

Questionnaire

WGEID study on standards and public policies on effective investigation on enforced disappearances

Ireland's Response

February 2019

1) Please indicate whether there is a specific and autonomous crime of enforced disappearance in your criminal legislation meeting the elements contained in the definition of the 1992 Declaration and 2006 Convention on the Protection of all Persons from Enforced Disappearance.

Enforced disappearance has been codified as an offence in conformity with the statute of the International Criminal Court (when committed against the civilian population). Sections 6 and 7 of the International Criminal Court Act 2006 provide for an offence of “crimes against humanity” which includes the act of ‘enforced disappeared of persons’ as defined in Article 7 to Rome Statute.

If so, please provide details on the relevant legislative provisions, including with respect to:

a. the elements which are required to be met in order to charge suspected perpetrators with the crime of enforced disappearance;

Refer to Section 8 of the International Criminal Court Act which, inter alia, sets out the conditions under which perpetrators may be charged with the offence

b. the conditions for application of command/superior responsibility.

See Section 13 of the Act, Articles 27 and 28 to the Rome Statute of the International Criminal Court applies to the International Criminal Court Act 2006

c. the criminal sanctions which can be imposed for the crime of enforced disappearance, including for any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance.

See Section 10 of the International Criminal Court Act 2006 for relevant criminal sanctions

2) If the answer to question n° 1 is negative, please indicate how acts of enforced disappearances are or could be currently qualified and dealt with in your criminal legislation and whether the introduction of a specific crime is envisaged.

It should also be noted that some other measures already in place, which protect persons against unlawful detention include:

- Article 40.4.1 of the Constitution which provides that no citizen shall be deprived of their liberty save in accordance with law;
- Section 15 of the Non-Fatal Offences Against the Person Act 1997 which provides for an offence of false imprisonment, addressing circumstances where a person is taken or detained, or whose personal liberty is restricted by another person without the consent of the person involved. A person guilty of false imprisonment is liable, on conviction on indictment, to imprisonment for up to life. Consent is deemed to be absent where the person responsible obtains the other's consent by force or threat of force, or by deception causing the other to believe that he or she is under legal compulsion to consent.

3) Please inform whether the statute of limitations applies for crimes of enforced disappearances or proposed to be applied in future legislation criminalizing enforced disappearances? If so, please indicate the duration of the statute of limitations and the moment from which it commences to count.

The ICC Act 2006 provides for the non-applicability of statute of limitations.

5) Please indicate whether there are special units in the law-enforcement and/or prosecution authorities in charge of the investigation of enforced disappearances. If so, please provide the name of the units and indicate their composition including whether these special units are staffed with professional from different disciplines, including forensic science, anthropology and psychology. If not, please explain who is in charge of investigating or prosecuting enforced disappearances.

There is no specific “Enforced Disappearances Section” within our police force. The Missing Persons Bureau of An Garda Síochána assists District Officers in their investigations of Missing Person Incidents in this jurisdiction.

15) Please indicate what measures are in place to ensure that all parties involved in the investigation of enforced disappearances, including the complainant, counsel, witnesses and those conducting the investigation, are protected against illtreatment, intimidation or reprisal; and to ensure that – if these prohibited acts occur – they are appropriately punished, in accordance with article 13 (3) and (5) of the Declaration. If an office or unit for the protection of these persons exists, please explain its mandate, competency and powers, as well as the applicable legal framework.

Ireland subscribes to the protections of the Rome Statute.

16) What measures has your State adopted in the field of international judicial cooperation to facilitate the effective investigation of transnational cases of enforced disappearances?

The law that allows Ireland to provide mutual legal assistance to and to ask for mutual legal assistance from other countries is contained in:
the Criminal Justice (Mutual Assistance) Act 2008.

Ireland is a party to the following international Conventions:

- The Council of Europe Convention on Mutual Assistance in Criminal Matters (1959) and its Additional Protocol
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990)
- The OECD Convention on combating bribery of Foreign Public Official in international business transactions (1997)
- The Council of Europe Criminal Law Convention on Corruption (2003)

18) What are the main obstacles and challenges encountered by your country, if any, to effectively investigate enforced disappearances? Does your State have any recommendations and/or proposals in this regard?

Any acts of “enforced disappearance” in this State are likely to be historical and dating back several decades. The challenges would therefore be whether the evidence and witnesses are accessible to instigate a prosecution.