provides that the prison system is headed by an administrative unit called the Directorate-General of the Prison System under the Ministry of the Interior and Justice (now the Ministry of the Interior).

114. Article 10 of Act No. 55 states that only persons of legal age who are deprived of liberty or punished may continue to be detained in prison; that a person deprived of liberty may only be sent to prison if there is a written order from the competent authority; and that prior notification of the transfer of this person must be given to this authority. In addition, before an individual can be incarcerated, article 21 of Executive Decree No. 393 requires the submission of a police report certifying that the arrest has been brought to the attention of the official who issued the arrest warrant.

115. Under articles 34 and 35 of Act No. 55, the Directorate-General of the Prison System appoints a warden for each prison; the warden is the highest authority and is

responsible for the effective and harmonious functioning of the institution of which they are in charge.

116. Article 51 of Act No. 55 requires every place of detention to keep a register of all detainees, indicating their identity, the grounds for their detention, the competent authority that ordered their detention, and the day and time of admission and release. It also states that no person may be admitted to a prison or holding facility without a written detention order from a competent authority, of which the details have been previously entered in the register.

117. Article 22 of Executive Decree No. 393 stipulates that the following information is required before a detention order or arrest warrant can be issued: the full name of the individual concerned and the number of his or her identity document or passport, as applicable; the offence they are accused of, the file number and the authority at whose disposal he or she is to be placed; the authority ordering the detention; details of the complainant, if known; and the name and address of the victim, if known.

118. Article 52 provides that persons deprived of their liberty who are admitted to any facility should be segregated by, among other things, their age, sex, status of the proceedings, criminal record (first-time or repeat offenders), state of health and any diagnosed illnesses, behavioural problems and recommended treatment.

119. With regard to transfers, article 39 of Executive Decree No. 393 provides that the Director-General of the Prison System has exclusive authority to determine the destination facility and to decide on transfers of inmates, on the basis of proposals made by the technical bodies of each facility. Transfers are reported to the competent judicial authority and carried out by the National Police.

120. The Directorate of the Prison System has issued a procedural protocol to be followed in the event of the death of a person deprived of liberty. This establishes that the officer who discovers the body must immediately notify the head of the prison, who must notify the Directorate-General of the Prison System as soon as possible. The official who first learns of the death must prepare a report indicating, *inter alia*, the identity of the dead person and the place and circumstances in which the body was found. The report is sent to the head of internal security of the prison, the Prison Warden, the Director-General of the Prison System and the Minister of the Interior. The designated family member is informed within two hours of the identification of the body and the detainee's belongings are delivered to this family member; a channel of communication is established to keep the family informed of the circumstances surrounding the event. Criminal and administrative investigations are initiated in all cases, and so the location of the discovery must be secured and kept intact until the authorities of the Public Prosecution Service arrive on the scene. Finally, the media are notified and the incident is recorded for statistical purposes.

## **Article 18**

121. The law allows the families of detainees to be aware of each of the points covered by article 17.3 of the Convention, since from the moment detainees enter the facility, they have the right to communicate their status to their families and friends by telephone (Executive Decree No. 393, art. 252). Inmates also have the right to communicate by telephone and in writing with family members, and to receive regular visits from them. If they become seriously ill, have an accident or die, the designated family member must be notified immediately.

122. Similarly, information on the identities of detainees and the detention facility where they are held is not considered confidential or restricted information. Such information is regulated by Act No. 6 of 2002, which sets standards for transparency in the public administration and provides for the remedy of habeas data, among other things; therefore, this information is freely available.

123. Anyone with a legitimate interest in accessing the information and who is not provided with it by a competent public servant, may file the habeas corpus action referred to earlier in this report or, failing that, a habeas data action, as set forth in Act No. 6 of 2002, which will be heard by the country's Supreme Court in plenary session.

124. To date, there is no law to protect a person who requests access to information, since in a democratic context such a regulation would not appear to be necessary. It is different

for those participating in a criminal investigation, for whom protective measures can be granted, as explained in previous paragraphs.

#### **Article 19**

125. The procedures followed in Panama are internationally recognized by the forensic community and are duly validated and verified in Panama's own laboratory. With regard to article 19 (1), on the use of information in cases of enforced disappearance, the Institute of Forensic Medicine and Science, through the Laboratory of Biomolecular Analysis, maintains and uses the genetic data of disappeared persons and their families specifically for the purpose of identifying remains, and the data is not used or compared with other databases or criminal investigation indicators.

126. The data collected from the DNA analyses (genetic profiles) performed by the Institute of Forensic Medicine and Science, under Act No. 80 of 1998 establishing the DNA database and databank and other provisions, are used exclusively for human identification purposes and are strictly limited to situations covered by the above-mentioned Act (at the request of the competent authority where appropriate).

127. The genetic data stored by the Laboratory of Biomolecular Analysis are kept in controlled-access facilities with different levels of physical and digital security to ensure data integrity and prevent unauthorized access to the information. The digital and physical security levels include eight-character alphanumeric passwords for each user that must be changed regularly, a data storage server with an internal network (i.e. not connected to the Internet), a controlled information backup system, video surveillance, fingerprint access control for restricted areas, and records of access and entry to restricted areas.

128. Pursuant to Act No. 80 of 1998, Panama has a DNA database and databank comprising genetic profiles and biological samples collected in accordance with the Act. It is operated by the Laboratory of Biomolecular Analysis of the Institute of Forensic Medicine and Science, which has been in operation since 2000, and the Institute's DNA database unit established by decision JD-012-2016 of 5 July 2016.

129. At the national level, the information technology systems for storing genetic profiles include the Combined DNA Index System (CODIS) supplied by the United States Federal Bureau of Investigation (FBI) in March 2014, under the letter of agreement signed between the Institute and the FBI on 29 February 2012, and the Mass Fatality Identification System received in January 2017 as a donation from the State Department of the United States of America and its Bureau of International Narcotics and Law Enforcement Affairs (INL-Anti-Narcotics Affairs and Law Enforcement Section).

130. At the international level, the database programme "DNA Gateway" of the International Criminal Police Organization (INTERPOL) is used. The computer for accessing and connecting to the database belongs to and is located at the central bureau of INTERPOL Panama in Ancón.

#### **Article 20**

131. Article 55 of the Constitution provides for the declaration of a state of emergency, whereby, in the event of a foreign war or internal disturbance that threatens the peace and public order, fundamental rights may be suspended, including those contained in article 23 of the Constitution, which provides for the remedy of habeas corpus.

132. This constitutional provision provides that the state of emergency may be applied in all or part of the Republic and temporarily suspended in part or in full. It also provides that the suspension of the effects of the above-mentioned constitutional provisions is declared by the executive branch of government through a decree adopted by the Council of Ministers. The legislative branch must, of its own motion or at the request of the President of the Republic, take cognizance of the declaration of a state of emergency if such a state lasts more than 10 days and may confirm or revoke all or part of the decision adopted by the Council of Ministers in connection with the state of emergency.

133. Article 55 of the Constitution stipulates that once the grounds for declaring a state of emergency cease to exist, the legislative branch, if assembled, or, if it is not, the Council of Ministers must lift the state of emergency.

134. Notwithstanding the provisions of the Constitution, it should be stressed that, under international human rights law, which our Constitution considers to be constituent law, the authorities of the Republic of Panama do not have the right to temporarily suspend guarantees like habeas corpus, even during a state of emergency.

135. Article 44 of the Constitution provides for the use of a habeas data action as an effective way to obtain access to public information. A habeas data action is a summary proceeding and can be initiated without the need for a legal representative. Paradoxically, in accordance with article 55 of the Constitution, the guarantee afforded by this mechanism cannot be suspended.

- Information on any kind of restriction on the right to access information on persons deprived of their liberty that may still be included in the domestic legislation and the steps undertaken to suppress it

136. Although, as explained, Panama does not allow information on persons deprived of their liberty to be restricted under any circumstances, it would be prudent for this legal reality to be enshrined in the Constitution, which could be done when the Constitution is amended, as appears likely in the coming months.

137. As explained earlier, the Panamanian legal system provides for habeas corpus and habeas data, which may not be suspended at any time, whatever the circumstances.

138. In Panama, the guarantee is primarily provided through the remedy of habeas corpus, but, as explained earlier, the remedy of habeas data can also be used for that purpose.

#### **Article 24**

139. Article 1 of Act No. 31 of 1998 defines victims of crime as:

- Persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, financial loss or substantial impairment of their fundamental rights, through acts or omissions in violation of the criminal legislation in force
- The legal representative or guardian of the person directly affected by the crime in case of incapacity, the spouse, common-law partner, relatives to the fourth degree of consanguinity and second degree of affinity, as well as testamentary heirs, when the principal has died
- Associations recognized by the State in the case of crimes affecting collective or public interests, provided that the purpose of the association is directly linked with those interests

Article 79 of the Code of Criminal Procedure (Act No. 63 of 2008) also provides a broad concept of a victim of crime:

- The person directly aggrieved by the crime
- The spouse, common-law partner, relatives to the fourth degree of consanguinity and second degree of affinity and the heirs of the victim
- Partners, in connection with crimes affecting a company that are committed by those who direct, administer, manage or supervise it
- Associations recognized by the State in the case of crimes that affect collective or public interests, involve serious material losses for the State or affect public services, provided that the purpose of the association is directly related to those interests
- Institutions and government entities affected in cases of crimes against the State or its assets or any circumstance in which their property is affected

140. In general, for persons who have individually or collectively suffered harm or impairment of their rights, the State has established mechanisms to restore the right of victims to know the truth about the circumstances of the disappearance and the fate of the disappeared person, in addition to the provisions of the Criminal Code and Code of Criminal Procedure. It has done this through designated committees (the Committee of Relatives of Victims Disappeared or Murdered during the Military Dictatorship and the 20 December Committee) and through negotiations with the relevant institutions (the Ministry

of Foreign Affairs, the Institute of Forensic Medicine and Science, the Public Prosecution Service and the Civil Registry, as well as relatives of the disappeared persons) for the purposes set out in the Convention.

141. These organizations serve as an intermediary between the victims and the State and the institutions that administer justice in cases of disappeared persons (the Public Prosecution Service and the judiciary).

142. A special high-level prosecutor's office has been set up to clear cases left pending under the semi-inquisitorial system, with a mandate to deal with all matters related to the identification of victims who disappeared during the dictatorship and to order the necessary DNA tests to be carried out by the Institute of Forensic Medicine and Science. It also conducts investigations in cases that have been reopened by the court hearing the case:

- Rules and procedures have been established for handing over the remains of disappeared persons, with the participation of the Public Prosecution Service and the Institute of Forensic Medicine and Science, in accordance with the Code of Criminal Procedure in force.
- Extensive information on persons who disappeared during the dictatorship and their relatives has been collected, mostly from criminal files, by the Committee of Relatives of Victims Disappeared or Killed during the Military Dictatorship, State commissions, the special prosecutor's office and relatives, and also from the database of the Laboratory of Biomolecular Analysis, which the Institute of Forensic Medicine and Science and the Public Prosecution Service are working on.
- The Laboratory of Biomolecular Analysis of the Institute of Forensic Medicine and Science stores genetic material of possible human remains, along with the DNA of the relatives of disappeared persons.
- The Code of Civil Procedure and some provisions of the Criminal Code set out the procedure for claiming compensation and reparation. Where criminal procedure is followed, third-party proceedings, which may be ordered by the judge ruling on the case, are carried out. However, as these cases date back to the military dictatorship, which ended many years ago, the State has drawn up agreements that are negotiated with the victims' relatives.
- These agreements between the State and the victims' relatives have sought to meet the demand for compensation, restitution, rehabilitation and the restoration of dignity and reputation, as well as to provide a guarantee of non-repetition.
- While Panama has no specific programmes for the rehabilitation of relatives of the victims of enforced disappearance, there is a multidisciplinary team that assists victims of any crime (the Unit for the Protection of Victims, Witnesses, Experts and Other Participants in Criminal Proceedings, and its secretariat).
- To recognize the legal status of disappeared persons, and make it possible to dispose of their property through succession and settle other post-mortem legal matters, there are procedures for the declaration of presumed death.

#### **Article 25**

143. There is no specific legal provision on this subject in Panama. However, the conduct in the circumstances covered by the article could in itself constitute a range of crimes, some of them related, including: deprivation of liberty, child abduction, identity crimes and child-trafficking, aggravated trafficking in persons, and destruction or falsification of public documents. In other words, conduct of such a serious nature could not fail to be investigated and prosecuted under the Panamanian legal system.

144. Such conduct can also result in civil and administrative actions, since the Criminal Code stipulates that all crimes give rise to civil liability. If public servants are involved, they are subject to disciplinary procedures that could lead to their dismissal.

145. There have been no cases of enforced disappearances based on the definition of this crime against humanity – which is a protected under international human rights law – as set out in the Criminal Code (Act No. 14 of 2007), which entered into force in 2008.

146. Disappearances that occurred between 1964 and 20 December 1989 – during the military dictatorship and the well-known invasion – took place when enforced disappearance had not yet been criminalized. Efforts continue to be made to identify the human remains found and to establish the victims' identity.

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