



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Panama under article 29 (1) of the Convention*

1. The Committee considered the report submitted by Panama under article 29 (1) of the Convention¹ at its 366th and 368th² meetings, held on 15 and 16 September 2021 in hybrid form, due to the coronavirus disease (COVID-19) pandemic. It adopted the present concluding observations at its 380th meeting, held on 24 September 2021.

A. Introduction

2. The Committee welcomes the report submitted by Panama under article 29 (1) of the Convention, which was drafted in accordance with its guidelines.

3. The Committee expresses its appreciation for the constructive dialogue with the delegation of the State party on the measures taken to implement the Convention, during which its concerns were addressed, and welcomes the frankness with which the delegation responded to the questions posed. It thanks the State party for the additional information and clarifications provided in its oral statements and in writing.

B. Positive aspects

4. The Committee commends the State party for having ratified almost all the core United Nations human rights instruments³ and eight of the optional protocols thereto, as well as the Inter-American Convention on Forced Disappearance of Persons and the Rome Statute of the International Criminal Court.

5. The Committee welcomes the steps taken by the State party in areas related to the Convention, notably, those taken to amend legislation, policies and procedures so as to enhance protection for human rights and implement the Convention, including, in particular:

(a) The establishment of the national mechanism for the prevention of torture and cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, by Act No. 6 of 2017;

(b) The establishment of the offence of enforced disappearance in article 292 bis of the Criminal Code, by Act No. 55 of 2016;

* Adopted by the Committee during its twenty-first session (13 to 24 September 2021).

¹ CED/C/PAN/1.

² CED/C/SR.366 and CED/C/SR.368.

³ Panama is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.



(c) The creation of the 20 December 1989 Commission to shed light on the events that occurred during the United States military intervention in Panama referred to as the “invasion” of 20 December 1989, by Executive Decree No. 121 of 2016;

(d) The creation of the National Standing Committee responsible for overseeing implementation and follow-up of the human rights commitments undertaken by Panama at the national and international levels, by Executive Decree No. 7 of 2012.

6. The Committee welcomes the fact that the State party has extended a standing invitation to visit the country to all special procedure mandate holders of the Human Rights Council.

C. Principal matters of concern and recommendations

7. The Committee notes the measures taken by the State party to comply with the provisions of the Convention. However, the Committee finds that, at the time of adoption of the present concluding observations, the legislation in force, and its implementation, are not in full compliance with the State party’s obligations under the Convention. The Committee therefore urges the State party to give effect to its recommendations, which have been drawn up in a constructive spirit of cooperation, with a view to ensuring the full implementation of the Convention.

1. General information

8. The Committee is concerned that the State party has not recognized the competence of the Committee to receive and consider individual and inter-State communications (arts. 31 and 32).

9. **The Committee encourages the State party to recognize the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention with a view to ensuring that the Convention is fully implemented and strengthening the framework for protection from enforced disappearance.**

2. Definition of the criminal offence of enforced disappearance (arts. 1–7)

Absolute prohibition of enforced disappearance

10. The Committee regrets that it has not received information about the process of compiling the centralized, permanent register of missing and disappeared persons envisaged in the National Strategy for Public Security and expresses its concern about the lack of clear and precise official information on missing and disappeared persons in the State party, including those who may have been subjected to enforced disappearance during the military dictatorship (1964–1989) or during the period referred to as the “invasion” of 20 December 1989 (art. 1).

11. **The Committee recommends that the State party expedite the compilation of the centralized, permanent register of missing and disappeared persons so that it reflects the total number of missing and disappeared persons in the State party and the number who may have been subjected to enforced disappearance, including those who have been found, whether alive or dead, and those who are still missing. At the very least, the register should include the following information:**

(a) **The total number and identity of all missing and disappeared persons, with an indication of those who may have been subjected to enforced disappearance within the meaning of article 2 of the Convention;**

(b) **The sex, gender identity, age, nationality and ethnic origin of the missing or disappeared person, as well as the place, date, context and circumstances of the person’s disappearance, including all evidence relevant to determining whether it was an enforced disappearance;**

(c) **The status of the relevant search and investigation procedures, and of those necessary for the exhumation, identification and return of remains.**

Disappearances of migrants

12. The Committee notes the information that the delegation has provided regarding the difficulties encountered by the State party in establishing a presence in the Darién jungle, owing to the geographical characteristics of the area. However, it is concerned about the information received about: (a) alleged disappearances of migrants apparently committed by criminal groups, and the lack of investigations into such allegations; and (b) the presence of mass graves of unidentified migrants along the migration route through the Darién jungle (arts. 3, 15 and 24).

13. **The Committee recommends that the State party, in cooperation with the other countries involved and with input from victims and civil society:**

(a) **Redouble its efforts to ensure that disappearances of migrants are prevented and investigated, and that those responsible are criminally prosecuted;**

(b) **Ensure that immediate searches are conducted for missing migrants and that any human remains found are identified and returned in a dignified manner;**

(c) **Establish an up-to-date database of missing migrants that includes ante-mortem and post-mortem information to facilitate search and identification;**

(d) **Ensure that the family members and close friends of missing persons, irrespective of where they reside, have the opportunity to obtain information and take part in the investigations and the search for the persons concerned;**

(e) **Strengthen cooperation with the authorities of other States in the region in order to ensure that searches for missing migrants are conducted and their disappearance is investigated.**

Appropriate penalties

14. The Committee takes note of the Supreme Court judgment of 31 July 2017 in the suit challenging the constitutionality of article 220 of the Code of Criminal Procedure, which allows for plea bargaining, in which the Court established that victims have the right to be heard and to be kept informed about any plea bargain concluded between the Public Prosecutor's Office and the accused. However, the Committee notes with concern that plea-bargaining agreements offer the possibility of a significant sentence reduction without the active involvement of victims of enforced disappearance in the agreement's negotiation being sufficiently guaranteed. It is also concerned that criminal law does not contain the mitigating and aggravating circumstances provided for in article 7 (2) of the Convention (art. 7, 12 and 24).

15. **The Committee recommends that the State party take the measures needed to ensure that perpetrators of enforced disappearance are always punished with appropriate penalties that take into account the extreme seriousness of the offence. It should also ensure that victims are actively involved in the negotiation of any plea-bargaining agreement concluded in cases of enforced disappearance. The Committee also encourages the State party to include in its criminal legislation all the mitigating and aggravating circumstances mentioned in article 7 (2) of the Convention.**

Criminal responsibility of superiors

16. The Committee notes with concern that the State party's national legislation does not provide for the criminal responsibility of superiors, as set out in article 6 (1) (b) of the Convention (art. 6).

17. **The Committee recommends that the State party take the legislative measures necessary to ensure that national legislation expressly provides for superior officers to be held responsible in the circumstances described in article 6 (1) (b) of the Convention.**

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

Investigation of enforced disappearances

18. The Committee notes that the information provided by the delegation indicates that no complaints of enforced disappearances have been received since the Convention's entry into force. However, it is concerned about the lack of clear and precise information on the number of investigations and prosecutions carried out and the number of convictions obtained in cases of enforced disappearance perpetrated during the military dictatorship (1964–1989) and during the period referred to as the "invasion" of 20 December 1989 (arts. 9, 12, 14 and 15).

19. **The Committee recommends that the State party intensify its efforts to ensure that all enforced disappearances, without exception and irrespective of the date of their commission, are investigated impartially and without delay, and that the alleged perpetrators are prosecuted and, if found guilty, punished in accordance with the serious nature of their acts, ensuring that no act of enforced disappearance remains unpunished. The State party should also ensure cooperation with the authorities of other States with a view to facilitating the exchange of information and evidence, the search for and identification of disappeared persons and the conduct of investigations.**

Suspension from duty

20. The Committee is concerned that the suspension from duty, as provided for in article 224 of the Code of Criminal Procedure, of a State agent suspected of involvement in the commission of an enforced disappearance does not take place immediately, at the outset of the investigation (art. 12).

21. **The Committee recommends that the State party take all necessary measures to ensure that no State agent suspected of having committed or having been involved in the commission of an offence of enforced disappearance is in a position to influence, whether directly or indirectly, the course of the investigations, including suspension from duty from the outset and for the duration of the investigation, without prejudice to respect for the principle of presumption of innocence.**

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

Non-refoulement

22. The Committee notes the information provided by the delegation about measures taken to ensure respect for the principle of non-refoulement. However, it is concerned about the lack of sufficient information on the criteria and procedures used to assess and verify the risk of a person being subjected to enforced disappearance in the country of destination before their expulsion, return, surrender or extradition takes place (art. 16).

23. **The Committee recommends that the State party ensure that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly respected in all circumstances. To this end, the State party should:**

(a) **Ensure that there are clear and specific criteria and procedures for assessing and verifying, by means of an exhaustive, individual examination conducted by an independent authority or body, the risk of a person being subjected to enforced disappearance in the country of destination before their expulsion, deportation or extradition is carried out, and that, where a risk exists, the person concerned is not expelled, returned, surrendered or extradited;**

(b) **Ensure that diplomatic assurances offered by the requesting State are evaluated with the utmost care and that they are not accepted when there are substantial grounds for believing that a person would face a real and immediate risk of being subjected to enforced disappearance;**

(c) **Ensure that appeals against a decision to expel, return, surrender or extradite have a suspensive effect.**

Suspension of habeas corpus

24. The Committee notes the delegation's statement to the effect that, although article 55 of the Constitution allows the possibility of the right of habeas corpus being suspended when a state of emergency is declared, this right would not be suspended in practice. However, the Committee is concerned that the suspension of habeas corpus continues to be permitted under the State party's national legislation (art. 17).

25. The Committee recommends that the State party take the necessary legal measures, including by amending article 55 of the Constitution, to establish that the right to file a writ of habeas corpus may not be suspended or restricted under any circumstances and to ensure that any person with a legitimate interest may initiate habeas corpus proceedings.

Communication by persons deprived of liberty

26. The Committee takes note of the information provided by the delegation about communication in prisons between persons deprived of liberty and the persons referred to in article 17 (2) (d) of the Convention. However, the Committee regrets that it has not received information on how the State guarantees that this communication is possible in all places of deprivation of liberty, whatever their nature. It is also concerned about information received regarding: (a) persons deprived of their liberty who were transferred to other places of deprivation of liberty without their families or relatives being informed of their transfer; and (b) persons held incommunicado in detention facilities without being able to inform others of their detention (art. 17).

27. The Committee recommends that the State party take the necessary measures to ensure that, from the outset of their deprivation of liberty, all persons deprived of liberty and all persons who are transferred from one place of deprivation of liberty to another, irrespective of their location, have immediate access to a lawyer and are able to communicate with their relatives, close friends or any other person of their choice, and, in the case of foreign nationals, their consular authorities.

Registers of persons deprived of liberty

28. The Committee regrets the lack of information received about the registers kept, and the information contained therein, in all places where persons may be deprived of liberty, irrespective of their nature, including centres for minors in conflict with the law, police stations, migrant holding centres, mental health institutions and the National Air and Naval Service base on the island of Punta Coco. It also regrets that no information has been received about the measures taken to prevent and impose sanctions for the conduct described in article 22 of the Convention (arts. 17 and 22).

29. The Committee recommends that the State party take the necessary measures to ensure that:

(a) **All cases of deprivation of liberty, without exception and irrespective of the place of deprivation of liberty, are entered in up-to-date official registers and/or records that include, as a minimum, the information required under article 17 (3) of the Convention;**

(b) **Failure to comply with the obligation to record all deprivations of liberty, the registration of inaccurate or incorrect information, refusal to provide information on a deprivation of liberty and the provision of inaccurate information are punished;**

(c) **Registers and records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks, and, in the event of irregularities, the officials responsible are duly sanctioned.**

Training on the Convention

30. While the Committee takes note of the human rights training provided to State agents, it regrets the lack of information provided about specific training on the provisions of the Convention (art. 23).

31. **The Committee recommends that the State party continue its efforts to provide human rights training and, in particular, that it ensure that all law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or processing of any persons deprived of liberty, including judges, prosecutors and other officials involved in the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1) thereof.**

5. Measures to protect and ensure the rights of victims of enforced disappearance (art. 24)

Right to obtain reparation and prompt, fair and adequate compensation

32. The Committee is concerned that the State party's legal system does not effectively ensure that victims of enforced disappearance have the right to full reparation, in accordance with article 24 (4) and (5) of the Convention. It is also concerned about the lack of information received on the number of victims of enforced disappearance in the State party and any reparations granted to them outside the context of agreements reached within the framework of the inter-American system (art. 24).

33. **The Committee recommends that the State party take the necessary measures to:**

(a) **Ensure that national legislation provides for a comprehensive, State-administered system of reparation and compensation, in accordance with article 24 (4) and (5) of the Convention, for all victims of enforced disappearance, as defined in article 24 (1) of the Convention, and that reparation and compensation can be obtained even if no criminal proceedings have been instituted;**

(b) **Ensure that the reparations system applies a differential approach that takes into account individual characteristics of victims such as their sex, sexual orientation, gender identity, age, ethnic origin, social situation and disability;**

(c) **Ensure that all victims of enforced disappearance, irrespective of the date on which the crime was committed, have access to comprehensive reparation.**

Declaration of absence

34. The Committee takes note of the regulations governing the declaration of absence (art. 50) and the presumption of death of the absent person (art. 57) that are contained in the Civil Code. However, it is concerned that a declaration of the presumed death of persons who have been subjected to enforced disappearance and whose fate has not been clarified is required in order for their relatives to be able to deal with issues in fields such as social welfare, financial matters, family law and property rights (art. 24).

35. **The Committee recommends that the State party adopt the legislative measures necessary to ensure that, in accordance with article 24 (6) of the Convention, the legal situation of disappeared persons whose fate or whereabouts has not been clarified and the legal situation of their relatives can be regularized in fields such as social welfare, financial matters, family law and property rights without the need to declare that the disappeared person is presumed dead. In this connection, the Committee encourages the State party to provide by law for the issuance of declarations of absence by reason of enforced disappearance.**

Search for disappeared persons and return of remains

36. The Committee notes the efforts made to search for and identify disappeared persons. However, it is concerned to note the lack of progress made in the search for and location and identification of persons who disappeared during the dictatorship and during the period referred to as the "invasion" of 20 December 1989, as well as the lack of clear and precise statistical data on the number of persons who have been located and identified and the number who have not yet been identified (art. 24).

37. **The Committee recommends that the State party intensify its efforts to search for, locate and release all persons who disappeared during the dictatorship and the**

period referred to the “invasion” of 20 December 1989 and, in the event that they are found dead, to ensure the dignified return of their remains. It further recommends that the State party take the necessary measures to:

(a) Establish a genetic database that compiles the genetic information of remains found for the purpose of matching them with relatives and facilitating the identification of disappeared persons, and ensure that the database is updated on an ongoing basis;

(b) Ensure effective coordination, cooperation and cross-checking of data between the agencies responsible for searching for disappeared persons and, in the event that such persons are found dead, for identifying their remains and returning them to their relatives;

(c) Ensure that the authorities responsible for investigating enforced disappearances and searching for persons subjected to enforced disappearance have adequate financial and technical resources and qualified staff to be able to perform their work promptly and efficiently;

(d) Ensure that the competent authorities proceed with the search and that the relatives and close friends of the disappeared person may take part if they so wish.

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

Legislation concerning the wrongful removal of children

38. The Committee is concerned that the practices described in article 25 (1) of the Convention are not addressed in the Criminal Code. It is also concerned that there are no legal procedures in place in the State party to allow for the review and, where appropriate, annulment of any adoption, placement or guardianship that originated in an enforced disappearance.

39. **The Committee recommends that the State party:**

(a) Review its criminal legislation with the aim of incorporating as specific offences the acts described in article 25 (1) of the Convention and establishing appropriate penalties that take into account their extreme seriousness;

(b) Establish specific procedures for returning the children referred to in article 25 (1) (a) to their families of origin;

(c) Establish specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship that originated in an enforced disappearance and for re-establishing the true identity of the children concerned, taking into account the best interests of the child.

D. Dissemination and follow-up

40. The Committee wishes to recall the obligations that States assume when they ratify the Convention and urges the State party to ensure that all the measures it adopts are in full accordance with the Convention and other relevant international instruments.

41. The Committee also emphasizes the particularly cruel effect of enforced disappearance on women and children. Women victims of enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves have been subjected to enforced disappearance or because they are suffering the consequences of the disappearance of family members, are especially vulnerable to violations of their human rights. The Committee therefore places particular emphasis on the need for the State party to systematically adopt a gender perspective and take into account the specific needs of women and children in its efforts to implement the

recommendations contained in the present concluding observations and the full range of rights and obligations deriving from the Convention.

42. The State party is encouraged to disseminate widely the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations in order to raise awareness among State authorities, all civil society actors and the general public. The Committee also encourages the State party to foster civil society involvement in the implementation of the recommendations contained in the present concluding observations.

43. In accordance with the Committee's rules of procedure, the State party is requested to provide, by 27 September 2022, information on the implementation of the recommendations contained in paragraph 11 (compilation of the centralized register of missing and disappeared persons), paragraph 27 (communication by persons deprived of liberty) and paragraph 37 (search for disappeared persons and return of their remains) of the present concluding observations.

44. Under article 29 (4) of the Convention, the Committee requests the State party to submit, by 27 September 2027, specific and updated information on the implementation of all of its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention.⁴ The Committee encourages the State party to consult civil society, including, in particular, organizations of victims' families, when preparing this information.

⁴ CED/C/2, para. 39.