



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

Distr.: General  
24 October 2023

Original: English  
English, French and Spanish only

## Committee on Enforced Disappearances

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

#### I. General information

1. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications.
2. Please provide information on the powers of the Office of the Ombudsman with respect to cases of enforced disappearance and on the activities of the Office as they relate to the Convention, including specific examples. Please indicate whether the Office has received any complaints concerning the rights and obligations set out under the Convention. If it has, please describe the actions taken and their results.
3. Please specify whether the provisions of the Convention can be directly invoked and/or applied by domestic courts and, if they can, please provide examples of such application.
4. With regard to paragraph 8 of the State party report,<sup>1</sup> please provide further information on the participation of civil society, in particular organizations of victims, human rights defenders working on the issue of enforced disappearance and non-governmental organizations, in the preparation of the report.

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

5. With regard to paragraph 15 of the State party report, please specify the rights that may be restricted if a state of emergency is declared and explain how article 108 of the Constitution ensures that no exceptional circumstances may be invoked to justify an enforced disappearance. Please provide information on the rights that may not be derogated from in a state of emergency declared under article 105 of the Constitution (art. 1).
6. Bearing in mind that the offence of enforced disappearance is defined in national legislation in the same terms as in the Rome Statute of the International Criminal Court, and the information provided by the State party on the challenges faced in incorporating international instruments into the domestic legal order, please indicate the measures taken or planned to recognize enforced disappearance as a specific offence in order to ensure the full compliance of national legislation with the Convention (arts. 2, 3, 5 and 6).
7. Please provide updated statistical data, disaggregated by the sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation and occupation of the

\* Adopted by the Committee at its twenty-fifth session (11–29 September 2023).

<sup>1</sup> [CED/C/WSM/1](#).



victims, on: (a) the number of disappeared persons in or from the State party, specifying the date and place of disappearance and the number of those persons who have been located; (b) the number of those persons who may have been subjected to enforced disappearance within the meaning of article 2 of the Convention; and (c) the number of persons who may have been subjected to the acts described in article 3 of the Convention, including forced displacement due to climate change, disappearances committed for the purpose of trafficking in persons and, in the light of the Committee's general comment No. 1 (2023) on enforced disappearance in the context of migration, disappearances of migrants (arts. 1–3, 12 and 24).

8. With regard to paragraph 9 (d) (i) of the State party report, which concerns the power to carry out an arrest without a warrant under section 29 of the Criminal Procedures Act 2016, please provide information on the number of complaints lodged following an arrest or placement in custody without a warrant, specifying whether allegations of enforced disappearance have been made in that context. Please provide examples of specific cases and information on the investigations conducted and their outcomes, the penalties imposed and the reparations provided to the victims (arts. 2 and 3).

9. In view of paragraph 19 of the State party report, please provide information on cases investigated by the police and prosecuted by the Attorney General under section 16 of the International Criminal Court Act and specify the characteristics of the cases on which no action has been taken (art. 3).

10. With regard to paragraph 38 of the State party report, please specify whether a person detained for an alleged enforced disappearance that cannot be classified as a crime against humanity may be released on bail before the consent of the Attorney General has been obtained (art. 7).

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

11. In relation to paragraphs 29 and 30 of the State party report, please specify which provisions of national legislation relating to limitation would apply to cases of alleged enforced disappearance that cannot be classified as crimes against humanity. Please explain how the State party guarantees that no statute of limitations applies to criminal, civil or administrative actions brought by victims of enforced disappearance seeking access to an effective remedy (art. 8).

12. Regarding paragraphs 35 and 68 of the State party report, please indicate how the State party guarantees in practice the right of any person in custody to access consular assistance, in accordance with article 10 of the Convention (art. 10).

13. With regard to paragraph 32 of the State party report, please provide updated information on the progress of the searches and investigations carried out in relation to the alleged disappearances of a man in the village of Si'umu in July 2019 and of Chong Nee in 2020. Please describe the action taken since the entry into force of the Convention to search for, locate and, in case of death, identify disappeared persons and the results achieved (art. 12).

14. With regard to paragraphs 41 to 44 of the State party report, please describe the mechanisms in place to exclude from the investigation of an alleged enforced disappearance any members of law enforcement or the security forces who are accused of having committed the offence or having been involved in its commission. Please indicate whether, under domestic law, the suspension from duty of a State official suspected of involvement in the commission of an enforced disappearance takes effect from the outset of the investigation and remains in place throughout it and please provide information on the applicable legislation (art. 12).

15. In relation to paragraphs 45 to 53 of the State party report, please:

(a) Clarify whether the absence of a specific offence of enforced disappearance in the national legislation of the receiving State or provision for an inappropriate sentence in

view of the seriousness of the crime may have an impact on requests for extradition received by the State party in relation to cases of enforced disappearance;

(b) Specify whether any extradition agreements have been concluded with other States parties since the entry into force of the Convention. If they have, please specify whether they include enforced disappearance as an extraditable offence or demonstrate that enforced disappearance is not considered to be a political offence, providing a list and the texts of such agreements (art. 13).

16. In relation to paragraphs 54 to 57 of the State party report, please provide information on existing arrangements for mutual legal assistance in connection with criminal proceedings relating to cases of enforced disappearance, indicating the applicable time frames and protocols. In that connection, please describe the action taken since the entry into force of the Convention to search for, locate and, in case of death, identify disappeared persons and the results achieved. Please also clarify what forms of assistance are prohibited under Samoan law and may be refused if they are contrary to the interests of justice (arts. 14 and 15).

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

17. With regard to paragraphs 58 to 65 of the State party report, please provide information about the mechanisms and criteria applied in the context of procedures for expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance (art. 16).

18. Regarding paragraphs 66 to 70 of the State party report, please provide information about the measures taken to ensure in practice that all persons deprived of liberty are afforded, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided for under article 17 of the Convention, in particular the right of access to a lawyer, the right to communicate with and be visited by family members, counsel or any other person of their choice and the right to notify their relatives or any person of their choice of the deprivation of liberty and of the place in which they are being held, including the measures taken in the context of the coronavirus disease (COVID-19) pandemic. In that connection, please indicate whether there have been any complaints or allegations regarding failures to observe those safeguards and, if there have, please provide information on the resulting proceedings and their outcomes, including the penalties imposed (art. 17).

19. Please provide information on the existence of any official registers of persons deprived of liberty, irrespective of the place of deprivation of liberty, and indicate the measures adopted to ensure that they contain all the information listed in article 17 (3) of the Convention and that they are systematically completed, updated and monitored in a timely manner (art. 17).

20. With regard to paragraphs 72 and 73 of the State party report, please provide information on how access to the information mentioned in article 18 (1) of the Convention is ensured for any person with a legitimate interest, including on how such access was ensured during the COVID-19 pandemic. In that regard, please describe the measures taken to prevent and impose penalties for the conduct described in article 22 of the Convention (arts. 18 and 22).

21. With regard to paragraphs 73 and 74 of the State party report, please clarify whether forensic samples are collected only in the context of criminal investigations. Please provide information on the practical use of forensic samples for the purpose of searching for and identifying disappeared persons, including in the context of migration, and on the measures taken to protect personal information, including medical and genetic data, in compliance with article 19 of the Convention (arts. 12, 19 and 24).

22. In relation to paragraphs 65 and 86 of the State party report, please specify how specific training and capacity-building on the Convention and enforced disappearance will be included in future human rights training initiatives, in particular for law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice (art. 23).

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

23. With regard to paragraphs 87 and 88 of the State party report, please provide information on the steps that the State party intends to take to ensure the full compliance of the definition of victim in national legislation with the definition set out in the Convention (art. 24).

24. Please provide information on:

- (a) The procedures available to victims of enforced disappearance for obtaining compensation and full reparation and the time limits applicable to those procedures;
- (b) The types of reparations available to victims of enforced disappearance;
- (c) The authority responsible for providing compensation and/or reparation;
- (d) Existing legal conditions for the access of victims to compensation and reparation, specifying whether such access is contingent on a judicial decision;
- (e) Existing legislation in areas such as social welfare, financial matters, family law and property rights pertaining to the legal status of disappeared persons whose fate has not been clarified and to that of their family members (art. 24).

## **VI. Measures to protect children against enforced disappearance (art. 25)**

25. With regard to paragraphs 89 to 92 of the State party report, please explain how the conduct described in article 25 of the Convention is specifically criminalized in the national legal framework. Please indicate whether any complaints concerning the wrongful removal of children, as addressed in article 25 (1) (a) of the Convention, have been made since the entry into force of the Convention and, if they have, describe the measures taken to locate the children concerned and prosecute and punish those responsible, the results of those measures and the procedures for returning them to their families of origin (art. 25).

26. Please indicate the measures taken by the State party to protect children, especially unaccompanied minors, from enforced disappearance, in particular in the context of migration and trafficking in persons. Please describe the measures taken to ensure that information on unaccompanied minors is adequately recorded, including in genetic and forensic databases, so as to facilitate the identification of disappeared children (art. 25).

27. Please describe the measures taken by the State party to prevent illegal inter-country adoption. In that connection, please describe the legal procedures in place to review and, if necessary, annul any adoption or placement originating in an enforced disappearance. If such procedures have yet to be set up, please provide information on existing initiatives to ensure that national legislation is in full compliance with article 25 (4) of the Convention (art. 25).

---