



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
3 May 2022

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

List of issues in relation to the report submitted by Cambodia under article 29 (1) of the Convention*

I. General information

1. Please provide information about existing mechanisms for dealing with requests for urgent action transmitted by the Committee to the State party under article 30 of the Convention and for implementing the Committee's recommendations and requests for interim and protection measures in that context (art. 30).
2. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications (arts. 31–32).
3. Please provide information about the process of preparation of the State party's report,¹ in particular with respect to consultations carried out with relevant stakeholders, such as various governmental agencies and civil society actors.
4. In view of article 31 of the Constitution, please clarify the status of the Convention vis-à-vis domestic law, including the Constitution, and indicate whether the provisions of the Convention can be directly invoked before and applied by courts or other relevant authorities. Please include examples of case law, if any, in which the provisions of the Convention have been invoked before or applied by courts or other relevant authorities.

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

5. Please explain how the affirmation in paragraph 85 of the State party's report that Cambodia "does not currently have any official cases or statistical data in relation to enforced disappearance" is consistent with the fact that the Committee has registered four requests for urgent action so far concerning cases of alleged enforced disappearance, two of which remain open, and report on measures taken or envisaged to ensure the collection of accurate and up-to-date statistical information on persons subjected to enforced disappearance. Please also provide all available updated statistical information, disaggregated by sex, gender identity, sexual orientation, age, nationality, ethnic origin and religious affiliation of the victim, on the number of disappeared persons in the State party, specifying the date and place of disappearance, how many of those persons have been located, and the number of cases in which there may have been some form of State involvement within the meaning of the definition of enforced disappearance contained in article 2 of the Convention (arts. 1–3, 12 and 24).

* Adopted by the Committee at its twenty-second session (28 March–8 April 2022).

¹ CED/C/KHM/1.



6. With reference to paragraph 3 of the report, please provide information about the legal provisions guaranteeing that “under no circumstances may war situations or threats of war, internal political instability or public emergencies be used as justification for enforced disappearance”. Please also indicate whether, during a state of war or a threat of war, internal political instability or any other public emergency, the national legal framework provides for the possibility of derogating from any of the rights and/or procedural guarantees that may be embodied in domestic law or international human rights instruments to which Cambodia is a party and that might be relevant for preventing and combating enforced disappearance. If so, please enumerate the rights and/or procedural guarantees from which it is possible to derogate and indicate in which circumstances, under which legal provisions and for how long it is permissible to do so. In addition, please report on whether any measures that the State party may have taken concerning emergency situations, such as those relating to the coronavirus disease (COVID-19) pandemic or other similar grounds, have had any impact on the effective implementation of the Convention (art. 1).

7. Please indicate whether there have been any reports of cases of trafficking in persons or connected to migratory movements that may qualify as enforced disappearance in the terms of article 2 of the Convention (arts. 1–2, 12 and 24).

8. Please indicate whether there have been any cases of enforced disappearance that commenced before the entry into force of the Convention, including those that could have been perpetrated during the Khmer Rouge period, and with respect to which the fate and whereabouts of the victims have not yet been clarified. If so, please provide information about measures taken to search for those persons, to bring perpetrators to justice and to provide full reparation to victims (arts. 1–2, 12 and 24).

9. In relation to the information provided in paragraphs 4–5, 8 and 15 of the report, please indicate whether any measures have been taken or are envisaged: (a) to incorporate enforced disappearance as an autonomous offence into domestic law in accordance with the definition contained in article 2 of the Convention; (b) to ensure that the offence carries appropriate penalties that take into account its extreme seriousness; and (c) to establish the specific mitigating and aggravating circumstances provided for in article 7 (2) of the Convention (arts. 2, 4 and 7).

10. While noting the information provided in paragraphs 11–13 of the report, the Committee would appreciate information about whether steps have been taken to expressly incorporate into national law the criminal responsibility of superiors as set out in article 6 (1) (b) of the Convention (art. 6).

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

11. With reference to the information provided in paragraph 16 of the report, please indicate whether the term of limitation for criminal proceedings with respect to cases of enforced disappearance that do not amount to crimes against humanity commences from the moment when the offence ceases (that is, when the fate or whereabouts of the person concerned have been clarified), taking into account its continuous nature (art. 8).

12. In view of the information provided in paragraphs 21–22 and 26 of the report, please provide information about the legal provisions establishing the State party’s jurisdiction when an alleged perpetrator of enforced disappearance committed abroad is present in its territory, when the alleged perpetrator is not extradited or surrendered to another State or to an international criminal tribunal, and when neither the alleged perpetrator nor the victims are Cambodian nationals (art. 9).

13. Taking into consideration article 132 (new) of the Constitution, which provides that the King is the guarantor of the independence of the judiciary, please provide information on measures taken to guarantee the impartiality of the judiciary and its full independence from the executive branch and to address reports of corruption and lack of transparency within the judiciary, including as relates to cases of alleged enforced disappearance. In addition, please indicate whether military authorities are competent under domestic law to investigate and/or

prosecute alleged cases of enforced disappearance and, if so, please provide information on the applicable legislation (art. 11).

14. While noting the information provided in paragraphs 35 and 39 of the report, the Committee would appreciate information about measures taken, including existing safeguards, to prevent acts of intimidation or ill-treatment against complainants, witnesses, relatives of disappeared persons and their defence counsel, and persons participating in investigations into enforced disappearances, as a consequence of the complaint or any evidence given. Please also report on measures taken to ensure that human rights defenders assisting victims of enforced disappearance and persons participating in investigations into cases of enforced disappearance are protected from intimidation and ill-treatment (arts. 12 and 24).

15. With respect to the assertion in paragraph 36 of the report that “judicial police officers may conduct a primary investigation at their own discretion or at the request of a prosecutor”, please explain when judicial police officers may decide not to conduct a primary investigation into alleged enforced disappearance, and provide information about the remedies at the disposal of victims to challenge such a decision. In this respect, please also clarify how this assertion is consistent with the requirement under article 12 (2) of the Convention that the competent authorities undertake an investigation, even if there has been no formal complaint, where there are reasonable grounds for believing that a person has been subjected to enforced disappearance. Taking into account the information provided in paragraph 38 of the report, please clarify whether the requirements that the judicial police seek the express and real consent from the owner of the premises and not conduct searches between the hours of 6 p.m. and 6 a.m. apply with respect to places where there are reasonable grounds to believe that a disappeared person may be present (art. 12).

16. Please report on measures taken to ensure that persons suspected of having committed enforced disappearance are not in a position to influence the progress of an investigation. In particular, please indicate whether: (a) the law provides for suspension from duty, from the outset and for the duration of an investigation, when the alleged offender is a State official; and (b) there are any mechanisms in place to ensure that law enforcement or security forces do not participate in the investigation into enforced disappearance when one or more of their officials are suspected of having been involved in committing the offence. With respect to the latter, please also clarify who would carry out an investigation into alleged enforced disappearance when one or more judicial police officers are suspected of having been involved in the commission of the offence (art. 12).

17. Recalling its conclusion in the framework of request for urgent action No. 782/2020 concerning the State party’s lack of cooperation with the disappeared person’s State of nationality with a view to assisting the victims and in searching for, locating and releasing the disappeared person,² the Committee requests that the State party report on measures taken or envisaged to guarantee the greatest measure of cooperation and assistance in future with respect to requests for judicial assistance or cooperation received from other States parties under articles 14, 15 and 25 (3) of the Convention. Please also indicate whether the State party has reached out to other countries in the region, or envisages doing so, in order to strengthen cooperation on preventing and combating enforced disappearance (arts. 14–15 and 25).

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

18. With respect to paragraphs 45–46 of the report, please indicate whether domestic law explicitly prohibits the expulsion, return, surrender or extradition of a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance. Please also:

² CED/C/20/2, para. 37.

(a) Provide information about the mechanisms and criteria applied in the context of procedures of expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance;

(b) Indicate whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority, under which procedure and whether the appeal has a suspensive effect;

(c) Indicate whether the State party may accept diplomatic assurances when there is reason to believe that there is a risk that the person concerned may be subjected to enforced disappearance (art. 16).

19. While noting paragraph 51 of the report, the Committee would appreciate information about measures taken to guarantee that, as soon as persons are deprived of liberty, they have access to a lawyer, can inform their family or any other person of their choice of the deprivation of liberty, and, in the case of foreign nationals, can communicate with their consular authorities (art. 17).

20. Please clarify whether the registers compiled and maintained by prisons and detention centres contain, in addition to the information mentioned in paragraph 54 of the report, all the other elements listed in article 17 (3) of the Convention. Please also clarify whether those registers contain information on all persons deprived of liberty, regardless of the nature of the place of deprivation of liberty, such as mental health institutions, drug rehabilitation centres and Prey Speu Social Affairs Centre in Phnom Penh. If that is not the case, please provide information about the records kept in other places of deprivation of liberty and indicate whether such records include all the elements listed in article 17 (3) of the Convention (arts. 17 and 22).

21. In relation to paragraphs 55 and 57–58 of the report, please provide information about measures taken to guarantee, in practice, prompt and easy access to at least the information listed in article 18 (1) of the Convention for any person with a legitimate interest, including when such a person is a foreign national living abroad (arts. 18 and 20).

22. While noting the information provided in paragraphs 63–70 of the report, the Committee would appreciate clarification as to whether the State party provides, or envisages providing, specific and regular training on the Convention, in the terms of article 23 thereof, to civil or military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice (art. 23).

V. Measures to protect and guarantee the rights of victims of enforced disappearance (art. 24)

23. Please indicate whether the State party has adopted, or envisages adopting, a legal provision establishing a definition of victim that is in accordance with that contained in article 24 (1) of the Convention. Please also indicate whether domestic law makes explicit provision for the right of victims of enforced disappearance to the truth, in accordance with article 24 (2) of the Convention (art. 24).

24. With respect to paragraph 73 of the report, please provide information about measures taken, and the effectiveness thereof, to guarantee that the search for an alleged victim of enforced disappearance is launched ex officio and as soon as the competent authorities are notified of the disappearance, and to ensure that the search continues until the fate of the disappeared person has been clarified (art. 24).

25. In relation to paragraph 74 of the report, please provide information about the legal provisions that ensure that reparations “include restitution, rehabilitation, honour and dignity restoration”. Please also indicate who is responsible for providing compensation and/or reparation under domestic law in the event of enforced disappearance, whether access to compensation and/or reparation is contingent on a criminal conviction, and whether there is

a time limit on access by victims of enforced disappearance to compensation and/or reparation (art. 24).

26. Please provide information about applicable law with regard to 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 (art. 24).

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

27. While noting the information provided in paragraphs 78–79 of the report, the Committee would appreciate clarification as to whether domestic law specifically criminalizes the conduct described in article 25 (1) of the Convention and, if not, whether the State party envisages adopting such specific legislation. In addition, please indicate whether any complaints concerning the wrongful removal of children in the terms of article 25 (1) (a) of the Convention have been made since the entry into force of the Convention for the State party and, if so, please provide information on measures taken, and the results thereof, to locate those children and prosecute and punish those responsible (art. 25).

28. In relation to the information provided in paragraphs 80–82 of the report, please indicate whether legal procedures are in place to review and, where appropriate, to annul any adoption, placement or guardianship of children that originated in an enforced disappearance. If no such procedures have been established yet, please indicate whether any action has been taken to bring the national legislation into conformity with article 25 (4) of the Convention (art. 25).
