



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Costa Rica under article 29 (1) of the Convention*

1. The Committee considered the report submitted by Costa Rica under article 29 (1) of the Convention¹ during its twenty-fourth session, at its 427th and 429th meetings,² held on 22 and 23 March 2023 in a hybrid format. At its 440th meeting, held on 31 March 2023, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Costa Rica under article 29 (1) of the Convention, which was prepared in accordance with the Committee's reporting guidelines.

3. The Committee expresses its appreciation for the constructive dialogue with the delegation of the State party on the measures taken to implement the Convention, in which its concerns were addressed, and welcomes the frankness with which the delegation responded to the questions posed. It thanks the State party for the additional information and clarifications provided in its oral statements and in writing.

B. Positive aspects

4. The Committee commends the State party for having ratified almost all the United Nations core human rights instruments³ and nine of the optional protocols thereto, as well as the Inter-American Convention on Forced Disappearance of Persons and the Rome Statute of the International Criminal Court.

5. The Committee commends the State party's measures in areas related to the Convention and its initiatives to modify its legislation, policies and procedures in order to afford greater protection of human rights and to give effect to the Convention, in particular the following:

(a) Establishment of a national human rights institution (Office of the Ombudsman of the Republic of Costa Rica) that is accredited with A status in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles);

(b) Establishment, by Act No. 9204 of 2014, of the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

* Adopted by the Committee at its twenty-fourth session (20–31 March 2023).

¹ CED/C/CRI/1.

² See CED/C/SR.427 and CED/C/SR.429.

³ Costa Rica is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.



pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6. The Committee welcomes the fact that the State party has extended a standing invitation to all special procedure mandate holders of the Human Rights Council to visit the country.

C. Principal subjects of concern and recommendations

1. General information

7. The Committee is of the view that, despite the steps taken by the State party, the legislation in force, and its implementation, are still not in conformity with the Convention. The Committee encourages the State party to take account of the Committee's recommendations, which are made in a constructive and cooperative spirit, with a view to strengthening the existing normative framework and ensuring that this framework and all measures taken by the State authorities with responsibility for searches, investigations, prosecutions and reparations in cases of disappearance, including enforced disappearance, are fully consistent with the State party's treaty obligations. This also applies to ongoing legislative processes.

Individual and inter-State communications

8. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under the Convention (arts. 31 and 32).

9. The Committee encourages the State party to recognize the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention with a view to ensuring that the Convention is fully implemented and strengthening the framework for protection from enforced disappearance.

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

Absolute prohibition of enforced disappearance

10. The Committee is concerned to note that national law does not explicitly state that the prohibition of enforced disappearance may not be derogated from or restricted on the basis of exceptional circumstances (art. 1).

11. The Committee recommends that the State party take the necessary steps to incorporate the absolute prohibition of enforced disappearance into national law, in accordance with article 1 (2) of the Convention.

Register of disappeared persons

12. The Committee regrets that the State party's report and the information provided before and during the dialogue do not include precise statistics on the number of persons who are victims of the acts defined in article 2 of the Convention, including disappearances of migrants and disappearances committed for the purpose of trafficking, or on reports of disappearances (arts. 2 and 3).⁴

13. The Committee requests the State party to establish a single register of all cases of disappearance that have occurred in the national territory, clearly distinguishing between cases of enforced disappearance and cases of disappearance committed without the authorization, support or acquiescence of the State. The register should

⁴ The Committee notes that the State party sent statistics concerning the number of disappearances on 3 April 2023, after the dialogue with the Committee.

reflect the total number of reports of disappearances, including those concerning persons who are subsequently found, whether alive or dead, and persons who are still missing. The register should include at least:

- (a) The total number and identity of all disappeared persons, the sex, gender identity, sexual orientation, age, nationality and ethnic group of each disappeared person and the place, date, context and circumstances of the disappearance, including all evidence relevant to determining whether it was a case of enforced disappearance;
- (b) The status of relevant search and investigation procedures and of procedures for exhumation, identification and return of remains.

Protection of migrants from enforced disappearance

14. The Committee takes note of the information provided by the State party during the dialogue on the increase in the number of foreign nationals on migration routes, a situation that constitutes a major cause for concern. Also of concern are the incidents that may befall foreign nationals during their travel through the country. The Committee regrets the lack of information on the implementation of measures by the State party to prevent the disappearance of migrants and to ensure the rights recognized in the Convention in relation to the search for disappeared persons and the investigation of disappearances.

15. **The Committee recommends that the State party, in cooperation with the other countries involved and with the participation of victims and civil society:**

- (a) Redouble its efforts to prevent and investigate disappearances of migrants and to ensure that those responsible are criminally prosecuted;
- (b) Support processes to search for disappeared migrants and, in cases where their remains are found, to identify them and return them in a dignified manner;
- (c) Establish an up-to-date database of disappeared migrants that includes ante-mortem and post-mortem information to facilitate search and identification operations;
- (d) Ensure that relatives of disappeared persons, irrespective of where they reside, are effectively able to gain access to information and to take part in investigations of disappearances and the search for disappeared persons;
- (e) Strengthen cooperation with other States in the region to ensure that searches for disappeared migrants are conducted and that such disappearances are investigated.

Offence of enforced disappearance

16. The Committee notes with satisfaction that the State party considers the Convention to be a legally binding instrument at the domestic level. However, the Committee is concerned about the lack of a separately defined offence of enforced disappearance. It is also concerned about the possible confusion that could arise if provisions on other offences recognized in national law are applied to enforced disappearance even though they do not meet the definition in article 2 of the Convention (art. 4).

17. **The Committee recommends that the State party ensure that:**

- (a) The offence of enforced disappearance is defined as a separate offence (art. 2) and as a crime against humanity (art. 5);
- (b) The offence of enforced disappearance is punishable by appropriate penalties that take into account its extreme seriousness;
- (c) All the mitigating and aggravating circumstances provided for in article 7 (2) of the Convention are included.

Criminal responsibility of superiors and due obedience

18. The Committee notes that Costa Rican law enforcement officers are bound by the principle of legality and that, under article 281 (a) of the Code of Criminal Procedure, all

public officials and employees have the obligation to report illegal acts or orders by another public official in the performance of his or her duties to the Judicial Investigation Agency or the Attorney General's Office. It also notes that each police force has an internal affairs investigation unit, which is obliged to protect the confidentiality of the source in cases of whistleblowing. The Committee is concerned that due obedience, as formulated in article 36 of the Criminal Code, could exempt officers from any responsibility, in contravention of article 6 (2) of the Convention (art. 6).

19. **The Committee recommends that the State party ensure that its criminal law:**

- (a) **Provides for the responsibility of superiors under the terms established in article 6 (1) (b) of the Convention;**
- (b) **Expressly prohibits the invocation of superior orders or instructions to justify an offence of enforced disappearance.**

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

Extraterritorial jurisdiction over offences of enforced disappearance

20. The Committee is concerned to note that the criminal law does not establish the State party's competence to exercise jurisdiction over an offence of enforced disappearance committed abroad, as provided in article 9 (1) (b) and (c) and (2) of the Convention, and to prosecute such offences in accordance with article 11 (1) of the Convention (arts. 9 and 11).

21. **The Committee recommends that the State party take steps to establish the national courts' competence to exercise jurisdiction over offences of enforced disappearance in accordance with the obligations arising from article 9 of the Convention, in particular the principle of *aut dedere aut judicare* set out therein, and from article 11 of the Convention.**

Independent and impartial investigation

22. While noting the State party's assertion that no complaints of enforced disappearance have been received, the Committee regrets that no information has been provided on how the State party would ensure that any case of enforced disappearance is investigated ex officio in a prompt, thorough, impartial and independent manner and with a differential approach, even if there has been no formal complaint, and that the right of the disappeared person's relatives and loved ones to participate actively in the proceedings as holders of the rights recognized in article 71 (3) of the Code of Criminal Procedure is respected (arts. 12 and 24).

23. **The Committee urges the State party to see to it that all allegations of enforced disappearance are investigated promptly, thoroughly and impartially, even if there has been no formal complaint, and that the alleged perpetrators are prosecuted and, if found guilty, punished in accordance with the seriousness of their acts. The Committee also urges the State party to ensure that any persons with a legitimate interest, such as relatives, loved ones and legal representatives of disappeared persons, can participate in the investigations and at all stages of the proceedings, within the framework of due process, and to ensure that they are regularly informed of the progress and results thereof.**

Separation from duty of officials suspected of offences

24. The Committee notes with satisfaction that national law provides for the suspension from duty, as a precautionary measure, of State agents suspected of involvement in the commission of an offence. However, the Committee is concerned to note that such suspension is optional, that the duration of the precautionary measure depends exclusively on the judge's assessment of necessity, appropriateness and proportionality in each specific case, without there being clear criteria to that effect, and that it is therefore left to the judge's discretion in each case (art. 12).

25. **The Committee recommends that the State party ensure that no State agent suspected of having committed or taken part in the commission of an enforced**

disappearance is in a position to influence the progress of an investigation, whether directly or indirectly, including by suspending such agents from duty from the outset and for the duration of the investigation and by ensuring that members of the law enforcement and security forces who are suspected of involvement in the commission of such an offence cannot take part in the investigation.

Mutual legal assistance

26. While noting the State party's assertion that international legal cooperation functions "normally" and that the authorities afford legal cooperation whenever requested, the Committee regrets that it has not received information on measures taken or envisaged to respond to possible requests for cooperation in cases of enforced disappearance (arts. 14 and 15).

27. **The Committee recommends that the State party strengthen mutual legal assistance mechanisms to ensure their effectiveness whenever it receives requests from other States parties under articles 14 and 15 of the Convention.**

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

Non-refoulement

28. The Committee takes note of the information provided during the dialogue on the criteria and procedures applied to ensure respect for the principle of non-refoulement of a person when there are substantial grounds for believing that he or she may be subjected to enforced disappearance. However, it regrets that these criteria are not sufficiently clear and is concerned to note that national law does not include the risk of enforced disappearance as a basis for prohibiting the expulsion, return, surrender or extradition of a person to another country (arts. 13 and 16).

29. **The Committee recommends that the State party:**

(a) **Expressly incorporate into its domestic law a prohibition on the expulsion, return, surrender or extradition of a person when there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance;**

(b) **Ensure that there are clear and specific criteria and procedures for assessing and verifying the risk that a person may be subjected to enforced disappearance in the country of destination prior to his or her expulsion, return, surrender or extradition and that, where such a risk exists, the person is not expelled, returned, surrendered or extradited.**

Registers of persons deprived of liberty

30. The Committee notes with satisfaction that the prison administration maintains physical and electronic registers of persons deprived of their liberty in prisons. However, the Committee is concerned to note that the municipal police and the national police do not keep such registers and that existing registers are not interconnected (arts. 17 and 18).

31. **The Committee recommends that the State party ensure that all instances of deprivation of liberty, without exception and from the outset, are entered into official registers or records that include, as a minimum, the information required under article 17 (3) of the Convention. The Committee further recommends that the State party ensure that:**

(a) **Registers or records of persons deprived of liberty are completed and updated promptly and accurately and are subject to periodic checks, and that, in the event of irregularities, the officers responsible are duly sanctioned;**

(b) **Any person with a legitimate interest in this information can have prompt and easy access to at least the information referred to in article 18 (1) of the Convention.**

Fundamental legal safeguards for persons deprived of liberty

32. The Committee notes with satisfaction that national law provides for the right of persons deprived of liberty to communicate immediately with counsel, their family or any other person of their choice. It also welcomes the information received on the application of these guarantees to communications between foreign nationals and their consular authorities. The Committee regrets that it has not received sufficient information on the effective implementation of these guarantees and the proceedings initiated and sanctions imposed in the event of non-compliance (art. 17).

33. The Committee recommends that the State party guarantee, in law and in practice, that all persons deprived of liberty, without exception and regardless of the place of deprivation of liberty, are afforded all the fundamental legal safeguards provided for under article 17 of the Convention and other human rights treaties to which Costa Rica is a party. In particular, the State party should see to it that all persons deprived of their liberty have access to counsel and can communicate without delay with their relatives or any person of their choice and, in the case of foreigners, with their consular authorities, from the outset of the deprivation of liberty.

National preventive mechanism

34. The Committee takes note of the information provided during the dialogue on the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; on its regular visits, including during the coronavirus disease (COVID-19) pandemic, to all places where persons may be deprived of their liberty, regardless of their nature; and on the measures taken to ensure that the Mechanism has the necessary resources to discharge its mandate effectively and independently. The Committee regrets that it has not received information about the investigations carried out or about the mechanisms available in places of deprivation of liberty for the submission of complaints of rights violations to the Mechanism. The Committee also regrets that it has not received information on whether there are other national or international entities or organizations that have access to places of deprivation of liberty (arts. 17, 18, 20 and 22).

35. The Committee recommends that any person deprived of liberty be given access to appropriate mechanisms for reporting rights violations to the competent authorities, including the Ombudsman's Office and the National Mechanism for the Prevention of Torture.

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

Definition of “victim” and right to receive reparation and prompt, fair and adequate compensation

36. The Committee welcomes all the measures put in place for the reporting and tracing of disappeared persons and, in the event of death, for the return of the remains of disappeared persons to their families. However, the Committee regrets that the definition of “victim” in the domestic legal system is not fully consistent with the definition in the Convention and thus constitutes an obstacle to allowing victims of enforced disappearance access to full reparation in accordance with the provisions of the Convention (art. 24).

37. The Committee recommends that the State party ensure that all individuals who have suffered harm as the direct result of an enforced disappearance can exercise the rights enshrined in the Convention, in particular the rights to justice, truth and reparation. In this connection, the Committee recommends that the State party:

(a) Adopt a definition of “victim” that is in line with the definition in article 24 (1) of the Convention;

(b) Ensure that its domestic legislation provides for a comprehensive system of compensation and reparation that fully complies with article 24 (4) and (5) of the Convention and other relevant international standards, that is under the responsibility

of the State, that is applicable even if no criminal proceedings have been initiated and that is sensitive to the specific needs of victims, in view of, *inter alia*, their sex, sexual orientation, gender identity, age, ethnic origin, social status or disability.

Legal situation of disappeared persons whose fate has not been clarified and that of their relatives

38. The Committee regrets that it has not received clear information on the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in relation to issues such as property rights and social welfare (art. 24).

39. **The Committee recommends that the State party review its domestic legislation to ensure that it appropriately addresses the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, without requiring that the disappeared person be declared dead. In this respect, the Committee encourages the State party to set up a procedure for obtaining a declaration of absence as a result of enforced disappearance.**

6. Measures to protect children from enforced disappearance (art. 25)

40. The Committee takes note of the information on the safeguards and procedures governing intercountry adoption in the State party. The Committee is nonetheless concerned that the acts described in article 25 (1) of the Convention are not addressed in the Criminal Code. The Committee also regrets the lack of information on the procedures in place for reviewing and, if necessary, annulling any adoption or placement that originated in an enforced disappearance; measures for restoring a child's identity, including his or her nationality, name and family relations, while upholding the best interests of the child; and any limitations that may apply (art. 25).

41. **The Committee recommends that the State party:**

(a) **Review its criminal legislation with the aim of incorporating as specific offences the acts described in article 25 (1) of the Convention and establishing appropriate penalties that take into account their extreme seriousness;**

(b) **Establish specific procedures for returning the children referred to in article 25 (1) (a) to their families of origin;**

(c) **Establish specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship that originated in an enforced disappearance and for restoring the true identity of the children concerned, taking into account the best interests of the child.**

Fulfilment of the rights and obligations under the Convention, dissemination and follow-up

42. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures it adopts are in full accordance with the Convention and other relevant international instruments.

43. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations. In this context, the Committee places special emphasis on the need for the

State party to ensure that gender issues and the specific needs of women and children are systematically taken into account in implementing the recommendations contained in the present concluding observations and all the rights and obligations set out in the Convention.

44. The State party is encouraged to disseminate widely the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the process of implementing the recommendations contained in the present concluding observations.

45. Under article 29 (4) of the Convention, and with a view to strengthening its cooperation with the State party, the Committee requests the State party to submit, by 2030, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention since the adoption of the present concluding observations. The document should be prepared in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29 of the Convention.⁵ The Committee encourages the State party to involve civil society in the process of preparing the information.

⁵ [CED/C/2](#), para. 39.