

Handout for the group exercise for participants

Module 3: State obligations under the International Convention for the Protection of All Persons from Enforced Disappearance

Ask each working group to appoint a rapporteur who will summarize your discussions in plenary.

Give them 10 minutes to read the scenario and 20 minutes to discuss the following three questions.

1. List the obligations/rules relevant to your situation and the corresponding articles of the Convention;
2. Define if additional information is needed to fully understand the situation;
3. Identify possible measures to be taken to address or to improve the situation.

Liberto is a federal country with a population of approximately 3 million people. Political tensions between the Government and the opposition have turned into an armed conflict that has been ongoing for a few years now, in particular in the north of the country.

There have been allegations of enforced disappearances being perpetrated in Liberto at the end of the 1990s.

Liberto ratified the Convention in 2018. No amendments have been made in domestic legislation to give effect to the provisions of the Convention. Nevertheless, a working group, consisting of stakeholders from various governmental agencies, that was set up prior to the ratification of the Convention by Liberto has prepared a legal brief on the Convention and its role in the legal system of Liberto. The legal brief was widely circulated among the authorities at the local, regional and local levels.

Case study 1

The legal brief affirms that the prohibition of enforced disappearance is in line with the Constitution of Liberto. While the Constitution does not expressly mention enforced disappearance, according to the legal brief, the freedom from enforced disappearance falls under the right to integrity and dignity of persons pursuant to article 42 (1) of the Constitution. Article 42 (2) establishes that restrictions to the right affirmed in paragraph 1 can only be subject to such formalities, conditions, requirements or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime. Article 42 (3) further provides that the right affirmed in paragraph 1 is without prejudice to the powers of the regional and central authorities of Liberto to respond to the exigencies of the situation linked to the existence of an armed conflict or public emergency. In 2019, the Parliament of Liberto adopted a decree invoking the state of emergency and formally derogated from article 42 (1) of the Constitution in light of the armed conflict taking place in the north of the country.

Case study 2

According to the legal brief, the Convention in principle applies to the entire territory of Liberto. However, the legal brief notes that, given the inability of the central government to exercise full control over the territories in the north of the country due to the ongoing armed conflict, Liberto is not able to secure the rights affirmed in the Convention to individuals residing in those territories and to comply with its obligations related to enforced disappearances taking place in those territories until it restores full and unlimited control over the area. The legal brief specifies that the Convention does not produce effects for Liberto outside its sovereign territories over which it exercises jurisdiction. The legal brief also mentions that the Convention does not apply to enforced disappearances that had been allegedly perpetrated in Liberto prior to its ratification of the instrument.

Case study 3

The legal brief points out that the domestic legislation of Liberto is fully in line with the Convention and no further action is required to give effect to its provisions. It affirms that, while enforced disappearances are not specifically criminalized in Liberto, several provisions contained in its criminal code are sufficient to serve as the basis to prosecute and punish those responsible for such practices. The legal brief further mentions that the other obligations contained in the Convention are activated only when enforced disappearance is perpetrated in the territory of the State party. In the absence of such practices actually taking place, there is nothing to investigate, no one to search for and there are no victims. It goes on to explain that, since enforced disappearances do not happen in Liberto and given that there is nothing that would suggest that these practices would be perpetrated in the future, at this stage the Convention does not require Liberto to take additional steps to implement the treaty.

Case study 4

The legal brief provides that the Convention does not apply to crimes perpetrated by rebel groups operating in the north of the country even when these acts involve the deprivation of liberty of persons, followed by the concealment of their fate and whereabouts. It affirms that the State's obligations are limited to acts perpetrated by State officials or by persons acting with the authorization, support or acquiescence of the State. According to the legal brief, expanding the scope of the notion of enforced disappearance to encompass acts perpetrated by private individuals and criminal entities that have no connection with the State would dilute the meaning of the notion and contradicts the object and purpose of the Convention. It also affirms that the central government is practically precluded from influencing the behaviour of such actors and, therefore, unable to prevent or repress such practices or to provide redress for persons affected by such practices. Nevertheless, the legal brief affirms that, in such situations, the authorities of Liberto would, whenever

feasible, initiate proceedings with respect to crimes, such as establishment of and membership in a criminal organization, murder, kidnapping and deprivation of liberty.