



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
14 April 2023

Original: English

Committee on Enforced Disappearances

Concluding observations on the additional information submitted by Germany under article 29 (4) of the Convention*

A. Introduction

1. The Committee appreciates the additional information submitted by Germany under article 29 (4) of the Convention,¹ as requested by the Committee in its 2014 concluding observations.² It is also grateful for the open and constructive dialogue held at the Committee's 426th meeting, on 22 March 2023,³ regarding the measures taken to fulfil the State party's obligations under the Convention in the following areas: (a) harmonization of domestic legislation with the Convention; (b) prosecution and cooperation in relation to enforced disappearance; and (c) prevention of enforced disappearance. The Committee also thanks the State party for the additional information provided in writing after the dialogue.

2. At its 439th meeting, held on 30 March 2023, the Committee adopted the present concluding observations.

B. Positive aspects

3. The Committee acknowledges the measures taken by the State party in areas relevant to the Convention following the adoption of the Committee's previous concluding observations, including the prosecution by the State party of foreign nationals present within its territory on charges of offences committed outside its territory.⁴

C. Implementation of the Committee's recommendations and new developments in the State party

1. General information

4. The Committee considers that, despite the various measures taken by the State party since the adoption of the Committee's previous concluding observations, the legislative framework in force in the State party for preventing and punishing enforced disappearance is still not in full compliance with the Convention. The Committee therefore encourages the State party to give all due consideration to acting on the following recommendations, which have been adopted in a constructive and cooperative spirit, with a view to ensuring that the State party's legislative and institutional framework and all the steps taken by its authorities are in full compliance with the Convention. The Committee also urges the State party to

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

¹ [CED/C/DEU/AI/1](#).

² [CED/C/DEU/CO/1](#), para. 34.

³ [CED/C/SR.426](#).

⁴ [CED/C/DEU/AI/1](#), para. 7.



consult and cooperate with non-governmental organizations and other members of civil society, in particular those engaged in activities related to the Convention or in similar fields, in designing and taking the measures necessary to follow up on the Committee's recommendations.

2. Harmonization of domestic legislation with the Convention

Criminalization of enforced disappearance as a separate offence

5. The Committee notes the State party's assertion that the offences already defined in criminal legislation, combined with the provisions of other acts, are sufficient to adequately investigate and punish cases of enforced disappearance, and regrets its assertion that the Convention cannot be interpreted as giving rise to an obligation for States parties to create a separate criminal offence of enforced disappearance.⁵ The Committee considers that the provisions of current criminal legislation do not give full effect to articles 4, 6, 7 and 8 of the Convention and do not guarantee the effective prosecution of enforced disappearance. In that connection, the Committee recalls that enforced disappearance is not a series of different crimes, but rather a complex and single offence, and that only by criminalizing enforced disappearance as an autonomous offence can the State party fully comply with article 4 of the Convention (arts. 2, 4 and 6–8).

6. The Committee reiterates its recommendation that the State party review without delay its criminal legislation and ensure the inclusion of enforced disappearance as an autonomous offence in accordance with the definition contained in article 2 of the Convention.

Enforced disappearance as a crime against humanity

7. The Committee notes that according to the Code of Crimes against International Law, for the offence of enforced disappearance to be considered a crime against humanity, there must be severe deprivation of liberty and an inquiry into the whereabouts of the disappeared person, conditions which are not consistent with the definition of the offence of enforced disappearance in article 2 of the Convention. The Committee is concerned that these additional conditions, which are not compatible with the Convention, could limit the prosecution of enforced disappearance. In that regard, the Committee wishes to emphasize that enforced disappearance may last for only a short period of time and that the fear of reprisals frequently limits the capacity of victims of enforced disappearance to make official inquiries (arts. 2, 3 and 5)

8. The Committee recommends that the State party adopt without delay a definition of enforced disappearance that is fully in accordance with articles 2 and 5 of the Convention, removing all conditions that limit the possibility of demonstrating and effectively prosecuting cases of enforced disappearance as crimes against humanity, and ensure the full compatibility of its domestic legislation with articles 2, 3 and 5 of the Convention.

Criminal liability, appropriate penalties and statute of limitations

9. The Committee emphasizes that under article 6 (1) of the Convention, perpetrators of enforced disappearance include not only those persons who are involved in the detention and subsequent treatment of the disappeared person but also those who knowingly withhold information and thus facilitate the actions of the offenders. The Committee observes that under the existing offences provided for in the Criminal Code, persons who are not directly involved in the initial act of enforced disappearance but who subsequently contribute to the commission of the offence by concealing the location of the disappeared person may not be held liable and sanctioned, or may be held liable not as a principal but only as secondary offender. The Committee further observes that, in the absence of an autonomous offence of enforced disappearance, the existing offences provided for in the Criminal Code – such as unlawful imprisonment for more than one week, unlawful imprisonment causing serious

⁵ Ibid., para. 4.

injury or death to the victim, abandonment, and abduction of minors from the care of their parents – do not entail punishments that are commensurate to the seriousness of the offence of enforced disappearance in compliance with article 7 (1) of the Convention (arts. 6 and 7).

10. The Committee recommends the State party amend domestic legislation to reflect criminal liability for the offense of enforced disappearance in compliance with article 6 (1) of the Convention and amend or impose penalties that take into account the seriousness of the offence in compliance with article 7 (1) of the Convention.

11. The Committee notes that the applicable statutes of limitations in the State party's Criminal Code are based on the existing criminal offences and do not apply to enforced disappearance as a complex and single offence. It is concerned that the statutes of limitations that would apply to those existing criminal offences would not necessarily be of long duration or commence from the moment when the disappearance ceases, taking into account the continuous nature of enforced disappearance (art. 8).

12. The Committee recommends that the State party take all the legislative measures necessary to ensure that the statutes of limitations applicable to the autonomous offence of enforced disappearance are of long duration and commence only from the moment when the offence ceases, given its continuous nature.

3. Prosecution and cooperation in relation to enforced disappearance

Prosecutions

13. The Committee welcomes the information provided by the State party on the criminal proceedings before the Koblenz Higher Regional Court against two members of the Syrian intelligence service and commends the State party for its prosecution of these individuals under the principle of universal jurisdiction. It further notes the assertion by the State party that this case involves acts that fall under the definition of enforced disappearance in article 2 of the Convention.⁶ The Committee also welcomes the prosecution of an individual involved in the abduction in Berlin and illegal rendition of a Vietnamese national in July 2017. It regrets, however, that in neither of these cases were charges of enforced disappearance brought by the Federal Public Prosecutor General (arts. 9 and 10).

14. The Committee recommends that the State party:

(a) **Pursue its efforts to investigate and prosecute those accused of serious violations of human rights and offences committed abroad, ensuring the proper identification, investigation and punishment of enforced disappearance, whenever the alleged perpetrator is present in the territory under the jurisdiction of the State party;**

(b) **Take all the measures necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance, as provided for in articles 9 (2) and 10 of the Convention.**

Investigation and punishment of enforced disappearance in the context of migration

15. The Committee is concerned about allegations that cases of disappearance in the context of migration are often not reported, owing to obstacles faced by relatives living in another country, language, cultural or knowledge barriers, and fear among relatives or witnesses who may themselves have an irregular migratory status. The Committee recalls that under article 12 (1) of the Convention, all individuals, irrespective of migratory status, have the right to report enforced disappearance (art. 12).

16. The Committee recommends that the State party endeavour to raise awareness about existing reporting mechanisms and provide professional interpreters whenever necessary; ensure that witnesses or relatives are able to report disappearance without fear of deportation or deprivation of liberty; prosecute and punish perpetrators, once identified, in accordance with the gravity of the crime, and consider the situation of vulnerability of migrants an aggravating circumstance; and raise awareness among

⁶ Ibid., para. 7.

authorities at all levels – federal, regional and municipal – with a view to their recognizing and identifying cases of trafficking in and exploitation of children, and enhance the ways and means of guaranteeing adequate protection and comprehensive assistance for victims.

4. Prevention of enforced disappearance

Non-refoulement

17. The Committee welcomes the State party's acceptance, during its latest review under the universal periodic review mechanism, of the recommendation that it ensure that all necessary human rights measures have been examined prior to the deportation of migrants and failed asylum-seekers.⁷ The Committee further welcomes the details provided by the State party's delegation about the domestic procedures that place an obligation on both the courts and the administrative authorities to review, prior to any transfer to another State, whether the extradition and the acts upon which it is based comply with the minimum standards of international law and whether the person concerned would be in danger of enforced disappearance. The Committee regrets, however, that domestic legislation still contains no provisions that expressly prohibit refoulement where such a risk exists (art. 16).

18. The Committee recommends that the State party:

(a) **Incorporate into its domestic legislation provisions that expressly prohibit refoulement where there is a risk of the person concerned being subjected to enforced disappearance, and ensure that a thorough individual assessment of the risk of any person becoming a victim of enforced disappearance is conducted before it proceeds with an expulsion, return, surrender or extradition, including in cases where entry is refused at an airport or at the border;**

(b) **Ensure that in the case of expulsion, return, surrender or extradition to a State considered "safe", a systematic assessment is also carried out of the risk of the persons concerned subsequently being transferred to a State where they may be at risk of enforced disappearance;**

(c) **Improve the training provided to staff involved in asylum, return, surrender or extradition procedures on the concept of "enforced disappearance" and on the assessment of the related risks.**

Visits to places of deprivation of liberty

19. The Committee highlights the importance of the mandate of the National Agency for the Prevention of Torture to visit places of deprivation of liberty, as part of measures to prevent enforced disappearance. However, the Committee is concerned about reports that the National Agency does not have sufficient resources to accomplish its mandate by visiting all institutions with sufficient frequency to ensure effective monitoring (art. 17).

20. **The Committee joins the Committee against Torture in again recommending that the State party provide the National Agency for the Prevention of Torture with sufficient human, financial, technical and logistical resources to enable it to carry out its functions effectively and independently.⁸**

Compilation and maintenance of up-to-date official registers and records of persons deprived of their liberty

21. The Committee welcomes the State party's assertion that the information required under article 17 (3) of the Convention is accurately and promptly recorded and updated, in all places of detention in the State party, in registers that are regularly verified, and that irregularities are duly investigated and punished.⁹ While noting the acknowledgment by the State party's delegation of the limitations faced by the State party during the influx of asylum-

⁷ [A/HRC/39/9](#), para. 155.240; see also [A/HRC/39/9/Add.1](#).

⁸ [CAT/C/DEU/CO/6](#), para. 14

⁹ [CED/C/DEU/AI/1](#), para. 25.

seekers into Germany in 2015 and 2016 and of the inaccuracies in records in that context, the Committee is concerned about the lack of reliable data and statistics on disappeared migrants and about possible inaccuracies and gaps in records concerning asylum-seekers, refugees and migrants, in particular unaccompanied minors. The Committee emphasizes that personal data, especially biometric data, should be used only for the purposes of searching for disappeared migrants, in accordance with article 19 (1) of the Convention, and of providing information to persons with a legitimate interest, in accordance with article 18 (arts. 17–19).

22. The Committee recommends that the State party:

(a) **Ensure the prompt and immediate registration of the identity of asylum-seekers, refugees and migrants entering its territory, including unaccompanied minors;**

(b) **Maintain up-to-date registers and records of asylum-seekers, refugees and migrants, subject these records to regular checks to ensure their accuracy and, in the event of irregularities, take appropriate correctional measures;**

(c) **Standardize data collection in order to facilitate data-sharing between countries of origin, transit and destination, and ensure that databases on missing and disappeared migrants¹⁰ are interconnected and interoperable at the national and international levels in order to facilitate the cross-checking of information, noting that any exchange of information should meet internationally accepted standards on the protection of privacy and personal data.**

Training on the Convention

23. The Committee welcomes the information provided by the State party regarding the training of public officials on the Convention and related issues. However, it is concerned about the fact that such training is still not systematic and guaranteed for all professionals involved in the custody or treatment of persons deprived of their liberty, or who could be involved in the search for disappeared persons or in the investigation of their alleged disappearance (art. 23).

24. The Committee encourages the State party to further ensure that all law enforcement and security personnel, whether civil or military, and medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the Convention, in accordance with article 23 (1).

Enforced disappearance and the wrongful removal of children

25. The Committee notes the information provided by the State party about the legislation in force as relates to offences covering the wrongful removal of children. It also notes that according to the State party, the statute of limitations applicable to the annulment of an adoption starts only when the situation of duress has ended, or the deceit has been discovered. The Committee further notes the comment by the State party that it has not yet had occasion to address the issue of enforced disappearance in the context of illegal intercountry adoption (art. 25).

¹⁰ The Committee underlines the difference in terminology in English between “missing” and “disappeared”. “Missing” covers situations ranging from cases of disappearance caused by natural disasters to cases of disappearance amounting to a crime against humanity. The term “disappeared” refers exclusively to acts committed by persons, and includes three subcategories: (a) “enforced disappearance”, which refers to acts committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State; (b) acts described in article 2 of the Convention that are committed by non-State actors without the authorization, support or acquiescence of the State; and (c) enforced disappearance constituting a crime against humanity (art. 5), including when committed by non-State actors.

26. The Committee invites the State party:

(a) To ensure that the statute of limitations commences when the offence ceases; that is, when the child forcibly disappeared and wrongfully removed has recovered their true identity;

(b) To ensure the prevention of the acts referred to in article 25, to search for and identify child victims and, to this end, to seek the cooperation of countries of origin as necessary.

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

27. 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 that it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the Convention and other relevant international instruments. Given the federal nature of the State party, the Committee calls on it to ensure that the Convention is applied in full at both the federal and the Land levels.

28. 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.

29. The State party is encouraged to widely disseminate the Convention, the additional information that it submitted under article 29 (4) of the Convention 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.

30. 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 4 April 2026, specific and updated information on the implementation of the recommendations regarding harmonization of domestic legislation with the Convention, contained in paragraphs 6, 8, 10 and 12 of the present concluding observations, and any other new information on the fulfilment of the obligations contained in the Convention since the adoption of the present concluding observations. The information should be presented in a document prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention.¹¹ The Committee encourages the State party to involve civil society, in particular organizations of victims of enforced disappearance, in the process of preparing this information, which the Committee intends to consider in 2027.

¹¹ CED/C/2, para. 39.