



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

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## Committee on Enforced Disappearances

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Item 6 of the provisional agenda

Consideration of reports of States parties to the Convention

## Replies of Costa Rica to the list of issues in relation to its report submitted under article 29 (1) of the Convention\*

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\* The present document is being issued without formal editing.



1. The following is in response to a letter received from the Office of the United Nations High Commissioner for Human Rights containing an advanced, unedited version of the list of issues in relation to the report submitted by Costa Rica ([CED/C/CRI/1](#)) on 7 May 2020 under article 29 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance. The report outlined the measures taken by the State to comply with its obligations under the Convention.

2. The State of Costa Rica expresses its sincere appreciation for the requests formulated by the Committee in the list of issues in relation to this report. In accordance with the principle of good faith, included below are some important comments and clarifications in response to these requests.

**Reply to the issues raised in paragraph 1 of the list of issues ([CED/C/CRI/Q/1](#))**

3. Costa Rica has historically been receptive to this type of mechanism, since it strengthens and complements the work of the committees, and hence the fulfilment of the obligations and commitments undertaken by States. At the same time, it gives effect to the modern concept underlying international law whereby individuals possess full legal capacity.

4. The possibility of receiving communications or complaints, in addition to being common to most of the core human rights treaties, is consistent with the current state of development of international human rights law, according to which precedence is always given to domestic remedies.

5. Beyond this clarification of the State's goodwill, it should be noted that consideration is being given to the desirability or political advisability of making the declarations provided for in articles 31 and 32, which concern the Committee's competence to receive and consider individual and inter-State communications.

**Reply to the issues raised in paragraph 2 of the list of issues**

6. The Ombudsman's Office, as the body responsible for the promotion and defence of human rights in Costa Rica, is guided by the obligations that the State has undertaken throughout its legal history under binding international rights treaties, such as the one that concerns us here.

7. It is worth mentioning, as a background note, that the American Convention on Human Rights is the most far-reaching instrument on the human rights of all persons. One of the characteristics of the inter-American human rights system is that it reinforces or complements the domestic law of the American States.

8. This instrument gives rise to two general obligations for all States parties and one direct, general obligation for legislatures:

**“Article 1. Obligation to Respect Rights**

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

**Article 2. Domestic Legal Effects**

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”

9. Likewise, concerning the signatory countries' compliance with the American Convention on Human Rights, in its Advisory.

10. Opinion OC-14/94 on international responsibility for the promulgation and enforcement of laws in violation of the Convention (arts. 1 and 2 of the American Convention on Human Rights), the Inter-American Court of Human Rights found that:

“[T]he promulgation of a law that manifestly violates the obligations assumed by a state upon ratifying or acceding to the Convention constitutes a violation of that treaty and, if such violation affects the guaranteed rights and liberties of specific individuals, gives rise to international responsibility for the state in question.

...

“[T]he enforcement of a law manifestly in violation of the Convention by agents or officials of a state results in international responsibility for that state.”

11. Based on the above principles, we can conclude that, when the legislature fails in its duty to harmonize the national law with that of the Convention (by adopting legislative measures), the judiciary, as a branch of the State, must refrain from enforcing any law in violation of the Convention. Failure to do so would incur the international responsibility of the State, since the State as a whole (including any of its branches or organs) is responsible for acts or omissions related to the violation of the rights internationally enshrined in article 1.1. of the American Convention on Human Rights.

12. The foregoing implies that the ratification of the present Convention entails adherence to the same principle of compliance – the principle of effectiveness and *pacta sunt servanda* – as that undertaken upon ratification of the American Convention on Human Rights. For this reason, the Ombudsman’s Office would not rule out making the declarations provided for in articles 31 and 32 of the present Convention.

#### **Reply to the issues raised in paragraph 3 of the list of issues**

13. The report was prepared by the Inter-Institutional Commission for the Monitoring and Implementation of International Human Rights Obligations, which coordinates the implementation of actions at the international level. It was charged with conducting the relevant consultations for the report, gathering inputs and producing and approving the outcome document.

14. The Commission is a permanent advisory body of the executive branch and is attached to the Ministry of Foreign Affairs and Religion. Its mission is to coordinate the implementation of the State party’s international human rights obligations at the national level, as well as to coordinate relevant actions at the international level, with a view to enhancing the promotion and protection of human rights. The Commission is responsible for compiling, analysing and processing the recommendations made by international and regional human rights bodies and devising formulas for their implementation under domestic law.

15. The Commission is also charged with coordinating the preparation of reports, such as the one relating to the International Convention for the Protection of All Persons from Enforced Disappearance. It is composed of representatives of various public institutions, including government ministries and independent bodies whose work involves giving effect to human rights, among them: the Ministry of Planning and Economic Policy, Ministry of Education, Ministry of Health, Ministry of Housing and Human Settlements, Ministry of Social Welfare and the Family, National Child Welfare Agency, National Institute for Women, Ministry of the Environment, Energy and Telecommunications, Ministry of Culture and Youth, Ministry of Internal Affairs, Police and Public Security, Ministry of Justice and Peace, Ministry of Agriculture and Livestock, Ministry of Economic Affairs, Industry and Commerce and Ministry of Finance. The Commission also welcomes representatives of those independent institutions, governing councils and directorates, whose scope of action constitutes or promotes a fundamental component of human rights, such as the Costa Rican Water Supply and Sewerage Institute, Costa Rican Electricity Institute, National Institute of Statistics and Censuses, Social Insurance Fund of Costa Rica, National Council for Rehabilitation and Special Education, National Council for Older Persons, National Commission on Indigenous Affairs, and Directorate General for Migration and Alien Affairs. The Commission also welcomes the participation of civil society organizations.

**Reply to the issues raised in paragraph 4 of the list of issues**

16. In 1990, the Constitutional Chamber of the Supreme Court set an important judicial precedent regarding the hierarchy of international treaties signed by Costa Rica when it found that those international treaties whose purpose is to grant broader rights or protections to persons have a higher rank than the Constitution itself (see resolution Nos. 3435-92 and 5759-93 of this Chamber). However, in the area of repression, and specifically with regard to the characterization of certain conduct as a criminal offence, provisions to that effect must be set out in a national statute that is adopted by the Legislative Assembly and endorsed by the Executive.

17. The foregoing is in keeping with article 39 of the Constitution, which stipulates:

“No one shall be made to suffer punishment other than for an offence, quasi-offence or misdemeanour sanctioned by prior law and by virtue of a final judgment pronounced by a competent authority, after the suspect has been given an opportunity to defend him or herself and has necessarily been proven guilty. Enforcement by committal in civil or labour matters and arrests which may be ordered in connection with bankruptcy proceedings shall not constitute a violation of this article or of the two previous ones.”

18. Accordingly, when it comes to the criminal prosecution of persons charged with the conduct described in the Convention as enforced disappearance, judges may use the Convention only as a guiding criterion. They may not, in any circumstances, invoke the Convention directly to fill gaps in the domestic legislation, in terms of punishing conduct that has not been defined as a criminal offence under an applicable domestic law.

**Reply to the issues raised in paragraph 5 of the list of issues**

19. On 16 March, the Ministry of the Office of the President declared a national emergency and closed the borders until 1 August, opening them to persons from the European Union, the Schengen area, the United Kingdom of Great Britain and Northern Ireland, Canada, Uruguay, Japan, the Republic of Korea, Thailand, Singapore, China, Australia and New Zealand. On 1 September, the borders were opened to six states of the United States of America: New York, New Jersey, New Hampshire, Vermont, Maine and Connecticut.

20. In Costa Rica, the declaration of a state of emergency does not entail a suspension of guarantees as defined in article 27 of the American Convention on Human Rights (Pact of San José). Unlike in other countries, in Costa Rica, no guarantees have been suspended, and consequently no one risks being detained or subjected to reprisals for exercising their freedom of movement or their freedom of association. The state of emergency is more of an administrative, budgetary and health measure. Article 1 of Decree No. 42227-MP-S provides that: “A national state of emergency is hereby declared throughout the territory of the Republic of Costa Rica due to the health emergency caused by the coronavirus disease (COVID-19).” Its scope is oriented more towards controlling public health and the flexibility of administrative procedures than it is the suspension of guarantees or core human rights.

21. In its response to the pandemic, Costa Rica has sought to safeguard the human rights of all members of its population, including by following the guidelines set forth in Resolution 1/2020 on the pandemic and human rights in the Americas, referred to in Directive No. 082-MP-S, which provides guidance on protocols for the resumption of activities throughout the nation.

22. In accordance with the judicial precedent set by the Constitutional Chamber, it should be noted that there tends to be confusion between the limits of the executive branch as they relate to declarations of a state of emergency and the suspension of constitutional guarantees, commonly known as a state of exception.

23. Concerning the suspension of constitutional rights and guarantees, the Constitution stipulates that:

“Article 121. In addition to the other powers conferred upon it by this Constitution, the Legislative Assembly shall have the exclusive right:

...

(7) to suspend by a majority of not less than two thirds of its total membership, in the event of manifest public need, the individual rights and guarantees established in articles 22, 23, 24, 26, 28, 29, 30 and 37 of this Constitution. Such suspension may be enacted in respect of all or only some of the rights and guarantees, or in respect of all or only part of the territory, and for a maximum period of 30 days. During such suspension, the Executive may order the detention of persons only in establishments not intended for ordinary convicts, or it may order their confinement to residential accommodation. At its subsequent meeting, the Assembly must also hear a report on the measures taken to maintain public order or the security of the State.

...

Article 140. The following are the joint powers and duties of the President and the respective cabinet minister:

...

(4) During adjournment of the Legislative Assembly, to order the suspension of rights and guarantees referred to in article 121 (7), in the same instances and with the same limitations as are established therein, and to report this immediately to the Assembly. A decree of suspension of guarantees is equivalent, ipso facto, to a convocation of the Assembly, which must meet within the next 48 hours. If the Assembly does not confirm the measure by a two-thirds vote of its total membership, the guarantees shall be considered as reinstated. If the Assembly is unable to meet due to lack of a quorum, it shall do so the following day with any number of deputies. In such cases, the decree issued by the Executive requires approval by a vote of not less than two thirds of those present.”

24. It can be seen from these articles that the Constitution limits the suspension of constitutional rights and guarantees to those set forth in articles 22, 23, 24, 26, 28, 29, 30 and 37, as follows:

“Freedom of movement (art. 22):

“All Costa Ricans may go or settle anywhere inside or outside the Republic, on condition that they are free of liability, and may return whenever they wish. Costa Ricans shall not be subject to requirements that prevent them from entering the country.”

Freedom of domicile (art. 23):

“The home and any other private premises of inhabitants of the Republic are inviolable. Nevertheless, they may be searched by written order of a competent judge or to prevent an offence from being committed or going unpunished or to avoid serious injury to persons or property, as provided by law.”

Right to the inviolability of the documents and oral communications of the inhabitants of the Republic (art. 24):

“The right to the privacy, freedom and confidentiality of communications is guaranteed. The private documents and the written and oral communications of the inhabitants of the Republic shall be inviolable. However, the law, whose approval and amendment shall require a two-thirds vote of the deputies of the Legislative Assembly, shall specify the instances in which the courts may order the seizure, search or inspection of private documents, when doing so is absolutely necessary in order to clarify matters brought to their notice. In addition, the law shall specify the instances in which the courts may order the interception of any type of communication and shall specify the offences in whose investigation the use of this exceptional power may be authorized and for how long. Additionally, it shall specify the responsibilities and sanctions incurred by officials who abuse this power. Judicial decisions covered by this law must be reasoned and may be enforced immediately. Their application and enforcement shall be the non-delegable responsibility of the judicial authority. The law shall determine in which instances the competent officials of the Ministry of Finance and the Office of the Comptroller General of the Republic may review the accounting books and their annexes for tax purposes and to ensure the proper

utilization of public funds. A special law, approved by two thirds of the total number of deputies, shall determine which other organs of the public administration may review the documents specified in this law, in connection with the fulfilment of their regulatory and oversight authority to achieve public objectives. It shall also indicate in which cases such review is appropriate. Correspondence that is stolen or information obtained as a result of the illegal interception of any communication shall not produce legal effects.”

Freedom of assembly (art. 26):

“Everyone has the right to assemble peacefully and without arms, whether for private business, or to discuss political matters and scrutinize the public conduct of officials. Meetings held on private premises do not require prior authorization. Those held in public places shall be regulated by law.”

Principle or right of free will (art. 28):

“No one may be harassed or persecuted for expressing their opinions, nor for any act that does not infringe the law. Private actions that do not damage public morals or the public order, or that do not harm a third party, fall outside the scope of the law. However, no political propaganda of any kind may be produced by members of the clergy or lay persons who invoke religious motives or who utilize religious beliefs as a means thereof.”

Freedom of thought, expression and religion (art. 29):

“Everyone may communicate their thoughts orally or in writing and publish them without prior censorship; however, they shall be responsible for the abuses they commit in the exercise of this right, in the instances and under the terms prescribed by law.”

Freedom of access to administrative departments in order to obtain information on matters of public interest (art. 30):

“Free access to administrative departments for the purpose of obtaining information on matters of public interest is guaranteed. This excludes State secrets.”

The right not to be arrested without substantiated evidence of having committed a criminal offence and without a warrant (art. 37):

“No one may be detained without substantiated evidence of having committed an offence or without a written warrant from a judge or authority responsible for public order, unless he or she is a fugitive from justice or is found in flagrante delicto. In all cases where a person is detained, he or she must be brought before a competent judge within a mandatory period of 24 hours.”

25. In summary, in the event of manifest public need, and with the approval, by vote, of no less than two-thirds of the membership of the Legislative Assembly, the State may suspend the exercise of the following rights and their respective guarantees: (1) Freedom of movement; (2) Inviolability of the home and any other private premises; (3) Right to privacy, freedom and confidentiality of communications; (4) Right to assemble peacefully, without arms, to discuss business, politics, and the conduct of State actors; (5) Guarantee of the principle of the requirement of law to govern the actions of individuals; (6) Freedom of expression and of the press; (7) Freedom of access to administrative departments for the purpose of obtaining information; and (8) Right not to be detained or arrested without order of a judge or competent authority, upon evidence alleging that one is the author of, or accomplice in a crime.

#### **Reply to the issues raised in paragraph 6 of the list of issues**

26. In this bill, the definition of enforced disappearance as a criminal offence must be revised in order to characterize it as a discrete offence and without using the technique of the unspecific criminal provision. It is necessary, in absolute respect for the principle of legality, to have a specific and clear legal definition that will allow for the effective exercise of the right of defence by accused persons.

27. Regarding the lack of a definition of the offence of enforced disappearance, note should be taken of the following:

28. Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, which was ratified by Costa Rica through Act No. 9005 and published in *La Gaceta* No. 224 of 21 November 2011, defines enforced disappearance as follows:

“For the purposes of this Convention, ‘enforced disappearance’ is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

29. The above description considers the arrest, detention, abduction or deprivation of liberty of a person or group of persons as conduct characteristic of the offence. In the absence of a definition of enforced disappearance as a discrete offence, such conduct could be assimilated, under the current legislation, into the following criminal offences defined in the Criminal Code:

“Article 338. Abuse of Authority. Any public official who abuses his or her office by ordering or committing an arbitrary act prejudicial to the rights of any person, shall be liable to a term of imprisonment of between three months and two years.

Article 190. Concealment of detainees by authorities. Authorities who order and officials who carry out the concealment of a detainee, who refuse to bring him or her before the respective court, or who in any other way circumvent the guarantee afforded by article 37 of the Constitution shall be subject to the same penalty and furthermore shall be deprived of their employment, office or function, or be disqualified from regaining it for a period of from six months to two years.

Article 191. Deprivation of liberty without a financial motive. Anyone who deprives another of his or her personal liberty for a purpose other than financial gain shall be sentenced to a term of imprisonment of from six months to three years.

Article 192. Aggravated deprivation of liberty. The penalty for depriving a person of his or her personal liberty shall be from 4 to 10 years’ imprisonment, if any of the following circumstances apply:

1. The victim is a person under the age of 18 or is in a situation of vulnerability or disability;
2. Coercion, deceit or violence is used;
3. The offence is committed against a spouse, partner or relative up to the third degree of consanguinity or marriage, or against a public official;
4. The deprivation of liberty lasts more than 24 hours;
5. The perpetrator takes advantage of a relationship of authority or trust with the victim or the victim’s family, whether or not based on ties of kinship;
6. The perpetrator takes advantage of the exercise of his or her profession or the function that he or she performs; or
7. The victim’s health is seriously harmed.”

Article 215. Kidnapping for extortion. Anyone who kidnaps a person for ransom or for political, sociopolitical, religious or racial reasons, shall be sentenced to a term of imprisonment of 10 to 15 years.

If within three days of the commission of the act, the victim is released unharmed and without the kidnappers having achieved their purpose, the penalty shall be from 6 to 10 years’ imprisonment.

The penalty shall be from 15 to 20 years’ imprisonment in the following cases:

1. If the author achieves his or her purpose;
2. If the act is committed by two or more persons;
3. If the kidnapping lasts for more than three days;
4. If the kidnapped person is a minor, or is pregnant, disabled, sick or elderly;
5. If the kidnapped person suffers physical, moral, psychological or economic damage, due to the way in which the kidnapping was carried out or the means used in its commission;
6. If violence is used against any third parties who attempted to help the kidnapped person at the time of the act or subsequently when trying to free him or her;
7. When the kidnapped person is a public official, a diplomat or consul accredited in or passing through Costa Rica, or any other internationally protected person under the definition given in Act No. 6077 ratifying the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 11 August 1977, and other international law provisions, when political or sociopolitical conditions must be met to secure his or her release;
8. When the purpose of the kidnapping is to demand a measure or concession from the national public authorities, the authorities of another country or the authorities of an international organization.”

30. The applicable criminal offence is determined on a case-by-case basis, taking into account the context and the evidence available in each case.

**Reply to the issues raised in paragraph 7 of the list of issues**

31. As indicated in the reply to the issues raised in paragraph 4, in criminal matters, the principles of legality and typicality take precedence. These principles require the State to set out the definition of the conduct considered to be a criminal offence in a law of the Republic that is duly adopted by the legislature and endorsed by the Executive. The above is derived from article 39 of the Constitution (transcribed above) and article 1 of the Criminal Code, which states: “No one may be punished for an act not defined as punishable under criminal law or subjected to punishment or security measures not previously prescribed by law”.

32. This means that it is not possible in any circumstances to initiate criminal proceedings in our country for the offence of enforced disappearance, since such conduct has not been defined as an offence under a law of the Republic.

33. Although the State of Costa Rica ratified the International Convention for the Protection of All Persons from Enforced Disappearance by means of Act No. 9005, which was published in *La Gaceta* No. 224 of 21 November 2011, this does not mean that the criminal offence of enforced disappearance has been included in domestic law. Rather, it means that an obligation has been undertaken to criminalize it. This task is the responsibility of the legislative branch.

**Reply to the issues raised in paragraph 8 of the list of issues**

34. As indicated in the reply to the issues raised in paragraph 6, the circumstances of each case will determine the criminal offence to which the conduct corresponds, given the lack of a definition of enforced disappearance as a discrete offence. For the offence of kidnapping for extortion to be applicable, there must be evidence that the conduct was carried out for one of the purposes set out in article 215 of the Criminal Code. If the purpose of the conduct is not among those described in article 215, the conduct cannot be assimilated into the offence described therein, in strict application of the principles of legality and typicality.

35. As for the offence of concealment of detainees, which is defined in article 190 of the Criminal Code, a special condition is required of the perpetrator, namely that he or she must be an authority or agent who has been assigned the duty to bring detainees before the

authorities. For those who have not been assigned that duty, the theory of the transferability of circumstances, provided for in article 49 of the Criminal Code, is applicable. It stipulates the following:

“Any individual status that constitutes an element of an offence is also attributable to participants who do not possess it, provided that they were aware of it. Any relationship, circumstance or individual status that entails a reduction or waiver of the penalty may be invoked only by those participants in whose case they arise. Material circumstances that aggravate or attenuate the offence shall be taken into account only in respect of those who were aware of such circumstances when they provided their assistance.”

36. However, in practice, the principle of judicial independence applies to all administrators of justice; hence, the application of the above article will depend on its interpretation by the judges responsible for adjudicating each case. If persons who have not been assigned the specific duty in question cannot be charged with the above-mentioned offence, it is possible, depending on the circumstances of the case, to prosecute them for some of the acts referred to in the reply to the issues raised in paragraph 6.

**Reply to the issues raised in paragraph 9 of the list of issues**

37. No information is available, as there was no response from the lead agency.

**Reply to the issues raised in paragraph 10 of the list of issues**

38. For any public official, the procedure is the one set forth in paragraphs 108 et seq. of the General Public Administration Act, which stipulates:

“Article 108.

1. A subordinate must disobey an order when any of the following circumstances is present:

(a) The order is for the performance of an act clearly beyond the subordinate’s competence; and

(b) The act is manifestly arbitrary, because its performance would constitute an abuse of authority or any other criminal offence.

2. A subordinate who obeys an order in any of these circumstances incurs personal liability, both administrative and civil, without prejudice to any criminal liability that may apply.

Article 109.

1. When none of the circumstances listed in the two previous articles is present, subordinates must obey the order, even if the act ordered by the superior is unlawful in any other way; however, in this latter instance, they must record and transmit their objections in writing to the chief officer, who is required to acknowledge receipt thereof.

2. Transmitting their written objections will protect subordinates from liability, but they will still be required to execute the order immediately.

3. When immediate execution of the order could cause serious damage that would be impossible or difficult to repair, the subordinate may suspend it, subject to disciplinary and possibly civil or criminal liability, if the reasons given to justify it prove ultimately to be unfounded.

4. The provisions of article 158 of the Code of Procedure for Administrative Litigation shall remain unaffected.

Article 110.

1. In the event of an emergency, subordinates may protect themselves from liability, even if they are not able to send their objections in writing prior to executing an order.

2. In such instances, subordinates may present their objections verbally to their immediate supervisor, but the presence of two witnesses shall be required.”

39. It is important to clarify that Costa Rican law enforcement personnel are bound by the principle of legality. In addition, all public officials have the duty to report illegal acts or orders by another public official in the exercise of his or her duties, either to the Judicial Investigation Agency or to the Public Prosecution Service, which are independent bodies, pursuant to article 281 (a) of the Code of Criminal Procedure. Furthermore, each police force has an internal affairs investigation unit, which is required to protect the confidentiality of its sources.

**Reply to the issues raised in paragraph 11 of the list of issues**

40. The willingness exists to bring the domestic law into line with the State’s international obligations. Accordingly, a bill entitled “Amendment of Act No. 4573, the Criminal Code, to address crimes provided for in the Rome Statute of the International Criminal Court, including the Kampala amendments” is currently before the legislature. In that bill, enforced disappearance is defined as a crime against humanity, and is understood as the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time. The offence of enforced disappearance is considered to be a continuing offence so long as the fate or whereabouts of the victim have not been established.

41. As mentioned previously, the legislative branch has the exclusive power to adopt laws, which it exercises in keeping with the procedures set forth in the Constitution and discussions held within the legislature. For this reason, it is not possible to provide a maximum time period for their adoption.

**Reply to the issues raised in paragraph 12 of the list of issues**

42. In the Costa Rican legal system, the limitation periods for prosecution are stipulated in article 31 of the Code of Criminal Procedure, paragraph (a) of which reads as follows:

(a) After the expiry of a period equal to the maximum penalty in the case of offences attracting a custodial penalty; this period may not exceed 10 years or amount to less than 3 years, except in the case of sexual offences committed against minors, for which the limitation period shall start to run from the date on which the victim reaches the age of majority.

43. This means that, according to current legislation, the statute of limitations for the crime of enforced disappearance would depend on the maximum penalty considered by lawmakers, without exceeding 10 years, unless a different and specific provision is expressly established for that crime.

44. As to when the statute of limitations begins to run, the answer is to be found in article 32 of the Code of Criminal Procedure, which provides that:

“The limitation periods for prosecution shall be governed by the main penalty prescribed by law and shall start to run, for completed offences, as from the date of completion; for attempts, from the date on which the last act was performed; and for continuous offences or offences with continuing effects, from the date on which their continuation or continuing effects ceased.”

45. The above rule provides that, for offences with continuing effects, the statute of limitations begins to run from the time the effects cease, so that the circumstances of each case will determine the specific time from which the limitation period begins to run.

**Reply to the issues raised in paragraph 13 of the list of issues**

46. Article 4 of the Criminal Code expressly stipulates that Costa Rican criminal law applies to anyone who commits a punishable act within its territory. The last paragraph states that Costa Rican ships and aircraft are considered part of the national territory; therefore, the

determining factors are a vehicle's flag and place of registration. If it has a Costa Rican flag, the above-mentioned rule applies.

47. In the absence of an expressly defined offence, article 7 of the Criminal Code could be applied to cases of enforced disappearance, if the conduct in question was assimilable into any of the offences defined therein. Otherwise, it would not be appropriate to invoke it.

48. If enforced disappearance is defined as a criminal offence, it would be up to lawmakers to determine whether to include it in the list contained in article 7 of the Criminal Code.

**Reply to the issues raised in paragraphs 14 and 15 of the list of issues**

49. No information is available, as there was no response from the lead agency.

**Reply to the issues raised in paragraph 16 of the list of issues**

50. The exclusion of an individual from a criminal investigation is the sole prerogative of the Public Prosecution Service. The Code of Criminal Procedure provides for the possibility, as a precautionary measure, of suspending from duty a State official who is suspected of having committed an act of enforced disappearance, in conformity with article 244 (i), which stipulates:

“Article 244. Other precautionary measures. Provided that the suspicions that warranted pretrial detention can reasonably be addressed through the application of a measure that is less onerous for the accused, the competent court, ex officio or at the request of the person concerned, shall impose in its place, in a reasoned decision, one or more of the following alternatives:

...

(i) Suspension from duty when charged with misconduct.”

51. The duration of the precautionary measure depends on the assessment of its necessity, suitability and proportionality, which the judge must make in each specific case, since there is no express provision concerning the maximum duration of measures other than those involving deprivation of liberty.

**Reply to the issues raised in paragraph 17 of the list of issues**

52. No information is available, as there was no response from the lead agency.

**Reply to the issues raised in paragraph 18 of the list of issues**

53. Considering the breadth of this question and the multiple scenarios that may be covered by judicial cooperation, it is worth highlighting article 154 of the Code of Criminal Procedure, which reads as follows: “Requests made of foreign judges or authorities shall be made by letters rogatory and shall be processed in the manner prescribed by the Constitution, and the international and community law in force in the country. Through the Secretariat of the Supreme Court of Justice, correspondence shall be forwarded to the Ministry of Foreign Affairs, which shall process it through diplomatic channels. However, in urgent situations, correspondence may be addressed to any foreign judicial or administrative authority, in advance of the letter rogatory or the response to a request, without prejudice to the subsequent formalization of the procedure, as described in the preceding paragraph.”

54. As to the number of requests for international cooperation that the State party has received or made in connection with cases of enforced disappearance, Costa Rica has received one request.

**Reply to the issues raised in paragraph 19 of the list of issues**

55. In Costa Rica, the General Act on Migration (No. 8764) includes this principle in article 31 (9), which stipulates that “foreigners who have requested or been granted asylum may not be expelled, deported or returned to another country, whether or not their country of origin, where their right to life is in danger”.

56. Article 115 stipulates that “it is prohibited to deport to their country of origin refugees and asylum-seekers who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, gender, membership in a particular social group or political opinion, are outside the country of their nationality and are unable or, owing to such fear, unwilling to avail themselves of the protection of that country”.

57. Similarly, article 116 stipulates that “when an application for recognition of refugee or asylum status is filed, it shall have suspensive effect on the execution of the foreigner’s extradition until the corresponding procedure has been completed by means of a final decision”. It adds the following: “The recognition of refugee or asylum status shall have the effect of terminating any extradition proceedings initiated against the refugee or asylum-seeker at the request of the Government of the country where the alleged offence was committed, on the basis of the same facts that justified such recognition.”

58. Article 39 of the Regulations governing Refugees, No. 36831-G, follows the same line of reasoning when it stipulates that: “No refugee or applicant for refugee status pending a final and unappealable decision, may be expelled or returned to the territory of a country where their life, safety or freedom is in danger because of their race, religion, nationality, gender, membership in a particular social group or political opinions. The foregoing is in conformity with article 31 of the Constitution of Costa Rica, article 33 of the Convention and articles 115 and 116 of the Act.”

59. The Constitutional Chamber has observed that the principle of *non-refoulement*, precisely because it is a general principle of international human rights law, takes on the quality of a hermeneutic model, which must serve as a guide to judicial agents and all officials who apply the national positive law in a given situation.

60. In this regard, the Chamber found that: “Article 33 of the Convention relating to the Status of Refugees establishes the principle of *non-refoulement*, which is the cornerstone of the international system of refugee protection. It refers to the protection of refugees from expulsion or any form of return to the borders of countries where their life or freedom would be in danger. This principle is not only for those persons who have well-founded fear of persecution within the meaning of the 1951 Convention relating to the Status of Refugees, but also those persons covered by the regional definition of refugee contained in the Cartagena Declaration.” (See judgment No. 2005-004679 of 2.35 p.m. of 29 April 2005 and reiterated in judgment No. 2018-015983 of 9.20 a.m. of 28 September 2018.)

61. The principle of *non-refoulement* is also embodied, explicitly or implicitly, in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3), the Fourth Geneva Convention of 1949 (art. 45 (4)), the International Covenant on Civil and Political Rights (art. 7), the Declaration on the Protection of All Persons from Enforced Disappearance (art. 8), and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (principle 5), the American Convention on Human Rights (art. 22 (8)) and the Inter-American Convention to Prevent and Punish Torture (art. 13).

62. Consequently, the argument that this principle is a norm of customary international law is undisputed, thus making it binding, even on those States not parties to the Convention. Moreover, the Constitutional Chamber has incorporated the standard established by the Inter-American Court of Human Rights, given that the obligation to guarantee the rights to life and personal integrity, as well as the principle of *non-refoulement* when faced with the risk of torture and other forms of cruel, inhuman or degrading treatment, or the risk to the right to life, applies to all modalities of the return of a person to another State, including that of extradition.

63. Finally, concerning the value of diplomatic assurances, this analysis will depend on each specific case, in which the principle of good faith and cooperation will have to be weighed against the elements of risk identified.

#### **Reply to the issues raised in paragraph 20 of the list of issues**

64. In conformity with article 12 of the Code of Criminal Procedure, any person who is the subject of criminal proceedings has an inviolable right to a defence, which clearly implies

the right to communicate with a defence counsel of their choosing or with one assigned to them by the State, as from the start of proceedings:

65. Inviolability of the right to a defence. All parties to the proceedings have an inviolable right to a defence. With the exceptions provided for in this Code, the accused shall have the right to intervene in procedures to introduce evidence and to make any requests or comments that they see fit, without prejudice to the exercise of disciplinary powers by the relevant authority when the normal course of the proceedings is disrupted. When accused persons are deprived of their liberty, the person in charge of their custody shall transmit to the court any requests or comments they make within 12 hours after submission of same and shall facilitate their communication with defence counsel. Any authority who intervenes in the initial stages of the investigation must ensure that the accused is immediately informed of the rights provided for in such circumstances under the Constitution, the international and community law in force in Costa Rica and this Code.

66. In conformity with the above, and in relation to the right to defence counsel as from the initiation of proceedings, paragraph 13 of the Code provides as follows:

67. Qualified legal defence. From the first moment of the criminal proceedings and until the sentence has been served in full, the accused shall be entitled to qualified legal aid and counsel. To that end, accused persons may designate counsel of their own choosing, but if they fail to do so, a public defender will be assigned to them. The right to a defence is inviolable. The start of proceedings shall be understood to mean any judicial or police action that identifies a person as a possible perpetrator of, or participant in, a punishable act.

68. However, after the accused has been placed in pretrial detention, the judge may, as a precautionary measure, also impose solitary confinement, which may not exceed a period of 10 days, as stipulated in article 261 of the Code:

69. Incommunicado detention. The court may, by means of a reasoned decision, order the incommunicado detention of the accused for up to 10 consecutive days, provided that it has previously ordered pretrial detention and that there are reasons, which must be set forth in the decision, to believe that the accused will coordinate with his or her accomplices or otherwise obstruct the investigation. Incommunicado detention shall not prevent accused persons from communicating with their defence counsel immediately before giving their statement or before carrying out any action that requires their personal intervention. The Public Prosecution Service and the Judicial Police may order the incommunicado detention of an arrested person for only the time necessary to process the court order, which may not exceed six hours.

70. Apart from this provision, there is no other rule restricting the right of accused persons to have contact with their qualified legal representative or with third parties.

#### **Reply to the issues raised in paragraph 21 of the list of issues**

71. As indicated in the above, the incommunicado detention of a person who is the subject of criminal proceedings is regarded as a precautionary measure. Its purpose is to avoid the obstruction of the proceedings or to prevent the accused from reaching an agreement with accomplices in the offence. It can be imposed only in conjunction with pretrial detention.

72. This measure cannot be enforced for a period of more than 10 days and does not prevent accused persons from communicating with their chosen defence counsel before making a statement or carrying out any other procedural action requiring their intervention.

73. The legal provisions contained in article 261 of the Code of Criminal Procedure are not incompatible with article 17 of the Convention, because they do not refer to secret detention at all, but simply to the inability to engage in contact with third parties for a specified period.

74. At any time, both the chosen defence counsel and the family members of the accused may request information on the latter's condition and whereabouts, which clearly cannot be anywhere other than in the holding cells or the prisons of the Ministry of Justice.

75. Once a person is ordered to be held incommunicado, the only rights that are restricted are the freedom of movement and the ability to communicate with third parties. The

remaining fundamental and procedural rights must be respected by auxiliary judicial bodies, judicial authorities and prison authorities.

**Reply to the issues raised in paragraphs 22–26 of the list of issues**

76. No information is available, as there was no response from the lead agency.

**Reply to the issues raised in paragraph 27 of the list of issues**

77. The Judicial Investigation Agency has set up a confidential telephone line at this number: 800–8000-645. The e-mail address [ojp\\_prensa@Poder-Judicial.go.cr](mailto:ojp_prensa@Poder-Judicial.go.cr) may be used to file a missing person's report domestically. The web page states that the report can be made immediately in the case of a person who is presumed missing. In the case of an adult, it must be done in person at the offices of the Judicial Investigation Agency anywhere in the country. If it is a woman, this can be reported using the telephone line 800–8000-645, and if it is a minor, it can also be reported using the number 911.

78. This process consists of three phases: the first 24 hours after the complaint; from 24 to 72 hours after the complaint; and from 72 hours onwards.

79. In the first phase, after the complaint is filed, the authorities make a risk assessment, the complainant must fill out a form and an agent of the Judicial Investigation Agency conducts an extended interview. In addition, a photograph of the missing person is requested in order to publish and send it to the press.

80. During this period, which is fundamental for the investigation, the authorities also carry out the following steps:

- A victimological study based on the information received;
- A database search for information;
- Information sharing with police forces, mainly the national law enforcement agency;
- If the disappearance is recent, a visit is made to the place where the person was last seen, tracking is carried out and an interview is held with those in the person's immediate social circle.

**Reply to the issues raised in paragraph 28 of the list of issues**

81. Regarding the steps to be taken by the State to bring the definition of victim into line with the one set out in the Convention, that decision belongs to the legislature, since it requires a legal reform.

82. Regarding the procedures available to victims of enforced disappearance for obtaining compensation and reparation for damages, as has been indicated above, the national legislation does not expressly define this offence, so it would have to be assimilated into another criminal offence, depending on the particularities of the case.

83. Once criminal proceedings have been initiated, the victim has the option of filing a civil action for compensation, in accordance with the provisions of paragraph 37 of the Code of Criminal Procedure, which state:

“The injured party, his or her heirs, his or her legatees, the estate or the beneficiary in the case of personal claims, may bring a civil action to seek restitution of the material object of the punishable act, as well as compensation for the damages caused, from the perpetrators of and participants in the offence, and, where appropriate, from the civilly liable party.”

84. This action must be brought during the pretrial process, meaning within the investigative period, before the prosecution's indictment is formulated and/or the criminal complaint is filed, or jointly with it, as stipulated in article 114 of the Code of Criminal Procedure, which reads:

“Time limit. The request must be made to the Public Prosecution Service during the preparatory proceedings, before or at the same time that the prosecutor's application or the criminal complaint is filed.”

85. When exercising the right of civil action, the party bringing the action must indicate the person against whom it is directed. Article 119 of the Code provides that:

86. The person bringing an action for redress may sue the person who, according to the law, is liable for the damage allegedly caused by the accused by means of the offence.

87. Regarding the civil consequences that the punishable offence may produce and what type of reparation is available to civil plaintiffs within criminal proceedings, article 103 of the Criminal Code stipulates that:

“Every punishable offence shall give rise to civil reparation. Such reparation shall be determined in a judgment against the defendant containing an order for the following:

1. The restitution of the property or, failing that, the payment of its corresponding value;
2. Reparation for any damage and compensation for harm suffered by the injured party and any third parties; and
3. Confiscation.”

88. With regard to judgments in civil proceedings, article 368 of the Code of Criminal Procedure specifies the following:

“Once the right of civil action has been exercised, the decision of conviction will also establish the level of compensation for the damages or injury caused and how the respective obligations are to be met. When the amounts of some of the damages claimed by the civil plaintiff cannot be determined with certainty on the basis of the evidence, and when the case is not such that these can be fairly evaluated, the court may admit them, in the abstract, for payment during the sentence enforcement stage, before the civil or administrative courts, as the case may be, provided that the existence of the harm and the defendant’s duty to remedy it have been established.”

89. In order to obtain a civil judgment finding in criminal proceedings, the relevant action must have been initiated, since the court is not authorized to make an ex officio ruling in this regard.

#### **Reply to the issues raised in paragraph 29 of the list of issues**

90. No information is available, as there was no response from the lead agency.

#### **Reply to the issues raised in paragraph 30 of the list of issues**

91. Under the coordination of the National Child Welfare Agency, an analysis and monitoring process is currently being carried out in respect of families habitually residing in Costa Rica who decide to follow, in some African countries, international adoption procedures that are not compatible with the regulations and safeguards established in the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

92. Accordingly, the National Child Welfare Agency has devoted special attention to the compliance certificate provided for in article 23 (1) of the above-mentioned Convention. It constitutes a legal instrument whose aim is to certify officially that the particular international adoption process in question was carried out in line with the procedures, guarantees and safeguards prescribed by the Convention, while ensuring recognition of the fundamental rights of minors, adherence to the principles governing matters pertaining to children and adolescents, and the participation in and endorsement of the process by the intervening States. Such certification provides the necessary guarantee, for all purposes, to ensure full recognition of the adoption in question in the receiving country – in this case Costa Rica.