



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
14 October 2022

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

List of issues in relation to the report submitted by Ukraine 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 under article 30 of the Convention and for implementing its recommendations and requests for interim and protection measures in that context (art. 30).
2. Please indicate whether the provisions of the Convention may 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.
3. Please describe the competence of the Ukrainian Parliament Commissioner for Human Rights in relation to the Convention and the activities conducted in that regard. Please indicate whether the Commissioner has received complaints concerning enforced disappearance since the entry into force of the Convention and, if so, describe the action taken in that regard and the results thereof. In addition, please indicate the measures taken to ensure that the Commissioner has the necessary resources to perform its duties efficiently, including its duties as the national preventive mechanism.
4. In relation to paragraphs 7 and 8 of the report,¹ please provide more detailed information about the content, scope of application and implementation of Law No. 2505-VIII on the legal status of persons missing in special circumstances. Please specify whether it applies to all cases of disappeared persons, including forcibly disappeared persons and regardless of the time, place and circumstances of the disappearance.

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

5. Please specify whether the unified register of persons missing in special circumstances is fully operational, the kind of information that it contains, and whether such information enables differentiation between cases of enforced disappearance and cases of disappearance in which not all the elements of article 2 of the Convention are present. Please describe the measures taken: (a) to ensure that relevant information about all alleged cases of disappearance is promptly entered into the register and duly updated; and (b) to compare and consolidate the information contained in the register with the information on disappeared persons held by other State institutions, including those providing forensic services or administering DNA databases. Given that the unified register is only for cases of missing

* Adopted by the Committee at its twenty-third session (12–23 September 2022).

¹ [CED/C/UKR/1](#).



persons in special circumstances, please indicate the measures taken to ensure the registration of all cases of disappearance, regardless of the circumstances, whether in the unified register or in another specific database (arts. 1–3, 12 and 24).

6. Please provide up-to-date statistical information, disaggregated by sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation and occupation of the victim, on:

(a) The number of disappeared persons in the State party, specifying the date and place of disappearance and how many of those persons have been located;

(b) The number of those persons who may have been subjected to enforced disappearance within the meaning of article 2 of the Convention;

(c) The number of persons who may have been subjected to acts as described in article 3 of the Convention (arts. 1–3, 12 and 24).

7. Please indicate whether domestic law specifically prohibits the invocation of exceptional circumstances as a justification for enforced disappearance. Please indicate whether, during a state of war or threat of war, internal political instability or any other public emergency, domestic law permits derogation from any of the rights and/or procedural guarantees, including judicial guarantees, that are embodied therein or in international human rights instruments to which Ukraine is a party that might be relevant to preventing and combating enforced disappearance. If so, please enumerate the rights and/or procedural guarantees from which it is possible to derogate, specifying in which circumstances, under which legal provisions and for how long. In addition, please specify whether any measures taken by the State party concerning emergency situations, such as those relating to the armed conflict or to the coronavirus disease (COVID-19) pandemic, have had any impact on the effective implementation of the Convention (art. 1).

8. Please describe the efforts undertaken, and the results thereof, to investigate the cases of enforced disappearance allegedly perpetrated by Ukrainian military and law enforcement personnel, including of the Security Service of Ukraine, in the context of the armed conflict since 2014 and the introduction of the martial law in 2022, to bring those responsible to justice and to provide comprehensive reparation to victims. In doing so, please include information on the number of cases of enforced disappearance reported in the State party since the entry into force of the Convention, and on the investigations carried out and the results thereof, including the number of criminal proceedings initiated, alleged perpetrators indicted and their affiliation, and the sentences handed down (arts. 1–2, 12 and 24).

9. Bearing in mind General Assembly resolution 68/262, on the territorial integrity of Ukraine, please report on any measures taken by the State party to guarantee the application of the Convention in areas not under its control. In this respect, please include information on measures taken to document any violations of the Convention perpetrated in such areas, as well as the identity of the alleged perpetrators. Please also comment on allegations concerning the disappearance of believers and clergy of the Ukrainian Orthodox Church, such as Archpriest Viktor Talko (Borodianka) and Archimandrite Lavr (Berezovsky), and provide information about the related searches and investigations undertaken and the results thereof (arts. 1–3, 12 and 24).

10. Please indicate whether there have been any reports of persons disappeared in the context of trafficking in persons, illegal adoption, or migratory movements or mass displacement due to the armed conflict that may qualify as cases of enforced disappearance. If so, please provide information on the measures taken to search for the disappeared persons, to investigate their disappearance, to bring perpetrators to justice and to provide comprehensive reparation to victims (arts. 1–3, 12 and 24–25).

11. In relation to paragraph 19 of the report, please explain why the offence of enforced disappearance is considered a minor crime, and report on the measures taken, or envisaged, to ensure that this offence carries appropriate penalties that take into account its extreme seriousness. Please report on the measures taken to criminalize enforced disappearance as a crime against humanity in domestic law. Please specify whether domestic law provides for the specific mitigating and aggravating circumstances enumerated in article 7 (2) of the

Convention. If not, please report on the measures taken to incorporate such circumstances into domestic law (arts. 2, 4–5 and 7).

12. In the light of article 146-1 (2) of the Criminal Code, please provide information about the steps taken to expressly incorporate into domestic law the criminal responsibility of superiors as set out in article 6 (1))b) of the Convention. Please also indicate whether domestic law specifically prohibits the invocation of an order or instruction from a public authority to justify an enforced disappearance (art. 6).

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

13. Please indicate whether a statute of limitations is applied in respect of cases of enforced disappearance and, if so, please indicate whether the term of limitation for criminal proceedings: (a) is of long duration and is proportionate to the extreme seriousness of the offence; and (b) commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature. Please also provide information about the measures taken to guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation (art. 8).

14. Please indicate whether domestic law establishes the State party's competence to exercise jurisdiction over the offence of enforced disappearance in the cases contemplated in article 9 (1) and (2) of the Convention (art. 9).

15. Please describe the measures taken to guarantee: (a) that any person tried for an offence of enforced disappearance benefits from a fair trial; and (b) the independence and impartiality of the courts. Please indicate the authorities responsible for searching for disappeared persons and investigating their disappearance; their respective mandates, composition and activities; and the powers, resources and expertise that they have to carry out their mandate effectively. Please describe the measures taken to ensure effective coordination, cooperation and cross-referencing between these authorities (arts. 11–12 and 24).

16. Please indicate whether: (a) domestic law provides for suspension from duties, 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 a case of enforced disappearance when one or more of their officials are suspected of having been involved in the commission of the offence (art. 12).

17. Please describe the mechanisms and applicable domestic law that are in place to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation of a case of enforced disappearance, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given (art. 12).

18. Please indicate whether any extradition agreements have been concluded with other States parties since the entry into force of the Convention and, if so, whether enforced disappearance has been included in such agreements. Please specify whether any limitations or conditions may be applied under domestic law in relation to requests for judicial assistance or cooperation under articles 14, 15 and 25 (3) of the Convention (arts. 13–15 and 25).

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

19. Please indicate whether domestic law explicitly prohibits the expulsion, return, surrender or extradition of a person when there are substantial grounds for believing that the person would consequently be in danger of being subjected to enforced disappearance. Please also:

(a) Provide information about the mechanisms and criteria applied in such procedures 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 expulsion, return, surrender or extradition and, if so, before which authority and under which procedure, and whether the appeal has suspensive effect (art. 16).

20. Please describe the measures taken to guarantee that no one is subjected to secret detention or held in unofficial places of detention. Please comment on allegations that detainees accused of crimes connected to the armed conflict in eastern Ukraine have been temporarily deprived of liberty in secret places of detention, including in Kharkiv between 2014 and 2016. In this respect, please specify: (a) the investigations conducted and their outcomes, including the number of secret detention facilities identified; (b) the sentences handed down to those responsible; and (c) the reparation awarded to victims (art. 17).

21. With respect to paragraphs 29 to 33 of the report, please provide information on the measures taken to ensure the due application of the provisions cited, in order to guarantee in practice that, as soon as persons are deprived of liberty, and regardless of the crime of which they are accused, they can have access to a lawyer, inform their family or any other person of their choice of their deprivation of liberty and, in the case of foreign nationals, communicate with their consular authorities. In this respect, please comment on the concerns expressed by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that the right to notify a family member or another chosen person of one's detention is not always ensured in practice, and that the right to a lawyer is not routinely guaranteed in all institutions (art. 17).²

22. Please provide information about the measures taken to guarantee that any person deprived of liberty or, in the case of suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, are entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful (art. 17).

23. Please provide information about the official registers and/or records of persons deprived of liberty that exist in all places of deprivation of liberty, regardless of their nature, including pretrial and temporary detention centres, penitentiaries, mental health and social care institutions, and facilities under the authority of the Security Service of Ukraine. Please specify whether all such registers and records include all the elements listed in article 17 (3) of the Convention, are immediately and duly completed following any type of deprivation of liberty and are systematically updated, including when persons are transferred from one institution to another, and specify whether all persons with a legitimate interest are guaranteed effective access to this information, as provided for in article 18 of the Convention. Please indicate whether there have been complaints concerning delays in duly registering, or failure to duly register, deprivation of liberty or any other pertinent information. If so, please describe the proceedings initiated, the sanctions imposed and other measures taken (arts. 17–20 and 22).

24. Please indicate whether the State party provides, or envisages providing, specific and regular training on the Convention, in the terms set forth in article 23 thereof, to civil and 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)

25. In relation to paragraph 14 of the report, please indicate whether domestic law contains a definition of victim that comprises not only the relatives of the disappeared person

² CAT/OP/UKR/3, paras. 45 and 47.

but also any other individual who has suffered harm as the direct result of an enforced disappearance. In this respect, please specify to what rights victims of enforced disappearance are entitled besides “the right to familiarize themselves with the criminal proceedings file”. Please also indicate whether domestic law makes explicit provision for the right of victims of enforced disappearance to the truth (art. 24).

26. Please specify whether domestic law provides for a comprehensive system of compensation and reparation in compliance with article 24 (4) and (5) of the Convention. In the light of paragraphs 66 to 69 of the report, please clarify 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 upon a criminal conviction, and whether there is a time limit for access by victims of enforced disappearance to compensation and/or reparation. In addition, please indicate the proportion of victims of enforced disappearance that have received reparation since the entry into force of the Convention and the type of reparation received (art. 24).

27. Please describe the existing procedures to search for and release disappeared persons, and to identify and return their remains in case of death, indicating the applicable time frames, protocols and procedures. In that connection, please describe the action taken, and the results thereof, to search for, locate and, in case of death, identify disappeared persons since the entry into force of the Convention, including in areas that are not currently under the control of the State party. In addition, please comment on the information received by the Working Group on Enforced or Involuntary Disappearances concerning the existence of unidentified graves on both sides of the contact line,³ and report on: (a) measures taken to ensure that all mass graves are searched for, located and preserved; (b) the number of mass graves located, the number of bodies found in each mass grave and the proportion of remains identified; (c) investigations conducted and the results thereof, including prosecutions of those allegedly responsible and the sentences handed down; and (d) efforts made to keep relatives abreast of the progress and results of the investigation and the fate of the disappeared persons (art. 24).

28. Please provide information about the measures taken, and the effectiveness thereof, to guarantee that the search for an alleged victim of enforced disappearance is launched ex officio 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. In the light of paragraphs 44 and 45 of the report, please describe the measures taken to systematically collect ante-mortem data related to disappeared persons and their relatives, and to set up a national database of DNA to identify victims of enforced disappearance. If such a DNA database does not exist, please explain how remains are identified (art. 24).

29. Taking into consideration information received by the Committee concerning amendments in 2022 to Law No. 2505-VIII on the legal status of persons missing in special circumstances, under which the Commissioner on Missing Persons was established and the Commission on Missing Persons in Special Circumstances was abolished, please provide detailed information about these amendments, and in particular:

(a) The procedure for the appointment of the Commissioner, and the Commissioner’s mandate;

(b) The composition, competence and functioning of the “search groups”, and whether they are already operational;

(c) Any measures taken to ensure that the Commissioner can deal with all cases of disappeared persons, regardless of the circumstances of the disappearance;

(d) The measures taken to ensure that the Commissioner has the necessary resources to carry out the mandate efficiently;

(e) How the Commissioner ensures coordination among the State authorities authorized to register and/or search for disappeared persons;

(f) The activities carried out by the former Commission and by the Commissioner and the results thereof, in particular the number of persons subjected to enforced

³ [A/HRC/42/40/Add.2](#), para. 42.

disappearance who have been located and, in the event of death, identified, the identity of the perpetrators in those cases, and the places in which the persons were located (art. 24).

30. 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 matters such as social welfare, financial matters, family law and property rights (art. 24).

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

31. Please indicate 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 complaints concerning the wrongful removal of children, in the terms described in 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 the measures taken, and the results thereof, to locate those children and prosecute and punish those responsible. Please also indicate whether complaints of abduction of children have been made with respect to areas currently not under the control of the State party and, if so, please describe the measures taken in that respect (art. 25).

32. Please indicate whether domestic law establishes legal procedures to review and, where appropriate, annul any adoption, placement or guardianship that originated in an enforced disappearance. If no such procedures have been established, please indicate whether any action has been taken to bring the national legislation into conformity with article 25 (4) of the Convention (art. 25).
