

Inter-American Convention on Forced Disappearance of Persons

Name: Inter-American Convention on Forced Disappearance of Persons.

Adoption: Adopted and opened for signature, ratification, and accession by the Organization of American States (OAS) on June 09, 1994.

Entry into force: March 28, 1996.

Number of signatories and ratifications: There are 16 parties that have signed the Convention. One state, Nicaragua, has signed but not ratified the Convention. 18 OAS states have neither signed nor ratified the Convention.

Canada's commitments: Canada has not signed nor ratified the Convention; however, Canada is an OAS member.

Summary information

States that are party to the Inter-American Convention on Forced Disappearance of Persons (herein after, the Convention) undertake the responsibility not to engage in any acts of forced disappearances of persons; to punish those who do within their jurisdictions; to cooperate in helping to prevent, punish, and eliminate forced disappearance of persons; and lastly to take the necessary legal and administrative measures to comply with the Convention.

The Convention arose out of the frequent incidents of forced disappearances in Latin America. Although Canada is a member of the OAS, it has not signed on to the Convention. Violations of the convention can be brought to the Inter-American Commission on Human Rights and can be forwarded to the Inter-American Court of Human Rights.

History

The Convention was adopted on June 9, 1994 and came into force on March 28, 1996. The issue of forced disappearances has been a reoccurring issue in Latin America dating back to the 1970s and 1980s when military dictatorships governed most of Latin America. They resorted to this technique as a way of limiting or eliminating opposition to their regimes. The Convention was one of the earlier attempts to address this issue that has plagued Latin America for decades. Other international legal instruments aimed at addressing this issue include the International Convention for the Protection of All Persons from Enforced Disappearances which adopted by the General Assembly on December 20, 2006.

The Convention on Forced Disappearance of Persons has been ratified by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. Guatemala withdrew the reservation it made at the time of ratification of the Convention concerning the extradition of its nationals. Mexico also had a reservation regarding Art. IX but it too notified the General Secretariat on the withdrawal of its reservation as of July 11, 2014. There are no other reservations by states party to this Convention.

The Convention on Forced Disappearance of Persons is part of the Inter-American Human Rights Treaties. The Inter-American human rights system includes: the main treaty, the American Convention on Human Rights and Additional Protocols; as well as additional treaties such as the Inter-American Convention to Prevent and Punish Torture, Inter-American Convention on Forced Disappearance of Persons, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women and the Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities.

Ratification of the Convention of Forced Disappearance of Persons is not limited to states part of the Inter-American Human Rights Treaties, but is open to all members of the Organization of American States (OAS), as per Art XVI of the Convention. Violations of the Convention of Forced Disappearance of Persons can be brought to the attention of the Inter-American Commission on Human Rights and follow the same process as petitions under the American Convention.

Key Provisions

There are four main responsibilities of states under the Convention: a) not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees; b) to punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories; c) to cooperate with other states in helping to prevent, punish, and eliminate the forced disappearance of persons; and d) to take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

State parties to the Convention have the responsibility to take the necessary administrative and legal measures to establish jurisdiction in cases when:

- the forced disappearance of a person occurred within the state's jurisdiction,
- when the accused person is a national of that state or when the victim of the offense is a national of the state and the state wishes to do so,
- or when the alleged criminal is within the state's jurisdiction and the state chooses not to extradite him/her.

The Convention includes several guidelines on extradition. Once states have ratified the Convention, they are to:

- Not consider the forced disappearance of persons as a political offense for purposes of extradition, as per Art V.
- Include forced disappearances as a crime in every extradition treaty already existing between state parties or in any future treaty to be entered by state parties, as per Art. V.
- Conduct a full investigation and impose criminal penalty if they refuse to extradite the individual in question to the requesting state. Any decision adopted must be communicated to the requesting state, as per Art. VI.
- Further, “[e]xtradition shall be subject to the provisions set forth in the constitution and other laws of the request state,” as per Art. V.

The *Convention* includes requirements for the procedural matters of criminal prosecution, for example:

- Persons alleged to be responsible for the acts constituting the offense can only be tried in courts of ordinary law, to the exclusion of all other special jurisdictions, particularly military jurisdictions as per Art. IX
- The acts constituting forced disappearance cannot be said to have been committed in the course of military duties and “no privileges, immunities, or special dispensations” can be admitted during trials, as per Art. IX. The *Convention* further grants the right and stipulates a duty on subordinates to refuse “superior orders or instructions that stipulate, authorize, or encourage forced disappearance.”
- Once the process of criminal prosecution is completed and a judicial decision is rendered, the *Convention* requires that the punishment should not be subject to a statute of limitation as per Art. VII. In case this conflicts with a fundamental principle in domestic law, then the punishment of the offense should be equivalent to the harshest penalty in the domestic law, as per Art. VII.
- Cases of exceptional circumstances such as war, the threat of war, internal political instability or any other public emergency do not justify the forced disappearance of persons.
- The *Convention* does not apply to international armed conflicts governed by the 1949 *Geneva Convention* and its Protocols, as per Art. XV.
- In cases of detention, state parties are to maintain up-to-date registries of their detainees (in accordance with their domestic law) and to make these records available to relatives, judges, attorneys, any other person having a legitimate interest.

Additional provisions require:

- State parties to give each other assistance in the search for, identification, location, and return of minors who have been removed to another state or detained as a consequence of the forced disappearance of their parents or guardians, as per Art. XII.

Canada’s commitments and responsibilities

In a senate committee, the Canadian Minister of Foreign Affairs at the time, Hon. Lloyd Axworthy, stated that Canada had concerns over some of the requirements of other legal instruments which are part of the Inter-American Human Rights Treaties conflicting with other international legal obligations has signed on to. For example, he stated that the American Convention on Human Rights would preclude the extradition of nationals, and therefore would conflict with Canada's extradition obligations and our obligations to co-operate with international criminal tribunals or the future international criminal court.

Violations of the Forced Disappearance Convention can be addressed under the Inter-American Commission on Human Rights and follow the same process as petitions under the American Convention. However, ratification is not limited to States party to the American Convention. If Canada wishes to sign and ratify the Forced Disappearance Convention, it can do so as a member of the OAS without ratifying the American Convention on Human Rights and the associated Protocols.

Canada is also not party to the International Convention for the Protection of All Persons from Enforced Disappearances.

International monitoring and implementation

There are two monitoring bodies in the Inter-American system for the protection of human rights (under which the Convention on Forced Disappearance falls): the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The Commission investigates individual petitions which allege violations of the rights guaranteed under the American Declaration or the American Convention, refers cases to the Inter-American Court of Human Rights, monitors the general human rights status in member states and in some cases, produces reports on specific issues or general country reports. Generally, all cases that are received by the Commission are referred to the Court.

The Inter-American Court of Human Rights was established under the terms of Art. 33 of the *American Convention*. It is located in San José, Costa Rica. The Court operates part-time and it doesn't have a formal system for monitoring the execution of its decision due to the lack of funds. However, there has been an impressive record of compliance by the Court.¹ The Court reports on the enforcement of its decisions in the Annual Report to the General Assembly of the OAS.

Full compliance in matters of forced disappearance has been interpreted to include: investigating and prosecuting the perpetrators, carrying out exhumations of suspected gravesites and identifying bodies. In cases where a government does not wish to comply with the Court's decision, the General Assembly of the OAS can apply political process to aid in a state's compliance.

References

UN News Centre

Report of the Standing Senate Committee on Human Rights

Topic: Enhancing Canada's Role in the OAS: Canadian Adherence to the American Convention on Human Rights

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General Information of the Treaty

Permanent Mission of Canada to the Organization of American States