



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

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Committee on Enforced Disappearances

**Report submitted by Costa Rica under article 29
(1) of the Convention, due in 2014***

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* The present document is being issued without formal editing.



I. Introduction

1. The State of Costa Rica hereby submits its initial report to the Committee on Enforced Disappearances under article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter “the Convention”), in accordance with its international obligations.
2. Having ratified the Convention, the State recognizes the immediate need to investigate all the situations referred to in the articles of the Convention, which require effective measures to be taken against enforced disappearance around the world and in a variety of contexts, not only in conflict zones.
3. This report incorporates contributions from the State institutions involved in defending and protecting all persons against enforced disappearance, including a large range of public entities responsible for investigative and enforcement tasks. Contributions were received from the Legislative Assembly, the Ministry of Justice and Peace, the Ministry of Public Security, the International Relations and Cooperation Office of the judiciary, the Public Prosecution Service and the Ministry of Foreign Affairs, among others.
4. The report was prepared during 2018 and the first half of 2019 by the subcommission on enforced disappearance of the Inter-Institutional Commission for the Follow-up and Implementation of International Human Rights Obligations,¹ under the coordination of the Directorate General for Foreign Policy of the Ministry of Foreign Affairs. The report was brought to the attention of civil society on 24 April 2019 and of the Commission’s member institutions on 26 April 2019.
5. In accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2) (hereinafter “the reporting guidelines”), the report includes a section on the general legal framework, both national and international, on enforced disappearances in Costa Rica, followed by information on the country’s level of compliance with each article of the Convention.

II. General legal framework on enforced disappearances

A. Relevant national standards

6. The national legal system contains various instruments that set out measures to prevent enforced disappearance. These instruments include the Constitution, which contains specific articles on individual and social guarantees and expressly mentions the obligation to respect international human rights standards. This is important for the observance of due process in prosecutions relating to offences that include deprivation of liberty.
7. The Criminal Code contains a provision that refers specifically to the offence of concealment of detainees by the authorities, and its corresponding penalty:²

“Article 190. Authorities which 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 shall be deprived of their employment, office or function, or be disqualified from obtaining the same for 6 months to 2 years.”
8. The Criminal Code also contains a specific provision on deprivation of liberty without a financial motive:

¹ The Inter-Institutional Commission was established as a permanent advisory body of the executive branch, attached to the Ministry of Foreign Affairs, to coordinate and implement international human rights obligations at the national level and to coordinate relevant actions at the international level with a view to enhancing the promotion and defence of human rights.

² Act No. 4573, the Criminal Code, title V, “Offences against liberty”.

“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 punished by 6 months’ to 3 years’ imprisonment.”

9. For its part, the Code of Criminal Procedure describes how the offences set forth in the Criminal Code are dealt with and provides for the creation of mechanisms for international judicial cooperation, in keeping with the provisions of the Convention.

10. Under Costa Rican law, a serious offence is one that carries a penalty of more than 4 years’ imprisonment. The offence of kidnapping for extortion – which has similarities with that of enforced disappearance – is considered an extremely serious offence, with the prison sentences handed down in the event of aggravating circumstances exceeding 10 years, making them some of the lengthiest provided for in Costa Rican law.

11. Complementary laws include Act No. 4762 establishing the Directorate General for Social Rehabilitation³ of the Ministry of Justice and Peace, which defines the purposes and functions that guide the work of the national prison system administration and thus the custody and treatment of persons prosecuted for having committed or allegedly having committed offences.

12. In the same vein, the Technical Regulations of the Prison System, issued pursuant to Executive Decree No. 33876-J⁴ and its amendments,⁵ modify the organizational structure of the prison system and standardize technical aspects of sentence enforcement so as to ensure the broader application of the principles of legality, reasonableness and legal certainty, among others, in the treatment of persons deprived of their liberty.

B. Relevant international standards

13. One particularly relevant instrument that has been ratified by Costa Rica – in 1996 – is the Inter-American Convention on Forced Disappearance of Persons. This instrument promotes the protection and defence of human rights in situations where cases of enforced disappearance may occur.⁶

14. Similarly, in 2001, Costa Rica ratified the Rome Statute of the International Criminal Court, which defines enforced disappearance as a crime against humanity.⁷

15. In 2012, Costa Rica ratified the International Convention for the Protection of All Persons from Enforced Disappearance by Executive Decree No. 36956⁸.

³ Act No. 4762, establishing the Directorate General for Social Rehabilitation. Published in *La Gaceta* (the country’s official gazette) of 1 July 1971.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param2=NRTC&nValor1=1&nValor2=5962&strTipM=TC.

⁴ The Technical Regulations of the Prison System were issued pursuant to Executive Decree No. 33876-J of 11 July 2007, published in *La Gaceta* No. 148 of 3 August 2007, with the aim of modifying the organizational structure of the prison system and standardizing technical aspects of sentence enforcement.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=60692&nValor3=110962&strTipM=TC.

⁵ Executive Decree No. 39418-JP amending the Technical Regulations of the Prison System.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=80949&nValor3=103020&strTipM=TC.

⁶ Official page detailing the status of ratifications of the Inter-American Convention.

<https://www.oas.org/juridico/spanish/firmas/a-60.html>. Act adopting the Inter-American Convention. http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=23781&nValor3=25184&strTipM=TC.

⁷ Executive Decree No. 38896-RE. *La Gaceta* No. 83 of 30 April 2015.

https://www.imprentanacional.go.cr/pub/2015/04/30/COMP_30_04_2015.html.

⁸ Executive Decree No. 36956-RE.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=72223&nValor3=87996&strTipM=TC.

III. Compliance with the articles of the Convention

16. The following information is provided in accordance with the framework provided by the reporting guidelines.

A. Article 1

17. Costa Rican law permits the authorities to decree states of emergency for various reasons, especially situations of: (1) war; (2) internal upheaval; (3) public disasters; and (4) natural or man-made phenomena. In the latter instance, a state of emergency can be declared under Act No. 8488, the National Emergency and Risk Prevention Act.⁹

18. While the characteristics and scope of a state of emergency are not precisely defined in either legislation or the Constitution, the authorities are able to determine, based on doctrine and practice, the specific circumstances in which the conditions for declaring one are met.

19. Since the adoption of the present Constitution in 1949, only two states of emergency have been declared, for reasons of national security. The first was declared on 12 January 1955¹⁰ and the second on 21 February 2011,¹¹ in order to safeguard national sovereignty and the integrity of the population.

20. None of the provisions on states of emergency in the Costa Rican legal system permit acts that would undermine individuals' freedom of movement, or the rights inherent thereto, on the grounds of the emergency.

21. In fact, there are high-ranking provisions in the Costa Rican legal system that guarantee the right to free movement of persons and, consequently, the certainty that no one will be subjected to the deprivation of that freedom or to enforced disappearance. In particular, the Constitution¹² contains articles that refer to protection mechanisms, namely:

“Article 22. All Costa Ricans may go or settle anywhere inside or outside the Republic, provided that they are free of liability, and may return when they wish. Costa Ricans shall not be subject to requirements that prevent them from entering the country.

...

“Article 32. No Costa Rican may be compelled to abandon the national territory.

...

“Article 37. No one may be detained without circumstantial 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.

...

“Article 48. Everyone shall have the right to the remedy of habeas corpus to protect his or her personal freedom and integrity, and to the remedy of *amparo* to maintain or re-establish his or her enjoyment of the other rights embodied in this Constitution and

⁹ Act No. 8488, the National Emergency and Risk Prevention Act.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=56178

¹⁰ *La Gaceta* No. 8 of 12 January 1955, Supplement No. 1, *Colección de Leyes y Decretos*, San José.

¹¹ Executive Decree declaring a state of emergency owing to the situation and process caused by the violation of Costa Rican sovereignty by Nicaragua.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=69759&nValor3=83962&strTipM=TC.

¹² Constitution, title IV, “Individual rights and guarantees”.

http://www.pgrweb.go.cr/scij/busqueda/normativa/normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=871&strTipM=TC.

of the fundamental rights recognized in the international human rights instruments in force in the Republic.”

22. In addition, article 7 of the Constitution establishes a hierarchy of laws:

“Public treaties, international agreements and concordats duly adopted by the Legislative Assembly shall have a higher authority than laws, upon their adoption or from the date stipulated.”

23. This article guarantees the obligatory implementation of the Convention by the State, thus ensuring that a person cannot be subjected to enforced disappearance in Costa Rica.

B. Article 2

24. At present, there is no definition of enforced disappearance in national legislation, except that contained in the Convention, which is applicable because the Convention forms part of domestic law.

25. Since there is no express provision defining the offence of enforced disappearance in the Criminal Code, the Costa Rican Commission on International Humanitarian Law¹³ has been working to draft such a provision, drawing on elements of the Convention and the Inter-American Convention on Forced Disappearance of Persons.

26. As part of this process, in June 2017, the Commission held a training workshop on the Convention and the Committee on Enforced Disappearances, with the participation of the national institutions that constitute the Commission’s membership and representatives of the United Nations system in Costa Rica and the Office of the United Nations High Commissioner for Human Rights. The workshop participants produced the following text:

“Enforced disappearance shall be understood as the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of agents of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of that person, thus placing him or her outside the protection of the law. Enforced disappearance shall be considered a continuing offence as long as the fate and whereabouts of the victim remain unknown, and no statute of limitations shall apply.

...

“Disappearance perpetrated by individuals shall be understood as the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by private individuals or groups of individuals acting without the authorization, support or acquiescence of agents of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of that person, thus placing him or her outside the protection of the law. Disappearance perpetrated by individuals shall be considered a continuing offence as long as the fate and whereabouts of the victim remain unknown, and no statute of limitations shall apply.”

27. The text drafted by the Costa Rican Commission on International Humanitarian Law includes the elements of arrest, detention and any form of deprivation of liberty, such as kidnapping, whether carried out by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State.

¹³ Inter-institutional body established by Executive Decree No. 32077-RE of 21 May 2004 (published in *La Gaceta* No. 216 of 4 November 2004) as an advisory body of the executive branch on the adoption, application and dissemination of international humanitarian law.
https://www.imprenanacional.go.cr/pub/2012/02/07/COMP_07_02_2012.html.

C. Article 3

28. With regard to the obligation of the State party to take appropriate measures to investigate acts constituting enforced disappearance, in Costa Rica, the Judicial Investigation Agency (the criminal investigation police) and the Public Prosecution Service act immediately when they are informed of an event that may constitute a crime, as in the case of a disappearance. Since Costa Rica does not have an offence of enforced disappearance, this report refers in several instances to the similar offence of kidnapping for extortion in order to illustrate the workings of the Costa Rican judicial and investigative system. In such cases, criminal investigation personnel bring the matter to the attention of the Office of the Deputy Public Prosecutor against Organized Crime, which addresses it immediately.

29. The purpose of this step is to ensure that preliminary measures are taken to ensure that the investigation addresses the possibility of a kidnapping, in case a ransom must be paid or another condition met to secure the victim's release, even though the case is handled, in the first instance, as a disappearance or a deprivation of liberty that is taking place in strange circumstances. The criminal investigation police has a protocol for these cases that provides for coordination with other State authorities, thereby ensuring that a channel of communication remains open at all times.

30. According to Organic Act No. 5524 on the Judicial Investigation Agency,¹⁴ “[The Judicial Investigation Agency] shall assist the criminal courts and the Public Prosecution Service in the discovery and scientific verification of crimes and their alleged perpetrators. It shall also serve as an advisory body to the country's other courts”. The Act also states that:

“Article 2. The Judicial Investigation Agency shall perform the functions of the criminal investigation police attributed to it by this and other laws, and shall enforce the orders and carry out the requests of the courts.

“Article 3. The Judicial Investigation Agency shall proceed, on its own initiative, in response to a complaint or by order of a competent authority, to investigate publicly prosecutable offences, to prevent the acts committed from leading to further consequences, to identify and preventively apprehend the alleged culprits, and to collect, secure and scientifically organize evidence and other information necessary for the investigation. For privately prosecutable offences, it shall act only in compliance with the order of a competent authority when the latter indicates that the complaint or accusation in question has been received from a legally entitled person.

“Article 4. The Agency's legally established powers shall include: (1) collecting all evidence and other information that may be important in the case; and (2) apprehending the alleged culprits. All persons detained must be brought before the competent judicial authority within a mandatory period of 24 hours. If, during a person's detention and before he or she has been brought before the judicial authority, the evidence of his or her guilt should be in any way distorted, he or she shall be released immediately.”

31. In addition to police action, the Criminal Code authorizes the Public Prosecution Service to request custodial measures for perpetrators of serious offences; and for aggravating circumstances in the event that the offence is financially, politically, sociopolitically, religiously or racially motivated.

32. In cases of kidnapping for extortion, article 16 of the Organized Crime Act¹⁵ provides for the possibility of wiretapping to obtain evidence. More generally, the numerous tools and technologies available to the criminal analysis unit of the Judicial Investigation Agency have allowed it to resolve 96 per cent of the kidnapping cases reported in the country. Working together, the criminal investigation police and Public Prosecution Service have used these

¹⁴ Organic Act on the Judicial Investigation Agency.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=16037&nValor3=17167&strTipM=TC.

¹⁵ Organized Crime Act (No. 8754).

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=65903&nValor3=87003&strTipM=TC.

technologies to prove the involvement of entire criminal organizations in the commission of offences, thereby ensuring that members of these groups receive prison sentences.

D. Article 4

33. With regard to the State's obligation to take appropriate steps to enact domestic legislation criminalizing enforced disappearance in terms that are consistent with the definition in article 2, it must be borne in mind that enforced disappearance is not currently criminalized under Costa Rican law other than through the Convention itself, which, as stated previously, is applicable since it forms part of domestic law.

34. Notwithstanding the absence of a specific offence, the following provisions of Act No. 4573, the Criminal Code,¹⁶ define criminal offences similar to enforced disappearance:

“Article 214. Extortion. Anyone who, for the purpose of unjust enrichment, forces another person by means of intimidation or serious threats to dispose of his or her assets in a manner prejudicial to himself or herself or a third party, shall be punished by 2 to 6 years' imprisonment.

“Article 215. Kidnapping for extortion. Anyone who kidnaps a person for ransom or for political, sociopolitical, religious or racial reasons, shall be punished by 10 to 15 years' imprisonment.

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

“Article 215 bis. Kidnapping of children under 12 years of age or persons with disabilities in a situation of defencelessness. Anyone who removes a child under 12 years of age, or a person with a disability that prevents him or her from defending himself or herself, from the authority of his or her parents, guardians or other responsible persons shall be punished by 10 to 15 years' imprisonment.

In the event of serious or extremely serious injury having been inflicted upon the kidnapped person, the penalty shall be 20 to 25 years' imprisonment; and if he or she dies, 35 to 50 years' imprisonment.”

35. Moreover, bill No. 20187, 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”;¹⁷ is currently before the legislature. This bill would criminalize enforced disappearance.

36. This information responds to the request contained in the reporting guidelines, considering that the spirit of the bill is precisely to separate the offence of enforced disappearance from other offences.

37. In respect of deprivation of individual freedoms, the Criminal Code¹⁸ provides the following:

“Aggravated forms. Article 192. Aggravated deprivation of liberty. The penalty for depriving another person of his or her personal liberty shall be 4 to 10 years' imprisonment if the offence involves any of the following circumstances: (1) the victim is under 18 years of age, is in a vulnerable situation or has a 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 a public official; (4) the deprivation of liberty lasts more than 24 hours; (5) the perpetrator

¹⁶ Criminal Code, sect. III, “Extortion”.

¹⁷ Bill No. 20187, submitted to the Legislative Assembly in December 2016.

http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=20187.

¹⁸ Criminal Code, art. 192, “Aggravated deprivation of liberty”.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=5027&nValor3=96389&strTipM=TC.

takes advantage of a relationship of authority or trust with the victim or the victim's family, whether based on ties of kinship or otherwise; (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.”

38. It is worth highlighting that article 192 (6) specifically states that the offence of deprivation of liberty is aggravated “when the perpetrator takes advantage of the exercise of his or her profession or the function that he or she performs”. This provision can be directly applied in cases where the deprivation of liberty is carried out by a State official.

E. Article 5

39. The reporting guidelines request State parties to provide information on compliance with their obligation to codify the widespread or systematic practice of enforced disappearance as a crime against humanity and ensure that this attracts the consequences defined under applicable international law.

40. In the case of Costa Rica, the Criminal Code contains a provision criminalizing widespread or systematic attacks against groups of people. Specifically, article 386¹⁹ provides that:

“Anyone who, in the context of a widespread or systematic attack against a civilian population and having knowledge of such an attack, performs or orders someone to perform acts that could be classed as crimes against humanity under the provisions of the international human rights treaties to which Costa Rica is a party, and of the Rome Statute, shall incur a prison term of 10 to 25 years.”

F. Article 6

41. With regard to the obligation of the State party to establish a regime of criminal responsibility, including superior responsibility, in relation to enforced disappearance, the relevant information is provided below:

42. Although enforced disappearance is not a specific offence in Costa Rica, the police chain of command is discussed in connection with matters of criminal liability and there is a disciplinary regime which is based on administrative law.

43. There are also criminal penalties. Under criminal law, criminal liability is individual, so that even persons who form part of an entity are punished individually, according to the Criminal Code.

“Article 36. Due obedience. An official who acts in obedience shall not be held criminally liable, provided that the following requirements are met: (a) the order comes from the authority competent to issue it and takes the form required by law; (b) the official is hierarchically subordinate to the person issuing the order; and (c) the order entails a clearly punishable offence.”

44. This article covers cases in which a judge orders the arrest or pretrial detention of a person. The prerogatives exercised in issuing such orders are set forth in law.

45. This means that even law enforcement officers must justify the detention of the person, in a process that involves both the judiciary and the Public Prosecution Service, whose actions are governed by the principle of legality. An official who believes that an arrest or detention order does not meet the aforementioned requirements has methods at his or her disposal to challenge it.

46. In cases where a police officer has committed an offence in the exercise of his or her duties, especially in a matter of abuse of authority, he or she is criminally liable for injuries

¹⁹ Criminal Code, title XVII, “Crimes against human rights”, art. 386.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=5027&nValor3=96389&strTipM=TC.

or rights violations once the criminal act has been proven. If the superior has knowledge of such an offence, he or she is obliged to report it.

47. Should the official believe that an arrest is illegal and that it might even give rise to an offence, he or she must inform the criminal investigation police or the Public Prosecution Service.

48. Article 331 of the Criminal Code, entitled “Abuse of authority”,²⁰ states that: “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 punished by 3 months’ to 2 years’ imprisonment.”

49. Furthermore, article 332 defines conduct that constitutes “Dereliction of duty”, stipulating that: “Any public official who unlawfully omits to perform, refuses to perform, or delays the performance of any duty inherent to his or her office shall be punished by disqualification from office for between 1 and 4 years. The same penalty shall be imposed on any public official who unlawfully fails to abstain, refrain or excuse himself or herself from carrying out a formality, measure or procedure when he or she is obliged to do so.”²¹

G. Article 7

50. Penalties vary depending on the protected legal right. The Criminal Code, as the basic criminal statute, establishes a hierarchy in respect of these legal rights. Thus, criminal offences are defined from article 111 onward, beginning with crimes against life, as the legal right with the greatest protection. The first criminal offence to be defined is homicide.

51. Article 71²² provides the tools necessary for judges to determine penalties:

“The judge, in a reasoned judgment, shall determine the duration of the penalty that must be imposed in accordance with the established limits for each offence, considering the gravity of the act and the personality of the participant. In so doing, he or she must take into account: (a) the subjective and objective aspects of the punishable act; (b) the extent of the injury or danger caused; (c) how, when and where the act was committed; (d) the nature of the chief motives; (e) the other personal circumstances of the perpetrator or of the victim insofar as they influenced the commission of the offence; and (f) the conduct of the perpetrator after having committed the offence.”

52. The Institute of Criminology is asked to provide a report detailing the offender’s psychological, psychiatric and social characteristics, as well as those referring to his or her education and background, and any other information that may be useful to the judge.

53. Under Costa Rican law, a serious offence is one that carries a penalty of more than 4 years’ imprisonment. As is illustrated below, the offence of kidnapping for extortion – which perhaps has the most elements in common with that of enforced disappearance – is considered an extremely serious offence, to the extent that when aggravating circumstances are taken into account, the penalties are the most severe provided for in the Criminal Code.²³

“Article 215. Kidnapping for extortion. Anyone who kidnaps a person to obtain a ransom or for political, sociopolitical, religious or racial reasons shall be punished by 10 to 15 years’ imprisonment.”

²⁰ Criminal Code, title XV, “Offences against the duties of public office”.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=5027&nValor3=96389&strTipM=TC.

²¹ This refers to commission by omission.

²² Criminal Code, sect. VII, “Determination of penalties”, “Sentencing”.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=5027&nValor3=96389&strTipM=TC.

²³ Criminal Code, sect. III, “Extortion”, “Kidnapping for extortion”.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=5027&nValor3=96389&strTipM=TC.

54. The Costa Rican legal system is in full conformity with the recommendation contained in the Convention to establish mitigating and aggravating circumstances as appropriate. In respect of mitigating circumstances, the same article 215 states that: “If the victim is released within three days of the commission of the act, unharmed and without the kidnappers’ having achieved their purpose, the penalty shall be 6 to 10 years’ imprisonment.”

55. There are many aggravating circumstances, all of which are set forth in article 215 and are described below in order of increasing severity:

“If the perpetrator achieves his or her purpose; if the act is committed by two or more persons; if the kidnapping lasts for more than three days; if the kidnapped person is a minor, a pregnant woman, or a legally incapable, sick or older person; if the kidnapped person suffers physical, moral, psychological or economic harm due to the way in which the kidnapping was carried out or the means used to consummate it; or if violence is used against any third parties who attempt to help the kidnapped person at the time of the act or subsequently when trying to free him or her, the penalty shall be 15 to 20 years’ imprisonment.”

56. The offence carries the same range of penalties 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,²⁴ when political or sociopolitical conditions must be met to secure his or her release; and 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.

57. In 2003, an article 215 bis was added, which reads as follows:

“Article 215 bis. Kidnapping of children under 12 years of age or persons with disabilities in a situation of defencelessness. Anyone who removes a child under 12 years of age, or a person with a disability that prevents him or her from defending himself or herself, from the authority of his or her parents, guardians or other responsible persons shall be punished by 10 to 15 years’ imprisonment. In the event of serious or extremely serious injury having been inflicted upon the kidnapped person, the penalty shall be 20 to 25 years’ imprisonment; and if he or she dies, 35 to 50 years’ imprisonment.”

58. In the light of the above, it can be said that the gravest offences are those in which the kidnapped person sustains serious or extremely serious injuries, or is killed.

H. Article 8

59. The Code of Criminal Procedure is fully compatible with the provisions of the Convention.

60. The articles on the statute of limitations²⁵ mention the following:

“Article 31. Statute of limitations for criminal prosecution. If criminal proceedings have not been initiated, the right of action shall be time-barred: (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; and

²⁴ Act ratifying the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=9950&n.

²⁵ Code of Criminal Procedure, sect. III, arts. 31–34.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=41297&nValor3=96385&strTipM=TC.

(b) after two years in the case of offences attracting only non-custodial penalties and in the case of minor or petty offences.

“Article 32. Calculation of the limitation period. The limitation periods for prosecution shall be determined by the main penalty prescribed by law and shall start to run: for completed offences, 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. The limitation period shall run or shall be suspended or interrupted individually for each person who took part in the offence. In the event of joint adjudication of several offences, the respective criminal proceedings shall be subject to separate statutes of limitations on the date indicated for each one.

...

“Article 34. Suspension of the limitation period. The limitation period shall be suspended: (a) where, by virtue of a constitutional or legal provision, the prosecution cannot be brought or continued. This provision shall not apply when the prosecution cannot proceed owing to the lack of a private action; (b) where offences are committed by public officials in the exercise or in the course of their duties, for such time as they continue to hold public office and have not been prosecuted; (c) when, in offences related to the constitutional system, the institutional order breaks down, until such time as it is restored; (d) for the duration of extradition proceedings in another country; (e) where the prosecution has been suspended by virtue of prosecutorial discretion or pending probation, for the duration of such a suspension; (f) in the event of contumacy on the part of the accused. In this case, the duration of the suspension may not exceed that of the limitation period; once this time has elapsed, the limitation period shall start to run again.”

I. Article 9

61. Domestic legislation is very clear on the issue of territorial jurisdiction; it allows for the prosecution of persons accused of committing an offence of enforced disappearance in Costa Rican territory or in any other place under Costa Rican jurisdiction. The courts are also competent to try Costa Rican nationals accused of having committed offences in other States.

62. The Criminal Code²⁶ provides the following:

“Article 4. Costa Rican criminal law shall apply to any person who commits an offence in the territory of the Republic, save for the exceptions laid down in the international treaties, agreements and rules accepted by Costa Rica.

“Article 5. Extraterritoriality. Costa Rican criminal law shall also apply to offences committed abroad when such offences: (1) pose an internal or external security threat to the State or its economy; or (2) are committed against the public administration by officials in its service, Costa Rican citizens or others.

“Article 6. Institution of judicial proceedings in respect of offences committed abroad. Judicial proceedings may be instituted in respect of offences committed abroad and Costa Rican law may be applied in such cases when: (1) they produce, or may produce, their effects in all or part of the national territory; (2) they were committed by persons in the service of Costa Rica who were not prosecuted in the place where the act was committed by virtue of diplomatic or functional immunity; (3) they were perpetrated against a Costa Rican national or breached his or her rights; or (4) they were committed by a Costa Rican national. (Amended in 2009.)

...

²⁶ Criminal Code, sect. II, “Scope of application”, art. 4, “Territoriality”, art. 5, “Extraterritoriality” and art. 6; sect. VII, “Determination of penalties”, “Sentencing”.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=5027&nValor3=96389&strTipM=TC.

“Article 7. International offences. Irrespective of the provisions in force in the place where the offence was committed and the nationality of the perpetrator, any person who commits acts of piracy, acts of terrorism or funds terrorist activities, or acts of genocide; forges coins, securities, banknotes and other bearer instruments; smuggles weapons, ammunition, explosives or related materials; participates in the trafficking of slaves, women or children; commits sexual offences against minors; or engages in trafficking of narcotics or obscene publications, shall be prosecuted under Costa Rican law. Any person who commits any other offence against human rights and international humanitarian law, as established in the treaties signed by Costa Rica or in this Code, shall also be prosecuted.”

J. Article 10

63. Any person suspected of having committed an offence of enforced disappearance who is found to be present in Costa Rican territory must be detained, in accordance with the legal provisions set out below.

64. The Constitution²⁷ provides the following:

“Article 37. No one may be detained without circumstantial 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.”

65. The authorities are bound by the following provisions of the Code of Criminal Procedure:²⁸

“Chapter I. Criminal proceedings. Article 16. Criminal proceedings may be public or private in nature. Public criminal proceedings shall be instituted by the Public Prosecution Service, without prejudice to the participation therein of the victim or private citizens in accordance with this Code.

In respect of offences against the Nation, the peace, the public authorities, the constitutional order, the environment, the maritime/land zone, or the public treasury, the Office of the Counsel General of the Republic may institute criminal proceedings directly, independently of the actions and decisions of the Public Prosecution Service. The Office of the Counsel General of the Republic shall be a party to any proceedings that it institutes and may exercise the same remedies as those granted by this Code to the Public Prosecution Service.”

66. Another section of the Code of Criminal Procedure, concerning the State’s obligation to exercise its jurisdiction and investigate any person found to be present in its territory who is suspected of having committed an offence of enforced disappearance, contains the following provisions:

“Article 45.²⁹ Jurisdiction. The courts shall have jurisdiction to hear cases involving offences committed in the territory of the Republic and offences committed in places where Costa Rica has special jurisdiction. In addition, in certain cases specified by law, the courts shall have jurisdiction to hear cases involving offences committed outside the national territory.

²⁷ Constitution, title IV, “Individual rights and guarantees”, sole chapter, art. 37.

http://www.pgrweb.go.cr/scij/busqueda/normativa/normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=871&strTipM=TC.

²⁸ Code of Criminal Procedure, title II, “Procedural measures”, chap. I, “Criminal proceedings”.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=41297&nValor3=96385&strTipM=TC.

²⁹ Code of Criminal Procedure, book I, “Criminal justice and parties to legal proceedings”, title I, “Criminal justice”, chap. I, “Jurisdiction”.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=41297&nValor3=96385&strTipM=TC.

“Article 46. Retention of jurisdiction. When lack of jurisdiction is notified after the date for the trial has been set, the court competent to try more serious offences may not declare itself incompetent on the ground that the case should be heard by a court competent to try less serious offences.

The courts competent to try offences shall also be competent to try misdemeanours when the principal act has been reclassified during the trial or when the misdemeanour is closely tied to an offence. In such cases, the procedure to be followed shall be that normally used to prosecute the more serious offence. Once the date for the hearing has been set, the territorial jurisdiction of a trial court may not be contested.

“Article 47. Rules governing jurisdiction. In determining the territorial jurisdiction of the courts, the following rules must be observed:

(a) A court shall have jurisdiction over offences committed in the judicial district where it exercises its functions. If there are several courts operating in the same district, they must divide tasks among themselves equally, in accordance with the distribution system established to that end. If it is unclear which court has jurisdiction, the offence must be tried by the court that was first to take cognizance of the case. The court having issued the first order or decision in respect of the case shall be considered to be the first to have taken cognizance thereof;

(b) When an offence committed abroad produces its effects in the Republic, the courts of the judicial district of the capital shall be competent to hear the case, even if the accused has been arrested in another judicial district of the country;

(c) When an offence is committed on the border between two judicial districts or in various judicial districts, the court that first took cognizance of the case shall have competence;

(d) When the place where the offence was committed is unknown, the court of the judicial district in which the accused resides shall have competence. If, subsequently, the place where the offence was committed is discovered, the court that has jurisdiction over that place shall continue the proceedings, unless the referral of the case would result in an undue procedural delay or prejudice the defence;

(e) When an offence is committed on board a ship in territorial waters or an aircraft in the national airspace, the court with jurisdiction over the place of arrival of the ship or aircraft shall have competence. If the ship or aircraft does not arrive in Costa Rican territory, a court of the judicial district of the capital of the Republic shall be competent to hear the case.”

67. The following provisions govern the activities of the criminal investigation police:³⁰

“Article 67. Function. The criminal investigation police shall assist the Public Prosecution Service and, under its direction and control, shall investigate publicly prosecutable offences, prevent their commission, identify the perpetrators and accomplices, gather the necessary evidence to substantiate charges and exercise the other functions assigned to it by the relevant organic act and this Code.

“Article 68. Direction. The Public Prosecution Service shall direct the police when it requires the latter to assist it in its investigations. Officials and agents of the criminal investigation police shall always comply with the orders of the Public Prosecution Service and those issued to them by the courts during the course of proceedings. In exceptional cases and on justifiable grounds, the Attorney General may directly appoint officers of the criminal investigation police to assist him or her in a specific investigation. In such cases, the police may not be removed from the investigation without the explicit approval of the Attorney General.

³⁰ Code of Criminal Procedure, chap. II, “Criminal investigation police”, arts. 67–69.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=41297&nValor3=96385&strTipM=TC.

“Article 69. Procedures. Officials and agents of the criminal investigation police shall comply with the procedures prescribed for the investigation and shall align their action with the general or specific directives and instructions issued by the Public Prosecution Service.”

68. The following provisions govern the rights of the accused:

“Article 82.³¹ Rights of the accused. The criminal investigation police, the Public Prosecution Service or the courts, as appropriate, shall inform the accused immediately, and in a manner that he or she understands, that he or she has the right:

(a) To be notified of the grounds for his or her detention and the identity of the official who ordered it, and to be shown, where appropriate, the arrest warrant issued against him or her;

(b) To have immediate and effective contact with the person, association, group or entity that he or she wishes to inform of his or her arrest;

(c) To be assisted, from the first step in the proceedings, by counsel of his or her choosing or counsel chosen by his or her family or the group that he or she has informed of his or her arrest or, failing that, by a public defender;

(d) To appear, or to be brought, before the Public Prosecution Service or the court to be informed of the charges brought against him or her;

(e) To remain silent or, if he or she agrees to make a statement, to do so in the presence of his or her defence counsel, and to be accompanied by such counsel at any other proceedings at which his or her presence is required;

(f) Not to be subjected to techniques or methods that affect or undermine his or her free will or violate his or her dignity;

(g) Not to have his or her free movement impeded at the place and during the conduct of procedural acts, without prejudice to such measures of supervision as may be required by the court or the Public Prosecution Service in special cases.”

69. The Supreme Court establishes standards for the treatment of detained foreign nationals in circular No. 04-ADM-2012,³² on preliminary inquiries conducted in respect of foreign suspects.

70. Any person suspected of perpetrating or of being an accomplice to an offence is entitled to exercise his or her rights from the beginning to the end of the proceedings concerning him or her. These rights must be protected. To that end, criminal prosecution must be conducted in strict compliance with the law, as stipulated in article 2 of the Organic Act on the Public Prosecution Service, and in accordance with the rights and guarantees established in the Code of Criminal Procedure, the Constitution and international instruments.

71. Article 8 of the American Convention on Human Rights³³ regulates the scope of judicial guarantees.

72. Moreover, article 2 of the International Covenant on Civil and Political Rights³⁴ provides that: “Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

³¹ Code of Criminal Procedure, title IV, “The accused”, chap. I, “General rules”, art. 81.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=41297&nValor3=96385&strTipM=TC.

³² Preliminary inquiries in respect of foreign suspects. 28 March 2022.
<file:///C:/Users/800910474/Downloads/04-ADM-2012.pdf>.

³³ American Convention on Human Rights.
https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

³⁴ International Covenant on Civil and Political Rights.
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

73. Mention should also be made of the American Declaration of the Rights and Duties of Man,³⁵ article XVIII of which provides that every person has the right to justice. Furthermore, article 36 (1) (b) and (c) of the Vienna Convention on Consular Relations³⁶ provide that: “With a view to facilitating the exercise of consular functions relating to nationals of the sending State: ... (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner.”

74. “Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph; (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.”

75. The Inter-American Court of Human Rights unanimously ruled in advisory opinion No. 16/99 that:³⁷ “Article 36 of the Vienna Convention on Consular Relations confers rights upon detained foreign nationals, among them the right to information on consular assistance, and that said rights carry with them correlative obligations for the host State. 2. That article 36 of the Vienna Convention on Consular Relations concerns the protection of the rights of a national of the sending State and is part of the body of international human rights law. 3. That the expression ‘without delay’ in article 36 (1) (b) of the Vienna Convention on Consular Relations means that the State must comply with its duty to inform the detainee of the rights that article confers upon him, at the time of his arrest or at least before he makes his first statement before the authorities. 4. That the enforceability of the rights that article 36 of the Vienna Convention on Consular Relations confers upon the individual is not subject to the protests of the sending State. 5. That articles 2, 6, 14 and 50 of the International Covenant on Civil and Political Rights concern the protection of human rights in the American States. 6. That the individual’s right to information established in article 36 (1) (b) of the Vienna Convention on Consular Relations allows the right to the due process of law recognized in article 14 of the International Covenant on Civil and Political Rights to have practical effects in concrete cases; article 14 establishes minimum guarantees that can be amplified in the light of other international instruments such as the Vienna Convention on Consular Relations, which expand the scope of the protection afforded to the accused.”

K. Article 11

76. In Costa Rica, the principle of *aut dedere aut iudicare* is applied, in accordance with international law. With regard to the guarantee of fair treatment at all stages of the detention procedure, the authorities are governed by the articles of domestic law below.

77. Article 1 of the Organic Act on the Judiciary³⁸ provides that: “The Supreme Court and any other courts established by law shall exercise the powers of the judiciary. In addition to the functions indicated in the Constitution, the judiciary shall hear civil, criminal, juvenile

³⁵ American Declaration of the Rights and Duties of Man.

<http://www.oas.org/en/iachr/mandate/Basics/declaration.asp>.

³⁶ Vienna Convention on Consular Relations.

http://www.pgrweb.go.cr/SCIJ/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NR TC&nValor1=1&nValor2=2618&nValor3=2779&strTipM=TC.

³⁷ Inter-American Court of Human Right, advisory opinion No. OC-16/99 of 1 October 1999, requested by Mexico. “The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law”.

https://www.corteidh.or.cr/docs/opiniones/seriea_16_ing.pdf.

³⁸ Organic Act on the Judiciary (1937).

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=33635.

criminal, commercial, labour, administrative and civil financial, family, agrarian and constitutional cases, as well as any others provided for in law, render final decisions thereon and execute the judgments pronounced, with the assistance of the law enforcement authorities, if necessary.” (As amended by article 1 of Act No. 7728 of 15 December 1997.)

78. The Constitution³⁹ provides the following:

“Article 35. No one may be tried by a commission, court or judge specially appointed for the case, but exclusively by the courts established in accordance with this Constitution.”

79. It also provides the following:

“Article 36. In criminal matters, no one is obliged to testify against himself or herself, or against his or her spouse, relatives in the ascending line, descendants, or collateral relatives to the third degree by consanguinity or marriage.

“Article 37. No one may be detained without circumstantial 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.

...

“Article 39. No one may be made to suffer a penalty except for an offence, quasi-offence or misdemeanour punishable by pre-existing law, and in consequence of a final sentence imposed by a competent authority, after the accused has been given an opportunity to defend himself or herself and has been proven guilty.

...

“Article 40. No one may be subjected to cruel or degrading treatment or to life imprisonment or to the penalty of confiscation. Any statement obtained by force is null and void.

...

“Article 42. The same judge may not preside over hearings on the same point in different courts. No one may be tried more than once for the same offence.

...

“Article 44. A court order must be obtained in order for a person to be held incommunicado for more than 48 hours; incommunicado detention may be extended for up to 10 consecutive days only, and in no event may a judicial inspection be prevented from taking place.”

80. The legal framework which enables national courts to exercise universal jurisdiction over the offence of enforced disappearance is governed by article 7 of the Criminal Code.⁴⁰

81. Costa Rica is committed to opening criminal proceedings in respect of serious international crimes, even when such crimes are not committed on its territory, as such conduct poses a threat to the peace and security of humankind.

³⁹ Constitution, title IV, “Individual rights and guarantees”, sole chapter, arts. 35–37, 39, 40, 42 and 44. http://www.pgrweb.go.cr/scij/busqueda/normativa/normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=871&strTipM=TC.

⁴⁰ Criminal Code. http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=5027&nValor3=96389&strTipM=TC.

L. Article 12

82. In Costa Rica, access to the criminal justice system is governed by the Code of Criminal Procedure. Articles 71 et seq⁴¹ establish the rights of victims in criminal proceedings. Victims are guaranteed dignified treatment and prompt and unimpeded access to the judicial authorities. The Public Prosecution Service has a specialized office for the protection of victims and witnesses.

83. Paragraph 2 (a) of article 71 on “Rights of the victim” provides that: “Rights to protection and assistance: Extrajudicial protection: The victim shall have the right to request and receive special protection in the event that a serious risk or threat to his or her life or physical integrity, or the life or physical integrity of his or her family, arises as a result of his or her complaint or participation in the proceedings. The Public Prosecution Service, the police, and the judge or trial court hearing the case shall take the measures necessary to ensure that such protection is provided. The victim must be heard in any proceedings aimed at granting him or her protection. The Office for Victim Support of the Public Prosecution Service shall coordinate with all prosecutor’s offices in the country to protect victims and shall channel through them the information needed to justify protection measures or requests for precautionary measures, in accordance with the final paragraph of article 239 of this Code:

(a) Procedural protection: When the victim’s knowledge puts his or her life or physical integrity, or the life or physical integrity of his or her family, at risk as a result of his or her complaint or participation in the proceedings, he or she shall have the right to have the details of his or her identity, including his or her name, identity card and address, telephone numbers and place of work, kept confidential and to have such data excluded from any documentation related to the proceedings; in addition, in the exceptional cases referred to in article 204 bis of this Code, the victim shall have the right to have information on his or her physical identifying characteristics kept confidential when, because of the nature of the offence, such physical characteristics are not known to the accused or to other persons associated with him or her, without prejudice to the right of defence. To ensure that the victim is able to testify and to protect his or her life, available technology, such as videoconferencing or any other similar means, may be used to ensure that the protection granted is provided, both during the hearing of evidence prior to trial and during the trial, under the terms and according to the procedure established in articles 204 and 204 bis of this Code;

(b) Victims who are minors, women who are victims of sexual abuse or violence, and victims of human trafficking and acts of violence shall have the right to receive assistance and support from personnel appointed for that purpose in the judiciary, the Ministry of Security and other institutions in order to prevent revictimization resulting from their involvement in the proceedings and to facilitate their participation in the various types of judicial proceedings, such as expert investigations and hearings;

(c) Victims who are minors shall have the right to have their best interests taken into consideration during all proceedings and expert investigations, and especially when they are called upon to testify; to this end, the Public Prosecution Service and the judge or trial court hearing the case shall take the necessary steps to reduce the number of proceedings and to receive the testimony of the victim under any special conditions required. An expert opinion may be requested, if necessary, from the Department for Social Work, Psychiatry and Forensic Psychology or from another duly appointed expert, without prejudice to the right of defence, in accordance with articles 212, 221 and 351 of this Code;

(d) The victim shall have the right to be granted paid leave by his or her employer, whether he or she works in the public or private sector, when he or she is required to attend judicial proceedings or expert investigations or appear before the court, for the time necessary. To confirm attendance at such events, the office of the court hearing the case or before which the proceedings took place shall provide the victim with a supporting document indicating the nature of the event and its duration. The Public Prosecution Service and the judge or trial

⁴¹ Code of Criminal Procedure (Act No. 7594), title III, “The victim”, chap. I, “Rights of the victim”.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=41297.

court hearing the case shall take the necessary steps to prevent the victim from receiving multiple summonses or being called to appear multiple times; in addition, hearings must be scheduled, where possible, such that testimony may be given without delay and that the paid leave granted to the victim is not excessively long;

Procedural rights:

(e) The victim shall have the right to report offences committed to his or her detriment personally, through a third person whom he or she has authorized to do so, or through a specially mandated agent;

(f) The direct victim of the offence shall have the right to be heard in court, even if the Public Prosecution Service does not call him or her as a witness. The victim's right to be heard must be recognized in all the proceedings authorized by this Code. The non-completion of filing formalities may not be invoked as a reason for neglecting to respond to petitions submitted by the victim, and the victim shall be given the opportunity to correct any procedural oversights under the terms of article 15 of this Code;

(g) The victim shall have the right to appeal any final decision to issue a discharge order during the preparatory, intermediate and trial stages, and to appeal any decision to dismiss the case;

(h) When the Public Prosecution Service informs the victim of its decision not to challenge an acquittal or to terminate or modify precautionary measures adopted in view of a risk posed to the victim's life or physical integrity and the victim does not agree with that decision, he or she shall have the right to appeal it under the terms established in article 426 of this Code;

(i) The victim shall be called to attend the preliminary hearing in all cases, provided that he or she has indicated an address or place where, or means by which, he or she may be located, and shall have the right to have his or her views taken into account with regard to the conduct of summary proceedings, the suspension of the trial, conciliation or the exercise of prosecutorial discretion, in accordance with terms and scope defined in this Code. Whenever he or she is present, he or she must be given the opportunity to be heard;

(j) The victim shall have the right to bring civil proceedings for damages, in accordance with the terms and scope defined in this Code, to file a complaint in respect of privately prosecutable offences, to withdraw a complaint in respect of offences that are publicly prosecutable provided that a private complaint has been filed first, to request the conversion of public legal proceedings into private legal proceedings, and to withdraw a complaint and desist from legal action, in accordance with the terms and scope defined in this Code;

(k) The victim shall have the right to be informed by the Public Prosecution Service of any decision to bring charges, to petition for a discharge order or to exercise its discretion to prosecute, so that, under the terms of this Code, he or she may decide whether to file a complaint and act as a plaintiff, or to bring civil proceedings for damages;

(l) Where pretrial detention is requested on the ground that there is a risk or threat to the life or physical integrity of the victim or to those of his or her family, the victim shall have the right to be heard by the judge when he or she rules on the request made to him or her by the Public Prosecution Service, provided that the victim has indicated an address or place where, or means by which, he or she may be located. The victim may make his or her statement in writing in order for it to be submitted by the prosecutor together with the request for detention, without prejudice to the decision of the judge to hear him or her. To this end, the prosecutor assigned to the case may request information from the Office for Victim Support of the Public Prosecution Service in order to substantiate his or her request, under the terms defined in the final paragraph of article 239 of this Code;

(m) The victim shall have the right to be heard by the judge during the preparatory stage in order to indicate any errors, omissions or delays that he or she considers have occurred to his or her detriment during the investigation of the facts of the case, under the terms established in the final paragraph of article 298 of this Code. Moreover, he or she may

appeal the decision of the prosecutor to shelve the case, under the terms defined in the above-mentioned article;

(n) The victim shall be entitled to have returned to him or her, as soon as possible, even provisionally, all property and assets belonging to him or her that have been seized or recovered by the authorities as evidence. (As amended by article 16 of Act No. 8720 on Protection for Victims, Witnesses and Other Persons Involved in Criminal Proceedings of 4 March 2009).”

84. Investigations may be initiated *ex officio*. The body competent to bring criminal prosecution in Costa Rica is the Public Prosecution Service.

85. No limitations are placed on the authorities which may restrict their access to places of detention where there are grounds to believe that a disappeared person may be present.

86. On 28 February 2014, Act No. 9204 on the establishment of the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment was published in the Official Gazette.⁴² The Act provides that the national preventive mechanism is independent of both the State and the national human rights institution. The mechanism carries out monitoring in all places where persons are deprived of their liberty, to which it has unrestricted access.

87. The following articles of the Code of Criminal Procedure⁴³ guarantee the right of any individual who alleges that a person has disappeared to report the facts and to have his or her complaint promptly and impartially investigated, and provide for the protection of the complainant and witnesses against ill-treatment or intimidation:

“Chapter II. Initial acts. Complaints. Article 278. Power to report: Any person with information regarding a publicly prosecutable offence may report it to the Public Prosecution Service, a criminal court or the criminal investigation police, unless public prosecution is subject to the filing of a complaint by a private party. In the latter case, only the party entitled to press charges pursuant to this Code may file a complaint. The court to which the complaint is submitted shall immediately bring it to the attention of the Public Prosecution Service.

...

“Article 281. Obligation to report: The following persons must report offences that are prosecutable *ex officio*: (a) public officials or employees who learn of such offences in the course of their work; (b) physicians, midwives, pharmacists and other persons engaged in any of the health professions, with regard to offences they learn of while providing their professional services, unless the information that they acquire is protected by the law governing professional secrecy; (c) persons who are responsible, pursuant to the law, the decision of an authority or a legal instrument, for the management, administration, care or control of the property or interests of an institution, entity or individual, in respect of offences committed to the detriment of the latter or to the detriment of the assets or property placed under their responsibility or control, provided that they learn of the offence in the performance of their duties. In all these cases, reporting ceases to be an obligation where there is a reasonable risk of criminal prosecution of the complainant, his or her spouse or relative to the third degree of consanguinity or marriage, or a person cohabiting with the complainant who is bound to him or her by special bonds of affection.”

88. The primary purpose of Act No. 8720 on Protection for Victims, Witnesses and Other Persons Involved in Criminal Proceedings, which amends and supplements the Code of

⁴² Establishment of the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=76665&nValor3=95789&strTipM=TC.

⁴³ Code of the Criminal Procedure, chap. II, “Initial acts”, sect. I, “Complaints”, art. 278.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=41297.

Criminal Procedure and the Criminal Code,⁴⁴ is to protect the rights of these persons and to regulate extrajudicial protection measures and procedures.

89. The Act establishes three basic principles, namely: the principle of protection, according to which the protection of the life, physical integrity, freedom and security of the persons referred to in the Act is paramount; the principle of proportionality and necessity, according to which protection measures must be proportionate to the level of risk or danger faced by the person concerned and may be applied only to the extent necessary to ensure his or her safety or to reduce the risks identified; and the principle of confidentiality, according to which all information and administrative or judicial activity related to the scope of protection of the persons referred to in the Act must be kept confidential for the purposes of the investigation or proceedings in which the persons are involved.

90. The above is important because it ensures that complainants have access to independent and impartial judicial authorities.

91. Costa Rica does not keep statistics on complaints of enforced disappearance.

M. Article 13

92. With regard to the obligation of the State to extradite persons suspected, accused or convicted of enforced disappearance, the Extradition Act⁴⁵ provides the following:

“Article 1. Where no relevant treaty applies, the conditions, procedures for and consequences of extradition, as well as any other aspects not expressly governed by any such treaties, shall be determined by the provisions of this Act.

...

“Article 3. Extradition may not be offered or granted: (a) when the person whose extradition has been requested is Costa Rican by birth or naturalization. In such cases, the person must be tried by the national courts. If part of the sentence or security measure imposed has been served abroad, this must be taken into account by the judge; (b) when the request for extradition is based on offences that were committed by persons who are being tried or punished in Costa Rica for the same acts, or when as a consequence of the proceedings to which this subparagraph refers, they have been acquitted or pardoned or have served the penalty imposed; (c) when the person whose extradition has been requested is being tried for or has been convicted of an offence or culpable wrongdoing committed in the Republic, prior to receipt of the request for extradition; however, if such a person is acquitted or his or her penalty is extinguished, extradition may be ordered; (d) when the alleged act is not an offence under Costa Rican law, or when criminal prosecution or penalty is barred by a statute of limitations; (e) when the penalty prescribed for the acts in question, as provisionally or definitively determined by the competent judge or court of the State requesting extradition, is less than a term of imprisonment of 1 year and the pretrial imprisonment or detention of the accused has been authorized or granted, pending a final sentence. The sentence must be custodial; (f) when the offence was not committed or did not produce its effects in the territory of the requesting State; (g) when the offence is a political one or, if an ordinary offence, is associated with a political offence under Costa Rican law; (h) when the person concerned is the perpetrator of an ordinary offence, if the purpose of extradition is based on political reasons; (i) when the offence for which extradition is requested is punished by the death penalty, unless the requesting State undertakes to impose the penalty immediately inferior to this. If this assurance is not obtained, the accused must be tried by the Costa Rican courts on the basis of such

⁴⁴ Act on Protection for Victims, Witnesses and Other Persons Involved in Criminal Proceedings, which amends and supplements the Code of Criminal Procedure and the Criminal Code.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=65274&nValor3=76217&strTipM=TC.

⁴⁵ Extradition Act (Act No. 4795), arts. 1 and 3.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param2=NRTC&nValor1=1&nValor2=6767&strTipM=TC.

documentation as is provided; (j) when the accused person would have to appear before a court of extraordinary jurisdiction in the requesting State; or (k) when the accused has protected status by virtue of having obtained political asylum.”

93. Where Costa Rica has adopted an international bilateral agreement relating to criminal matters, it undertakes to consider as extraditable persons prosecuted for the offences invoked therein, and, in such a case, for the offence of enforced disappearance, in accordance with the Convention, which it has signed and ratified.

94. Costa Rica has ratified the following bilateral instruments on extradition.

95. Convention on Extradition between the Republic of Costa Rica and Italy (Act No. 53 of 14 September 1874); Treaty on Extradition between Costa Rica and Nicaragua (Act No. 51 of 17 July 1896); Treaty on Extradition with Belgium (Act No. 78 of 14 August 1902); Treaty on Extradition with Colombia (Act No. 60 of 18 July 1928); Additional Treaty on Extradition with Belgium (Act No. 235 of 23 August 1934); Treaty on Extradition with the United States of America (Act No. 7146 of 30 April 1990); Treaty on Extradition between the Government of the Republic of Costa Rica and the Government of the Republic of China (Act No. 7186 of 26 July 1990); Treaty on Extradition between the Republic of Costa Rica and the Kingdom of Spain (Act No. 7766 of 24 April 1998); Treaty on Extradition between the Government of the Republic of Costa Rica and the Government of the Republic of Panama (Act No. 8930 of 8 March 2011); Treaty on Extradition with the United Mexican States (Act No. 9139 of 30 April 2013); and the Treaty on Extradition between the Republic of Costa Rica and the Republic of Peru (Act No. 9236 of 23 April 2014).

96. Costa Rica has also adopted the following multilateral instruments: Treaty on Extradition between the Republics of South America (Act No. 10 of 25 August 1879); Central American Treaty on Extradition (Act No. 11 of 3 June 1887); Treaty on Extradition and Protection from Anarchism (Act No. 35 of 2 July 1903), Code of Private International Law (Bustamante Code) (Act No. 50 of 13 December 1928); and the Inter-American Convention on Extradition (Act No. 7953 of 21 December 1999).

97. In the past five years, Costa Rica has made no extradition requests related to the offence of enforced disappearance, nor has it received any such requests from other countries. Costa Rica does not classify enforced disappearance as a political offence.

98. The lists provided in the treaties currently in force are not exhaustive, since the nature of offences continues to evolve. Having adopted the Convention, Costa Rica assumes the commitments established therein.

N. Article 14

99. With regard to the commitment to provide the greatest extent of legal assistance in all matters relating to criminal proceedings on cases of enforced disappearance, the High Council of the Judiciary established the Office of Technical Assistance and International Relations⁴⁶ in view of the need to strengthen the Public Prosecution Service’s inter-institutional and international relations.

100. Accordingly, the Attorney General’s Office mandated the Office of Technical Assistance and International Relations to represent it in the administration of international cooperation in criminal matters. All international requests by the country’s various public prosecutor’s offices are channelled through the Office of Technical Assistance and International Relations, with the assistance of the Ministry of Foreign Affairs, where appropriate. International requests by the Public Prosecution Service are also channelled through the Office.

⁴⁶ Executive Decree No. 40814-RE, designating the Office of Technical Assistance and International Relations of the Attorney General’s Office the central authority for sending and responding to requests for mutual assistance in accordance with the European Convention on Cybercrime (Budapest, 2001).

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=85715&nValor3=110938&strTipM=TC.

101. The Office of Technical Assistance and International Relations has been designated the central authority for the implementation of the United Nations Convention against Transnational Organized Crime⁴⁷ and the Inter-American Convention on Mutual Assistance in Criminal Matters.⁴⁸

102. International cooperation in criminal matters is governed by article 65 of the Code of Criminal Procedure, which provides that:

“When the offences are carried out, in whole or in part, outside the national territory or are attributed to persons linked to a regional or international organization, in cases where Costa Rican criminal law must be applied, the Public Prosecution Service may form joint investigation teams with foreign or international institutions. Agreements relating to joint investigations must be approved and supervised by the Attorney General.”

O. Article 15

103. States parties must cooperate with each other and provide each other with all possible support. Costa Rica maintains friendly relations with a large number of countries and is fully prepared to provide appropriate assistance in the circumstances described in this article.

104. Pursuant to the Organized Crime Act,⁴⁹ a platform to promote cooperation between the various bodies responsible for judicial cooperation was established in 2009.

105. Article 11 of Act No. 8754 provides the following:

“Police Information Platform. All police agencies in the country shall be connected to the Police Information Platform managed by the Directorate-General of the Judicial Investigation Agency, where they shall share, and have access to, information from their registers, databases, electronic records and international networks, as well as police intelligence, in order to improve the efficiency and effectiveness of preventive and punitive investigations into all forms of crime. Any international police organization which Costa Rica joins shall be connected to the platform in order for it to share information related to criminal matters.”

P. Article 16

106. The rules governing the prohibition of the extradition of a person to a State where, in addition to a risk of enforced disappearance, he or she may be at risk of other forms of serious harm to his or her life or personal integrity, are established in article 3 of the Extradition Act,⁵⁰ which reads as follows: “Extradition may not be offered or granted: ... (g) when the offence is a political one or, if an ordinary offence, is associated with a political offence, under Costa Rican law; (i) when the offences for which extradition is requested are punished by the death penalty, unless the requesting State undertakes to impose the penalty immediately inferior to this. If this assurance is not obtained, the accused must be tried by the Costa Rican courts on the basis of such documentation as is provided.”

107. It is for the judiciary to decide whether or not to request, grant, offer or refuse extradition; its decisions are notified to the requesting or requested State by the executive branch (Extradition Act, art. 5).

⁴⁷ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=50810&nValor3=54705&strTipM=TC.

⁴⁸ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=71513&nValor3=86840&strTipM=TC.

⁴⁹ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=65903&nValor3=87003&strTipM=TC.

⁵⁰ Extradition Act (Act No. 4795), art. 3.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param2=NRTC&nValor1=1&nValor2=6767&strTipM=TC.

108. The procedure for requesting extradition is established in article 9 of the Extradition Act, which reads as follows:

“When extradition is requested, the following procedure must be observed: The person whose extradition has been requested must be placed under the authority of the criminal court that has jurisdiction over the district where he or she resides; if the district in question cannot be determined, the matter must be heard by a criminal court in the city of San José; While the extradition is being processed, the person concerned shall be placed in preventive detention, the duration of which may not exceed two months.

The requesting State must submit:

1. Documentary evidence of the arrest warrant or detention order or, where appropriate, the final conviction;
2. A certified copy of the records of proceedings providing proof or at least reasonable evidence of the guilt of the person concerned;
3. Information identifying the accused or prisoner;
4. An authentic copy of the relevant legal provisions defining the offence, a statement on the offender’s involvement in the offence, and details of the applicable penalty and any statute of limitations;

(d) If the documentation is incomplete, the court shall request the missing documents by the quickest method;

(e) Once this process has concluded, the court must appoint a public defender to represent the accused if he or she does not have one, and he or she and the Public Prosecution Service must be given a hearing of up to 20 days, 10 of which must be for the purpose of putting forward evidence, and the remaining 10 for refuting it;

(f) Objections raised during the proceedings must be dealt with by the court, which shall reject any argument which is not relevant or which, in its judgment, unduly delays the proceedings. The court must make its decision, either granting or refusing extradition, within the 10 days following the procedure outlined above, and may attach to it such conditions as it deems appropriate; in all cases, the court must request and obtain from the requesting country a formal promise that the extradited person will not be tried for an offence committed previously other than that for which he or she is being extradited and that he or she will not incur penalties different from those prescribed for the offence or handed down in the judgment, a copy of which must be submitted to the Costa Rican courts by the requesting country;

(g) The decision of the court may be appealed before the appropriate higher court within three days of the date on which notification of the decision was given.

The court shall give the parties a hearing of up to five days, after which it shall issue its decision within the 15 following days.”

109. The decision ordering or refusing extradition is subject to appeal; this appeal has suspensive effect on the judgment and, therefore, on the execution of the extradition.

Q. Article 17

110. The Judicial Investigation Agency acts as a technical investigative police agency when an offence has been committed. Once an investigation into the criminal activity has been conducted and the suspected perpetrator of the offence has been identified, he or she may not be questioned in the absence of defence counsel and must, within the first six hours of his or her arrest, be placed under the authority of the Public Prosecution Service, with respect at all times for his or her fundamental rights and the guarantees afforded under the Constitution and domestic law.

111. Although the right to communicate with a lawyer is referred to in articles 12, 13, 82, 93, 100 and 109 of the Code of Criminal Procedure, there is no specific time limit within which the authorities must notify the family of the person concerned or a third party.

112. Costa Rica has designated the national mechanism for the prevention of torture as the body responsible for protecting the fundamental and human rights of persons subjected to any form of deprivation of liberty, and preventing any acts of torture or other cruel, inhuman or degrading treatment or punishment, through the regular inspection of holding centres, detention centres and places of deprivation of liberty. The mechanism has a duty to verify compliance with article 17 (3) of the Convention during every inspection.

113. The prison system keeps physical and electronic records on all persons deprived of their liberty in its prisons; however, similar records are not kept by the municipal and national police agencies.

114. The national mechanism for the prevention of torture has recommended that the Directorate-General of the Ministry of Public Security instruct all police stations to keep a register of persons taken into custody.

R. Article 18

115. Access to the information referred to in article 18 (a) to (g) of the Convention, which is recorded in the administrative files of persons deprived of their liberty, is governed by articles 6, 7 and 10 of the Regulations on the Rights and Duties of Persons Deprived of their Liberty.⁵¹

116. Official Memorandum JSNN.INC-276-2017 of 18 July 2017 contains an extensive and detailed explanation of the organization and operation of health services in the prison system. It explains, *inter alia*, that medical information must be kept confidential and that the dignity of patients must be respected.

117. The provisions of the Data Protection Act (Act No. 8968) are applied in every case, as appropriate. The Judicial Investigation Agency may place suspects in temporary custody only; during the initial stage of investigation and within six hours of arrest, the suspect must be placed under the authority of the Public Prosecution Service, which is responsible for follow-up and for providing the necessary information to the suspect's family and granting his or her counsel unrestricted access thereto.

118. The Judicial Investigation Agency monitors the situation of arrested persons during the initial stage of investigation through its Criminal Registry Office, which was established by law and is governed by article 40 of the Organic Act on the Judicial Investigation Agency.⁵² One of the monitoring mechanisms applied when persons are placed or held in, or released from, the cells of the Judicial Investigation Agency is the use of standardized forms for requesting the holding, release or transfer of detainees. Their use is mandatory for all judicial authorities, including the Public Prosecution Service and the criminal courts. The information recorded in these forms is in line with article 18 of the Convention.

119. The Criminal Registry Office of the Judicial Investigation Agency has a computerized system known as the Centralized Criminal Register, in which all information on arrested persons is recorded. The system is governed by article 41 of the Organic Act on the Judicial Investigation Agency, which provides that the information contained in the Register is confidential and may be used only by the Judicial Investigation Agency. The Constitutional

⁵¹ Executive Decree No. 37275-J, amending the Regulations on Securities Held in Custody and the Support Fund for Persons Deprived of their Liberty, the Regulations on Personal Searches and Inspection of Property in the National Prison System, the Regulations on Visits to Prisons, and the Regulations on the Rights and Duties of Persons Deprived of their Liberty.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=73256&nValor3=89834&strTipM=TC.

⁵² Organic Act on the Judicial Investigation Agency.
http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=16037&nValor3=17167&strTipM=TC.

Division of the Supreme Court confirmed the confidentiality of this information through vote No. 10335-2017. However, with respect for the principles of security and confidentiality at all times, non-sensitive information held in the system – namely, the competent authority; the date, time and place of detention; the place where the person is deprived of his or her liberty; the date, time and place of release; and information on the state of the detainee’s health – may be provided to the authorities.

120. Article 40 of the Organic Act on the Judicial Investigation Agency provides that: “The Criminal Registry Office shall operate under the responsibility of an expert in the field. It shall keep duly classified files and other documents on all persons who have at any time been brought before the authorities as suspected perpetrators of criminal offences, and also those files sent by the national or foreign authorities.”

121. Article 41 of the same Act provides that: “All information on file with the Criminal Registry Office shall be treated as confidential and may be used only by the Office and other authorities.”

S. Article 19

122. Act No. 8968 is the legal instrument that governs data protection while the Agency for the Protection of Personal Data,⁵³ a subsidiary body of the Ministry of Justice and Peace, is the functional entity with authority in that regard. Their purpose is to ensure respect for the fundamental and personal rights of all persons, including their right to informational self-determination and to the protection of their freedom and equality with regard to the automated or manual processing of data regarding them or their property.

123. As part of the Ministry of Justice and Peace, the Agency for the Protection of Personal Data maintains close ties with the prison system, which allows for effective and efficient coordination and cooperation between the entities, and the provision of training for prison officials on the content and application of Act No. 8968 and good practices in that regard.

124. Article 2 of the Regulations on the Registration of DNA Profile Data for Identification Purposes⁵⁴ reads as follows:

“Purpose of the DNA database. The DNA database was created to record and maintain, and allow for the comparison of, encrypted genetic profiles created by analysing DNA samples obtained during criminal investigations, as well as genetic profiles voluntarily provided by family members for the purpose of the identification of mortal remains and disappeared persons.”

125. Articles 3, 6, 8 and 26 of the Act are also relevant in this regard. They read as follows:

“Article 3. Scope of genetic profiles. For the purposes of this Act, a genetic profile or genetic fingerprint shall be understood to be a personal alphanumeric record, created exclusively on the basis of non-coding genetic information for identification purposes only.

...

“Article 6. Authority responsible for the DNA database. The Department of Forensic Science of the Judicial Investigation Agency shall be responsible for the custody of inconclusive and conclusive samples, the analysis of genetic profiles, and the administration and supervision of the DNA database, where all established profiles shall be kept in a centralized and comprehensive manner, and which may be used in

⁵³ Personal Data Protection Act.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=70975&nValor3=85989&strTipM=TC.

⁵⁴ Circular No. 90-2011, Regulations on the Registration of DNA Profile Data for Identification Purposes.

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=70935&nValor3=85936&strTipM=TC.

criminal proceedings and for the identification of disappeared persons and mortal remains in the circumstances defined by these regulations.

...

“Article 8. Confidentiality of information contained in the DNA database. The information contained in the DNA database and all biological samples shall be treated as confidential. The donor of a biological sample may have access to his or her own information for the purposes for which the sample was taken. The criminal courts, the Public Prosecution Service and the Ombudsman may also have access to the information contained in the DNA database for the purposes of criminal investigations for which they are responsible.

...

“Article 26. Conservation of information in the Register of Disappeared Persons. Information in the DNA database relating to mortal remains and biological material presumed to belong to a disappeared person shall be kept for an indefinite period of time until such time as the person in question is successfully identified.”

126. There is a single database of forensic genetic profiles in Costa Rica, known as the Combined DNA Index System. The System was developed by the United States Federal Bureau of Investigation and has been operational since 2013.

T. Article 20

127. Costa Rican law provides for the right to appeal to the bodies responsible for monitoring the activities of the prison administration. It is possible to submit an application for *amparo* or habeas corpus to the Constitutional Division of the Supreme Court, or to file a complaint with the relevant sentence enforcement court, the Ombudsman’s Office, or the Office of the Comptroller of Services of the Ministry of Justice and Peace.

128. In accordance with its obligations, the State promulgated Act No. 8720 on Protection for Victims and Witnesses and set up the Protection Unit within the Judicial Investigation Agency to protect the life and physical integrity of persons who enter the protection programme established by the Act. At-risk victims also have access to the protection programmes coordinated by the Office for Victim and Witness Support and Protection of the Public Prosecution Service.

U. Article 21

129. Under the procedure for releasing a prisoner, the appropriate judicial authority must be informed that he or she has served his or her full sentence, once this has been legally verified by experts.

130. The Judicial Investigation Agency performs administrative checks as a means of accurately monitoring the status and whereabouts of prisoners. Once a prisoner is placed under the authority of the Public Prosecution Service, he or she continues to be held in custody, but under the supervision of the Service. The prisons section of the Judicial Investigation Agency specializes in the restraint and transport of persons deprived of their liberty and the conduct of body searches on such persons. The prisons section carries out its work in accordance with the Manual on Procedures for the Restraint and Transport of, and the Conduct of Body Searches on, Persons Deprived of their Liberty of 20 December 2004, in keeping with Circular No. 187-2004 of the High Council of the Supreme Court. To complement this manual, guidelines were laid down in Circular No. 17-2005 of 23 February 2005, which were supplemented on 26 April 2016 by Circular No. 61-2016 of the High Council of the Judiciary. Furthermore, Circular No. 082-2001 of the plenary Court, which amends the Manual on Procedures for the Issuance of Orders for the Release, Transfer and

Holding of Detainees,⁵⁵ allows for absolute certainty regarding the release of persons held temporarily in the cells of the Judicial Investigation Agency or their transfer to a prison under the authority of the Ministry of Justice and Peace. Articles 3, 7 and 11 of this manual govern the protection of the physical integrity and health of persons deprived of their liberty.

131. Article 3 of the Manual provides that: “When a prisoner shows signs of a physical illness or condition that requires medical attention, he or she must be transferred to a hospital, with the prior authorization of the judicial officer under whose authority he or she has been placed. In emergency situations, the head or person in charge of the relevant police unit shall authorize the transfer and shall inform the relevant authority, for which purpose he or she may request the expert opinion of a physician and shall draw this opinion to the attention of the official under whose the authority the prisoner has been placed.”

132. Article 7 of the Manual provides that: “The transporter of the detainees must implement the necessary and authorized security measures when transferring, restraining and transporting persons deprived of their liberty and ensure their physical integrity.”

133. Article 11 provides that: “The same procedure must be followed when transferring a prisoner from the cells of the Judicial Investigation Agency to a prison. If there is even the slightest doubt as to the prisoner’s identity, the management of the prison concerned must be consulted in order to confirm basic details about the person based on the information contained in the prison’s records on individual prisoners; this is to verify that the person being transferred is the person whose transfer has been requested.”

V. Article 22

134. Public officials who fail to perform their duties may be punished under criminal and administrative law. The internal regulations of the Directorate General for Social Rehabilitation⁵⁶ establish the normative framework that governs the provision of services by its officials, while the General Prison Officer Regulations regulate the conduct of prison officers.

135. There is an electronic filing system, the Prison Administration Information System,⁵⁷ in which sociodemographic information and information on the legal status of persons deprived of their liberty, as well as information on technical interventions involving them, is recorded; it is currently used in all closed, semi-open and community facilities under the authority of the Directorate General for Social Rehabilitation.

136. There is also IGNIS,⁵⁸ a system in which sociodemographic information and information on inmate visits, as well as reports and information on other services used by the Prison Officers Directorate, is recorded. IGNIS has been introduced as the successor to the Prison Administration Information System. The first phase of the succession process entails the development of the services necessary to incorporate information related to sentence administration. It is used in all closed prisons and juvenile detention centres under the authority of the Directorate General for Social Rehabilitation, with the exception of Vilma Curling and Gerardo Rodríguez prisons.

137. Any person deprived of his or her liberty who considers that an abuse of authority occurred at the time of his or her arrest are entitled to submit an application for habeas corpus

⁵⁵ <https://ministeriopublico.poder-judicial.go.cr/documentos/Circulares/Administrativas/Circular%2015-2006.pdf>.

⁵⁶ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=13549&nValor3=14558&strTipM=TC.

⁵⁷ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=81236&nValor3=103503&strTipM=TC.

⁵⁸ IGNIS is the name of the software currently used at the national level for recording information on the prison population. It is an information system designed to evolve and eventually incorporate data on the legal status of all persons in the prison system, in the same way as the Prison Administration Information System. It will eventually contain consolidated, relevant information that can be used for various monitoring and statistical purposes.

to the Constitutional Division of the Supreme Court, and are guaranteed access to other remedies.

W. Article 23

138. The Ministry of Justice and Peace is convinced that prison system staff play a fundamental role in ensuring that the human rights of persons deprived of their liberty are respected and protected. For that reason, a series of normative instruments have been developed to ensure that Costa Rica fulfils the international commitments that it has undertaken in this regard.

139. The institutional regulatory framework contains fundamental rules relating to the particular activities of each category of prison staff and each group within the prison population tended to by that staff (women, men, sexually diverse persons, children, adolescents, older persons, etc.), as a means of guaranteeing that their needs are met, their dignity is respected and their integrity is protected.

140. This approach has ensured that prison staff receive clear guidance in relation to the performance of their professional, administrative and security duties by means of legitimate, humane and disciplined practices.

141. Drawing on the legal instruments drafted by the State pursuant to its international commitments, the Prison Officer Training Academy⁵⁹ has developed training modules on human rights through which it intends to equip prison officers with a range of tools for responding to these universal obligations.

142. The modules are intended to, inter alia, provide prison staff with the skills necessary to translate regulations into practice; to highlight the importance of the work of prison staff for the protection and promotion of human rights, and their own capacity to influence the strengthening and development of the normative framework governing their work; and to consolidate a culture of peace and alternative conflict resolution as a means of eradicating the culture of violence in which human rights are flouted.

143. Although enforced disappearance has not been defined as a specific offence in the Criminal Code, the Ministry of Justice and Peace has a long history of respecting and complying with international human rights standards, which will help ensure that its work in this regard will meet the requirements of the Convention when such an offence is eventually introduced.

X. Article 24

144. Once a disappearance has been notified, the general procedure to be followed involves opening an investigation and taking all the steps considered relevant to the case, such as: interviewing individuals who may be able to provide information that could advance the investigation and constructing a profile of the victim; providing care and protection to the victims, injured parties or witnesses to the event; gathering and preserving all the evidence provided by the victim or injured party for the purpose of establishing that a crime has occurred and the probable liability of the suspect/accused; preserving the scene of the event or the location of the discovery and, in general, taking all the steps necessary to guarantee the integrity of the evidence. Moreover, the National Central Bureau of the International Criminal Police Organization (INTERPOL) and the Ministry of Foreign Affairs may be requested to collaborate with their respective counterparts while all the required steps are being taken to clarify the facts, determine the identity of the likely perpetrators and carry out

⁵⁹ The Prison Officer Training Academy is a department of the Directorate General for Social Rehabilitation, whose functions, according to the Regulations on the Administrative Organization of the Ministry of Justice and Peace, set out in Executive Decree No. 41109 JP, include the promotion, through staff training, of favourable conditions for the performance of prison duties, based on a critical, creative and constructive approach.

their arrest, and establish the whereabouts of the disappeared person and, if applicable, secure his or her release.

145. Furthermore, in the event of the disappearance or abduction of a minor, the national warning system protocol and the coordination and immediate response procedure for public and private institutions⁶⁰ are activated. The Judicial Investigation Agency plays a very important role in this regard and may even take responsibility for a number of cases of disappearance involving adults.

146. A policy of openness is pursued towards the relatives of the victims, in keeping with their right to be informed about the progress made in and the results yielded by investigations into disappearances. If a person is found dead, the place where his or her body is discovered is worked on. During this process, attention is paid to each and every aspect related to the treatment of the scene, its preservation, the collection of evidence, the removal of the body, etc., in order to safeguard any evidence that may be found there and to ensure the proper treatment of the victim's body.

147. The Forensic Science Department of the Judicial Investigation Agency has implemented a quality management system to guarantee reliable and reproducible results by means of established procedures and partners with different national and regional judicial authorities in this endeavour. The different judicial authorities in the country have access to a standard list of experts; this ensures that the various items collected at the scene are processed as part of the investigation. This also applies in cases of enforced disappearance.

148. On mechanisms for carrying out investigations, locating victims and, in case of death, ensuring that their remains are located, respected and returned to their relatives, the legislation currently in force in the country provides that all deaths of a violent nature, whether the result of an accident, suicide or, in particular, homicide (which usually applies in cases of enforced disappearance), must be investigated; this is done in accordance with the Regulations on Hospital and Forensic Medical Autopsy,⁶¹ which have been in force since March 1987 and are better known as Executive Decree No. 17461-S. The relevant provisions are reproduced below:

“Article 3. The autopsy itself must always be complete and include both an external and internal examination of the corpse; for the latter, use must be made of pathological anatomy or forensic medicine techniques that will ensure the preservation of the face and other aesthetic and health aspects of the corpse, with the exceptions indicated in the study's objectives.

...

“Article 12. Outrage against and desecration of the corpse shall be governed by the relevant provisions of the Criminal Code. In the labour sphere, this offence shall be considered serious and the corresponding disciplinary sanction shall be imposed.

...

“Article 15. A forensic medical autopsy shall be carried out by express order of the judicial authorities in the following cases: all violent deaths, including homicides, suicides, accidents.”

The forensic pathology section of the Forensic Medicine Department employs professionals trained to establish cause, manner and time of death, and to identify the bodies or human remains that are brought to it; the latter is particularly important in the investigation of victims who have died as a result of enforced disappearance.

⁶⁰ Act No. 9307, establishing the warning system and the coordination and immediate response procedure for public and private institutions in the event of the disappearance or abduction of a minor. http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=80587&nValor3=102308¶m2=1&strTipM=TC&lResultado=1&strSim=simp.

⁶¹ Regulations on Hospital and Forensic Medical Autopsy. http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=53986&nValor3=59001&strTipM=TC.

It also employs highly experienced forensic doctors who have received training in Costa Rica and abroad on the investigation of unidentified remains and victims of enforced disappearance; highly competent forensic anthropologists with training in both physical and forensic anthropology, and experience and training in dealing with victims of mass disasters and all aspects related to the identification of human skeletal remains; and specialized forensic dentists with extensive experience in the post-mortem identification of victims of mass disasters and unidentified remains.

149. This ensures that the corpses or human remains located in the national territory receive a comprehensive examination and are shown due respect during the investigation.

150. On protocols for the return of the mortal remains of disappeared persons to their family in keeping with international standards, pursuant to the regulations governing the activities of the forensic pathology section, in cases of forensic medical interest, the mortal remains of a disappeared person may only be returned to his or her family once the necessary procedures have been followed to identify with certainty, or beyond any reasonable doubt, these remains using scientific or forensic methods.

151. Depending on the condition of the remains, these procedures include the study and correlation of all or some of the following: (a) the autopsy procedure is conducted in accordance with established international standards for the external and internal examination of corpses and, in the event of massive disasters, support is available in the form of internationally recognized instruments developed by INTERPOL. In these cases, particular attention is paid to tattoos, scars, surgical scars or any other distinguishing features; (b) the relatives of the disappeared person are interviewed using internationally recognized tools, such as INTERPOL protocols, which allow as much pre-mortem information as possible to be collected. These data are then cross-referenced with the findings of the forensic study; (c) a fingerprint study: in all cases where it is possible to obtain fingerprints, a request is submitted for them to be checked, in the first instance, against the records of the Criminal Registry Office of the judiciary and, on occasion, against the records of the Ministry of Public Security and, if necessary, against the documents of the civil registry of Costa Rica; (d) an anthropological study to construct an accurate biological profile; (e) a dental study comparing pre-mortem records and post-mortem findings (if pre-mortem records exist); and (f) a study comparing genetic markers from samples taken from the deceased and those taken from possible relatives.

152. The Forensic Science Department of the Judicial Investigation Agency has a biochemistry section staffed by experts in criminal DNA and paternity who can use biological material to identify a person for the purposes of the investigation, as well as biological fluids.

153. The Combined DNA Index System is a database comprising a set of files containing genetic profiles created exclusively on the basis of non-coding genetic information for identification purposes only, and a set of personal data files; both are stored separately on a computer and processed automatically for the sole purpose of human identification. To this end, the files are stored in two sections: (a) the humanitarian section, which serves to identify disappeared persons and tissue from corpses by using, inter alia, genetic profiles of unidentified persons, biological material presumed to belong to disappeared persons and relatives of disappeared persons; and (b) the criminal section, which includes genetic profiles based on unlinked evidence, reference profiles (accused or suspects), human remains and judicial officials (Forensic Services Manual, 2018).

154. In addition, the plenary of the Supreme Court, during session No. 25-11 of 1 August 2011, article XXV, adopted the Regulations on the Registration of DNA⁶² Profile Data for Identification Purposes as a means of monitoring issues related to the Combined DNA Index System; the regulations state the following concerning disappeared persons:

“Article 7. Limits of the DNA database. Only those genetic profiles of persons over 18 years of age, whose information reveals only the identity of the subject and their sex, may be registered. However, for the purpose of identifying disappeared persons

⁶² http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=70935&nValor3=85936&strTipM=TC.

and tissue from corpses, the genetic profile of a minor may be included when the minor voluntarily agrees to provide a sample and to be part of the DNA database and those exercising parental authority over him or her, or his or her legal representative, give their consent.

...

“Article 11. Appropriateness of collecting a biological sample. The judge or the prosecutor in charge of the criminal investigation, or in cases involving the identification of disappeared persons or tissue from corpses, may order, when necessary, a DNA test to be carried out and, for that purpose, shall arrange for the collection of a biological sample for identification purposes. Such an intervention shall be carried out in accordance with the rules of scientific knowledge and, in the case of an accused person, even without his or her consent, provided that such measures will not adversely affect the human dignity, physical integrity or health of the individual.

...

“Article 21. Organization of encrypted information from genetic profiles. The encrypted information from genetic profiles contained in the DNA database is stored in either the section for the identification of disappeared persons and tissue from corpses, or the criminal section. Only genetic profiles belonging to the same section may be compared with each other.

...

“Article 23. Section for the identification of disappeared persons and tissue from corpses. This section contains genetic profiles obtained from: 1. Unidentified corpses or human remains; 2. Disappeared persons; 3. Biological material presumed to belong to the disappeared person; 4. Persons with a missing relative who voluntarily agree, by giving their informed consent, to provide a biological sample that may be useful in identifying that relative and who agree to be included in this database.

“Article 24. Criminal section. This section is made up of four registers: 1. Register of inconclusive samples or samples yet to be linked, which includes genetic profiles obtained from biological samples collected in course of the criminal investigation and which belong to unidentified persons; 2. Register of conclusive samples or individualized genetic profiles, which includes the genetic profile of the accused person under criminal investigation for and of the accused person who has been convicted of intentional offences punishable by 5 or more years’ imprisonment, or of the organized crime offences described in articles 1 and 16 of the Organized Crime Act. Likewise, the genetic profile of all accused persons who usurp the identity of another person during criminal proceedings shall be included in the DNA database. The register of conclusive samples also includes the genetic profile of crime victims who voluntarily agree, by giving their informed consent, to be included in the DNA database; 3. Register of genetic profiles obtained from disappeared persons and tissue from corpses; 4. Register of genetic profiles belonging to the judicial officials who participate in the process of collecting and analysing biological material.

“Article 25. Exclusion of information from the DNA database. The judge or Public Prosecution Service must order the Forensic Science Department to exclude genetic profiles and personal information from the DNA database in the following cases: (a) When the relatives of disappeared persons or victims of a crime expressly withdraw their informed consent; (b) When an identification is made in cases involving relatives of disappeared persons or unidentified samples; (c) When a discharge order is issued in respect of the accused’s case or he or she has been acquitted during the criminal proceedings; (d) When 10 years have elapsed since the convicted person finished serving his or her sentence; (e) When the proceedings have been declared time-barred and the genetic profiles in question are based on inconclusive samples or samples pending identification.

“Article 26. Preservation of information in the section for disappeared persons. The information in the DNA database on tissue from corpses and biological material

presumed to belong to the disappeared person shall be kept for an indefinite period of time until that person is successfully identified.”

155. Once an accurate identification is made, the persons who identified themselves as family members and provided information and samples for genetic cross-checking are notified in order to coordinate the handing over of the remains.

156. The administrative formalities for the return of the remains, which include the preparation of a death certificate and a delivery certificate, are then initiated. Lastly, the death of the person must be reported to the institutions responsible for the country’s records and biostatistics, namely, the civil registry and the National Statistics and Census Institute.

157. On mechanisms for storing the genetic material of disappeared persons and their relatives, it should be mentioned that, during any forensic medical investigation procedure involving corpses, skeletal remains or other human remains, a sample is collected for the purpose of studying the genetic markers. Depending on the case, the samples may be of blood (FTA card⁶³), bone fragments, teeth, nails or hair. This will depend on the general state of the corpse or the material that is being investigated. These samples are transferred to the biochemistry section of the Forensic Science Department of the Judicial Investigation Agency in accordance with strict identification and chain-of-custody procedures. The biochemistry section serves as the depository for the samples until genetic material from possible relatives is provided and the relevant cross-checks can be carried out.

158. On whether there is a procedure by which victims can obtain compensation and reparation, and on whether this procedure is codified or has been formalized in some way, the Forensic Medicine Department, specifically the forensic pathology section, is responsible for providing the judicial authorities with a forensic medical opinion or an expert document prepared in the most comprehensive and scientific manner possible, which, above all else, allows the victims’ relatives to take a significant procedural step – that is, to know for sure the whereabouts of their relative, who then ceases to be a disappeared person. It also receives expert input that establishes facts that are important for the police or judicial investigation process, such as the cause and manner of death, not to mention for the identification of the victim, and especially for the administration of justice.

Y. Article 25

159. In Costa Rica, justice issues involving minors are covered by special laws. Moreover, the National Child Welfare Agency works in coordination with the Judicial Investigation Agency and other authorities on issues relating to the administrative status of minors. Proof of this is Act No. 9307,⁶⁴ under which the National Warning System Coordinating Committee was established to mount a rapid response in the event of the disappearance of a minor.

160. Similarly, the Judicial Investigation Agency has a section specializing in the care of minors. As a general rule, priority is given to any matter involving a minor or the violation of a minor’s rights.

IV. General conclusions

161. Although enforced disappearance is not established as an offence under Costa Rican law, the country has successfully drafted and enacted criminal provisions and regulations on

⁶³ FTA (Flinders Technology Associates) cards are cotton-based cellulose paper cards that contain chemicals which burn cells, denature proteins and protect DNA, thereby leaving samples suitable for molecular identification. They are mainly used for DNA capture.

⁶⁴ Act No. 9307, establishing the warning system and the coordination and immediate response procedure for public and private institutions in the event of the disappearance or abduction of a minor. http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=80587&nValor3=102308¶m2=1&strTipM=TC&lResultado=1&strSim=simp.

similar conduct, as well as regulations that transpose elements of the Convention into domestic law.

162. Costa Rica recognizes the need for a law containing an explicit definition of enforced disappearance and its implications, and prescribing appropriate penalties that take into account the seriousness of the offence.

163. Currently, Costa Rica does not have an offence of enforced disappearance. The national authorities, through the Costa Rican Commission on International Humanitarian Law and the Inter-Institutional Commission for the Follow-up and Implementation of International Human Rights Obligations, together with the highest authorities of the State, must find a way to adopt a law that allows for effective enforcement and the comprehensive monitoring of situations that fall under the definition of this international crime.

164. Costa Rica recognizes that there are a number of gaps in its domestic legislation that are preventing it from complying fully with the articles of the Convention.

165. Additional funding needs to be sourced in order to provide the units responsible for dealing with situations involving minors with more staff and equipment. Costa Rica could then provide training on the principles of the Convention to the institutions and other relevant stakeholders involved in the prevention of enforced disappearance.
