



# 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 Uruguay under article 29, paragraph 1, of the Convention, adopted by the Committee at its fourth session (8–19 April 2013)

1. The Committee on Enforced Disappearances considered the report submitted by Uruguay under article 29, paragraph 1, of the Convention (CED/C/URY/1) at its 42nd and 43rd meetings (CED/C/SR.42 and 43), held on 9 and 10 April 2013. At its 57th meeting, held on 19 April 2013, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the report submitted by Uruguay under article 29, paragraph 1, of the Convention, drafted in accordance with the reporting guidelines, and the information contained in the report. In particular, it commends Uruguay for having been the first State party to submit its report and comply with the deadline set in article 29, paragraph 1, of the Convention. The Committee appreciates the constructive dialogue with the high-level delegation from the State party on the measures taken by the latter to implement the provisions of the Convention, which has dispelled many of its concerns. The Committee also thanks the State party for its written replies (CED/C/URY/Q/1/Add.1) to the list of issues (CED/C/URY/Q/1), as supplemented by statements by the delegation, and the additional information submitted in written form.

#### B. Positive aspects

3. The Committee welcomes the fact that the State party has ratified all the core United Nations human rights treaties and their optional protocols currently in force, as well as the Rome Statute of the International Criminal Court and the Inter-American Convention on Forced Disappearance of Persons.

4. The Committee also notes with satisfaction that the State party has recognized its competence, under articles 31 and 32 of the Convention, in respect of individual and inter-State communications.

5. The Committee also applauds the adoption of the Act on Cooperation with the International Criminal Court in Combating Genocide, War Crimes and Crimes against Humanity (Act No. 18026), of 4 October 2006. The Act, inter alia, classifies as an offence enforced disappearance, which is deemed to be a continuing offence as long as the fate or whereabouts of the victim remains unknown; it establishes the imprescriptibility of the

offence and its punishment; and it stipulates that no one may invoke superior orders or exceptional circumstances to justify the commission of such an offence.

### **C. Principal subjects of concern and recommendations**

6. The Committee recognizes that the legislation in force in the State party to prevent and impose penalties for enforced disappearances is by and large in line with the provisions of the Convention and the obligations imposed by the latter on States that have ratified it. The concerns expressed below and the recommendations to be implemented subsequently are intended to help the State party strengthen existing legislation with the view to ensuring full compliance with all provisions of the Convention and their effective implementation.

#### **General information**

7. The Committee welcomes the delegation's statement that the Convention has constitutional status and that its provisions are applied directly. However, it notes that the direct applicability of its provisions is not clearly defined in national legislation.

**8. The Committee invites the State party to consider taking the necessary steps to acknowledge explicitly the direct applicability of the provisions of the Convention.**

9. The Committee applauds the establishment of the National Human Rights Institution (NHRI) and Ombudsman's Office by Act No. 18446 of 27 January 2009. It also applauds the fact that the NHRI has been designated as the national preventive mechanism under the Optional Protocol to the Convention against Torture. The Committee takes note of the information provided by the delegation concerning the accreditation of the NHRI by the International Coordinating Committee of National Human Rights Institutions.

**10. The Committee recommends that the State party should ensure that all public entities cooperate with and provide all the necessary assistance within their power to the NHRI. The Committee also recommends that the State party should ensure that the NHRI has the human, technical and financial resources to discharge its functions effectively. The Committee encourages the State party to continue its efforts to ensure the accreditation of the NHRI by the International Coordinating Committee of National Human Rights Institutions.**

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

11. The Committee notes with satisfaction that the State party has classified enforced disappearance as an offence (Act No. 18026, art. 21) and that the definition of the offence is in line with that contained in article 2 of the Convention. However, it notes with concern the wide gap between the minimum and maximum penalties prescribed for the offence (2–25 years' imprisonment), which gives the courts a broad margin of discretion when imposing such penalties, including with regard to the length of the minimum sentence (arts. 2, 4, 6 and 7).

**12. The Committee recommends that the State party should consider adopting legislative measures to reduce the wide gap between the minimum and maximum penalties for the offence of enforced disappearance, in particular by ensuring that the minimum sentence is in line with article 7 of the Convention and takes due account of the extreme seriousness of the offence.**

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

13. The Committee notes with concern the information provided by the State party on the judgement of the Supreme Court of Justice, according to which persons disappeared for

more than 30 years are considered to be deceased, and those accused of the disappearance are charged with homicide under especially aggravated circumstances, with the consequences that could be drawn in respect of the term of limitation (arts. 8 and 12).

14. **The State party should ensure that enforced disappearances are investigated as such and that the perpetrators are punished for the offence irrespective of the time that has elapsed since the commencement of the criminal conduct. The State party should ensure that all State officials, including judges and prosecutors, receive appropriate and specific training on the Convention and the obligations incumbent on States that have ratified it. The Committee wishes to emphasize the continuous nature of the offence of enforced disappearance, in accordance with the principles of the Convention, to recall the strict terms laid down in the article governing the statute of limitations for this offence, and to emphasize its imprescriptible character in relation to crimes against humanity.**

15. The Committee takes note of the information received from the State party concerning the legislation on the transfer and dismissal of judges, which could compromise the internal independence of the judiciary. The Committee emphasizes the importance attaching to the independence of the authorities responsible for prosecuting such crimes, in order to guarantee the effectiveness of investigations, trials and penalties in relation to enforced disappearances.

16. **The Committee recommends that the State party should take the necessary steps, both at the legislative level and in terms of the administrative competence of the Supreme Court of Justice, to continue consolidating the internal independence of the judiciary.**

17. The Committee acknowledges the protection afforded to victims and witnesses under Act No. 18026 with regard to procedures for investigating the offences referred to in the Act, including enforced disappearances, and to victims, witnesses and persons who provide confidential information to the police under Act No. 18315. However, the Committee is concerned about reports indicating that there are no mechanisms to ensure that such measures are applied effectively, and that they do not cover all the persons mentioned in article 12 of the Convention. In this connection, the Committee notes the State party's intention, as reflected in paragraph 65 of its replies to the list of issues, to take steps to extend the protection to complainants, family members, witnesses, defence counsel and relatives of the disappeared person (art. 12).

18. **The Committee urges the State party to adopt the necessary legislative or other measures to ensure the effective application of existing protection measures and to extend those measures to all persons referred to in article 12, paragraph 1, of the Convention.**

19. The Committee notes the lack of clarity concerning the existing guarantees under Uruguayan legislation to prevent people who have allegedly committed an offence of enforced disappearance from influencing the progress of an investigation (art. 12).

20. **The Committee recommends that, in accordance with article 12, paragraph 4, of the Convention, the State party should adopt the necessary measures to ensure that persons suspected of having committed an offence of enforced disappearance are not in a position, directly or indirectly, by themselves or through others, to influence the progress of investigations.**

21. The Committee notes with interest the information provided by the State party on the draft amendments to the Code of Criminal Procedure currently under consideration in parliament. The Committee welcomes the fact that Uruguayan legislation (article 13 of Act No. 18026) provides for the participation of the complainant, the victim or relatives in

investigations into enforced disappearances, but notes with concern that it does not provide for them to participate fully as parties in criminal proceedings, for example by appealing the decisions handed down. In this regard, the Committee notes with interest that the draft amendments to the Code of Criminal Procedure seek to maximize the opportunities for the participation of victims (arts. 12 and 24).

**22. The Committee encourages the State party to adopt swiftly the proposed amendments to the Code of Criminal Procedure, to ensure that they are fully in line with its obligations under the Convention, and to allow the victims of enforced disappearance to participate fully in judicial proceedings relating to the investigation of such an offence. The Committee also urges the State party to ensure that article 13 of Act No. 18026 is applied in accordance with the definition of victim contained in article 24, paragraph 1, of the Convention. The Committee also invites the State party to consider establishing a specialized unit under the Public Prosecution Service or other competent body, with staff specifically trained to investigate cases of alleged enforced disappearance, to pursue investigations and coordinate criminal prosecution policy in this field.**

23. The Committee notes the delegation's statement to the effect that in extradition agreements concluded before the entry into force of the Convention, enforced disappearance was not considered to be a political offence. The Committee also takes note of the fact that agreements are being negotiated and concluded with other States in the region to exchange information on human rights violations, including enforced disappearances, as well as of the information provided by the delegation regarding the numerous cooperation agreements concluded with Argentina (arts. 13 and 14).

**24. The Committee urges the State party to ensure that all agreements on extradition or mutual judicial assistance to be concluded in the future, including those currently being negotiated, contain specific provisions on enforced disappearances.**

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

25. The Committee welcomes the fact that the remedy of habeas corpus is provided for under the Constitution and the statement by the State party that the absence of related legislation does not prevent the effective exercise of that remedy. In this regard, the Committee notes that draft regulations have been under consideration in the Chamber of Deputies of parliament since 2010 (art. 17).

**26. The Committee encourages the State party to adopt the necessary legislative measures to regulate the exercise of habeas corpus. In this regard, the Committee recommends that the State party should ensure that the legislative measures adopted are in conformity with the Convention, in particular article 17, and with other relevant international norms.**

27. The Committee welcomes the information provided by the delegation concerning the prison reform under way and in particular concerning the plan on the introduction of prison administration software (art. 17).

**28. The Committee encourages the State party to introduce the prison administration software and ensure that it is fully consistent with article 17, paragraph 3, of the Convention. The Committee also encourages the State party to use similar registration and monitoring tools in all facilities housing persons deprived of their liberty.**

29. While taking note of the human rights training dispensed to State officials, the Committee notes with concern that no specific and regular training is dispensed on the provisions of the Convention (art. 23).

30. **The Committee recommends that the State party should step up its efforts to provide training on human rights matters to State officials and, in particular, should ensure that all law enforcement personnel, whether civil or military, and 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 court officials of all ranks, receive appropriate and regular training on the provisions of the Convention, in accordance with article 23.**

**Measures for reparation and protection of children against enforced disappearance (arts. 24 and 25)**

31. The Committee expresses its satisfaction concerning article 14 of Act No. 18026, which stipulates that the State shall be responsible for making reparation to victims of the offences defined in the Act, including enforced disappearances (art. 24).

32. **The Committee recommends that the State party should ensure that the term “victim” in article 14 of Act No. 18026 is applied in accordance with the definition of victim contained in article 24, paragraph 1, of the Convention.**

33. While taking note of the criminal provisions in force concerning deprivation of liberty and the removal and acquisition of civil status, the Committee is concerned that there are no provisions that specifically reflect the cases referred to in article 25, paragraph 1, of the Convention on the removal of children (art. 25).

34. **The Committee encourages the State party to consider reviewing its criminal legislation with the aim of including, as specific offences, the acts described in article 25, paragraph 1, of the Convention, which are subject to appropriate penalties that take into account the extreme seriousness of the offences.**

35. The Committee notes with interest the information provided by the State party on the regime governing adoption which respects the right to identity provided for in the Convention on the Rights of the Child. However, the Committee notes with concern the absence of specific procedures for the review and, where appropriate, the annulment of adoptions or placements that originated in an enforced disappearance.

36. **The Committee recommends that, in accordance with article 25, paragraph 4, of the Convention, specific procedures should be established for the review and, where appropriate, the annulment of adoptions or placements that originated in an enforced disappearance, as well as procedures which take into account the best interests of the child and, in particular, recognize the child’s right to be heard if he/she is capable of forming his or her own views.**

#### **D. Dissemination and follow-up**

37. The Committee wishes to recall the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when ratifying the Convention and other relevant international instruments. In this regard, the Committee particularly urges the State party to ensure the effective investigation of all enforced disappearances and the full satisfaction of the rights of victims as set forth in the Convention.

38. The Committee wishes to emphasize the particularly cruel effect of enforced disappearances on women and children. In the case of women, it exposes and makes them particularly vulnerable, as direct victims, to sexual and other forms of violence, and, as relatives of a disappeared person, to violence, persecution and reprisals. In the case of

children, it makes them especially vulnerable to losing their identity. In this context, the Committee places special emphasis on the need for the State party to ensure that women and children who are victims of enforced disappearance are provided with special protection and assistance.

39. The State party is encouraged to widely disseminate the Convention, its report submitted under article 29, paragraph 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 the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of relatives of victims, in the actions taken in line with the present concluding observations.

40. Noting that the State party submitted its core document in 1996 (HRI/CORE/1/Add.9/Rev.1), the Committee invites the State party to update it in accordance with the requirements for the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6, chap. I).

41. In accordance with the Committee's rules of procedure, by 19 April 2014 at the latest, the State party should provide relevant information on its implementation of the Committee's recommendations as contained in paragraphs 14, 22 and 36.

42. Under article 29, paragraph 4, of the Convention, the Committee requests the State party to submit, no later than 19 April 2019, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of relatives of victims, in the preparation of this information.

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