



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
10 December 2018
English
Original: Spanish
English, French and Spanish only

Committee on Enforced Disappearances

List of issues in relation to the report submitted by Peru under article 29, paragraph 1, of the Convention*

I. General information

1. Please indicate whether the State party intends to make the declaration provided for in article 32 of the Convention, which relates to the Committee's competence to receive and consider inter-State communications (art. 32).
2. Please provide additional information on the consultations that were undertaken in the course of the preparation of the report with the Government and national institutions for the protection and promotion of human rights, organizations of victims' relatives, human rights defenders who deal with the issue of enforced disappearance, non-governmental organizations and other stakeholders in the preparation of the report. Please provide detailed information on the remit of the Ombudsman's Office in the area of enforced disappearance and on the activities undertaken by that institution in relation to the Convention. Please also provide information on the complaints of enforced disappearance considered by that body. Kindly provide a specific example of a case in which provisions of international human rights treaties have been directly applied and of the jurisprudence of international bodies to which Peru is subject.

II. Definition of the criminal offence of enforced disappearance (arts. 1–7)

3. Please provide up-to-date statistical information, disaggregated by sex, age and nationality, on the number of disappeared persons in the State party, specifying their date of disappearance, the number of such persons who have been located and the number of cases in which there was some form of State participation, within the meaning of the definition of enforced disappearance contained in article 2 of the Convention. In this connection, please state the number of cases of alleged enforced disappearance that occurred before the entry into force of the Convention in which the fate of the disappeared person has not been clarified and the number of cases that have occurred since the entry into force of the Convention (arts. 1, 2, 3 and 12).
4. Please provide detailed information on the measures taken to ensure that the prohibition of enforced disappearance may not be derogated from or restricted by means of the invocation of exceptional circumstances. In relation to paragraphs 22, 26, 28, 30 and 43 of the State party's report (CED/C/PER/1), please state what punishment is to be imposed, under Peruvian law, on persons who refuse to acknowledge a deprivation of liberty or who conceal the fate or whereabouts of a disappeared person and on persons or groups of

* Adopted by the Committee at its fifteenth session (5–16 November 2018).



persons acting with the authorization, support or acquiescence of the State. Please indicate whether there are any legislative initiatives to bring the definition of enforced disappearance in article 320 of the Criminal Code into line with the definition contained in article 2 of the Convention, including the three constituent elements of the offence (arts. 1, 2 and 4).

5. With regard to paragraphs 44, 45 and 50 of the State party's report, please explain how article 320 of the Criminal Code applies to an offence of enforced disappearance when it is committed as a separate offence, bearing in mind that this article comes under title XIV (crimes against humanity) of the Criminal Code. In this connection, please indicate whether there are any initiatives to define enforced disappearance in its two forms – as a separate crime and as a crime against humanity – in accordance with the Convention (arts. 2, 4, 5, 7 and 8).

6. In relation to paragraphs 24 and 25 of the State party's report, please provide additional information on the way in which the conduct defined in article 2 of the Convention is prohibited and prosecuted when it is committed by persons or groups acting without the authorization, support or acquiescence of the State. In this regard, please include statistics, disaggregated by age, sex and the type of offence under which a person is prosecuted for having committed such acts. Please also explain how Act No. 30077 is applied to offences of enforced disappearance when they are committed by State officials or by persons or groups of persons acting with the authorization, support or acquiescence of the State (arts. 2 and 3).

7. With reference to paragraphs 60 to 67 of the State party's report, please specify the minimum and maximum penalties established for the offence of enforced disappearance as a separate offence and for the offence of enforced disappearance as a crime against humanity, indicate to what extent the penalties proposed for this crime are appropriate given its extreme seriousness and describe how these penalties are comparable to those handed down for similar offences. In addition, please indicate whether there are any initiatives to establish mitigating and/or aggravating circumstances in relation to the offence of enforced disappearance pursuant to article 7 (2) of the Convention. Please also indicate whether all those responsible for offences of enforced disappearance who benefited from the amnesty laws (Nos. 26479 and 26492) of 1995 have since been prosecuted and punished with appropriate penalties given the seriousness of the offence. Please also explain how the recently introduced regulations on pardons, particularly on pardons on humanitarian grounds, are compatible with articles 7 and 24 of the Convention (arts. 2, 4, 5, 7 and 24).

8. With regard to paragraphs 53 to 59 of the State party's report, please indicate whether measures have been taken to ensure that domestic law specifically incorporates the criminal responsibility of any person referred to in article 6 (1) (a) of the Convention and the criminal responsibility of superiors, including that of non-military authorities, under the terms set forth in article 6 (1) (b) of the Convention. Please also indicate whether there are any initiatives to incorporate an explicit prohibition on invoking the order of a superior as justification for enforced disappearance into domestic legislation, in accordance with article 6 (2) of the Convention. In this regard, please provide information on domestic law provisions that expressly prohibit the issuance of orders or instructions prescribing, authorizing or encouraging the commission of enforced disappearances and that guarantee that any person who refuses to obey such an order will not be punished (arts. 6 and 23).

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

9. In the light of paragraphs 29, 31, 32 and 68 to 74 of the State party's report, please explain how the State party ensures that the offence of enforced disappearance is treated as a continuing offence under domestic law, including in cases that occurred before the entry into force of the Convention and cases where it is treated as a crime against humanity. In this connection, please also indicate whether there are any initiatives to establish the non-applicability of statutory limitations to the offence of enforced disappearance, including

when it is classified as a crime against humanity. Please explain how the statute of limitations provided for in the Criminal Code is compatible with article 8 (1) (a) and (b) of the Convention. Please also provide information on measures taken to ensure that victims can exercise their right to an effective remedy during the term of limitation for criminal, civil and administrative proceedings (art. 8).

10. In the light of paragraphs 75 to 77 of the State party's report, please describe the measures taken to ensure that the State party is able to establish its jurisdiction over offences of enforced disappearance in the cases covered by article 9 (1) (b) and (c) and that it is able to initiate criminal proceedings in accordance with article 11 (1) of the Convention. In this regard, please explain how articles 2 (4) and 4 (1) of the Criminal Code are compatible with articles 9 and 11 of the Convention. Please include examples of cases over which the State party has exercised its jurisdiction. Please also indicate whether Peruvian courts can exercise jurisdiction over offences of enforced disappearance committed abroad, including in States that are not parties to the Convention, irrespective of the nationalities of the victim and alleged offender, in accordance with article 9 (2) of the Convention. In the light of paragraphs 78 to 80 and 83 of the report, please provide information on the measures in place to ensure that the degree of legal certainty necessary for prosecution and conviction applies equally to alleged offenders who are nationals of the State party and those who are foreign nationals who have committed acts of enforced disappearance abroad, irrespective of the existence of extradition treaties with other States (arts. 9 and 11).

11. Please provide information on the measures taken to ensure that all complaints of enforced disappearance allegedly committed by military personnel are investigated by the civil authorities from the outset and information on the jurisdiction of the ordinary courts in such matters, including during states of emergency. Please also provide information on the measures in place to ensure fair treatment and a fair trial for all persons investigated or prosecuted for the offence of enforced disappearance (art. 11).

12. Please provide information on the domestic legal measures applying to the arrest of alleged perpetrators of enforced disappearance who are present in the State party and on the measures in place to ensure that they appear before the authorities of the State party. Please also provide information on the legal provisions under which other States that may also have jurisdiction are notified of the arrest of an alleged perpetrator, the circumstances of the arrest and the intention of the State party to exercise its jurisdiction or not. In relation to paragraph 81 of the State party's report, please provide information on the procedures in place to ensure that any foreign national under investigation for allegedly committing acts of enforced disappearance can receive consular assistance (art. 10).

13. With regard to investigations into cases of alleged enforced disappearance:

(a) In relation to paragraphs 35 to 37 and 113 of the report, please provide statistics, disaggregated by sex, age and nationality, on: (i) the total number of complaints of alleged cases of enforced disappearance, specifying how many occurred before the entry into force of the Convention and how many occurred after its entry into force, in which the fate of the disappeared person has not been clarified; (ii) the number of investigations carried out and their outcomes, the sentences handed down and the number of those investigations that were initiated ex officio; and (iii) the number of investigations into alleged cases of enforced disappearance and the number of convictions for enforced disappearance since the entry into force of the Convention (art. 12);

(b) In relation to paragraphs 33, 34, 38, 39, 85, 86, 89, 127 and 128 of the State party's report, please provide additional information on the authorities involved in investigating enforced disappearances, the procedure that they follow in order to shed light on the events involved and to determine the facts in cases of enforced disappearance, and the measures taken to ensure that the search for individuals allegedly subjected to enforced disappearance begins immediately and to ensure efficient coordination between the various authorities involved in searching for disappeared persons and investigating cases of enforced disappearance. Also describe the human, financial and technical resources made available to the competent authorities in order to enable them to conduct investigations effectively and indicate whether the officials concerned are properly trained in the investigation of enforced disappearances. Provide information on the measures in place to

ensure that these officials have access to the relevant documentation, including documents in the hands of the armed forces (art. 12);

(c) In relation to paragraphs 87 and 91 of the State party's report, please provide additional information on the remedies available to persons who report an enforced disappearance to the competent authorities if the latter refuse to investigate the case and on the mechanisms in place for ensuring that such complaints are investigated promptly and impartially. Please provide information on the legal measures in place to prevent the alleged perpetrators of an enforced disappearance from influencing the corresponding investigations, specifying whether provision is made for the alleged perpetrator's suspension from duty during an investigation if that person is a military or civilian official of the State, and indicate whether there are any mechanisms in place to exclude a law enforcement agency or security force from participating in an investigation into an enforced disappearance if one or more of its members is accused of committing the offence (art. 12);

(d) In relation to paragraphs 92 to 94 of the State party's report, please provide further information on the mechanisms in place to ensure that complainants, witnesses, relatives of the disappeared person and his or her legal representatives – as well as persons participating in the investigation, the prosecution and the trial, including lawyers, prosecutors and judges – are protected from ill-treatment and intimidation. Also please provide information on the procedures for obtaining access to such protection mechanisms. Please provide disaggregated statistics on the number of persons linked to cases of enforced disappearance who have benefited from protection measures under these mechanisms (arts. 12 and 24).

14. In relation to paragraphs 102 to 106 of the State party's report, please provide further information on the provision of mutual legal assistance and requests for such assistance under the terms of articles 14 and 15 of the Convention. In this regard, please explain how the principle of dual criminality, mentioned in paragraph 104 of the report, is applied with regard to requests for judicial assistance or cooperation as provided for in articles 14 and 15 of the Convention. Please also provide additional information on measures taken to secure cooperation and mutual assistance in aiding victims, as well as in searching for, locating and securing the release of disappeared persons (arts. 14 and 15).

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

15. Please provide information on the domestic legislation that prohibits the expulsion, return, surrender or extradition of persons to another State where there are grounds for believing that such persons would be in danger of being subjected to enforced disappearance or other serious harm to their life or physical integrity. Please also state what authorities decide on such matters and what mechanisms and criteria are used in determining whether such a risk exists and in assessing it. In this regard, please also indicate whether the State party accepts diplomatic assurances where there are substantial grounds for believing that a person would be in danger of being subjected to enforced disappearance. Please also indicate whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, who is authorized to file such appeals, what authority considers them, what procedure is used in such cases and whether such appeals have a suspensive effect. Please describe any other measures in place to ensure strict compliance with the principle of non-refoulement under article 16 (1) of the Convention (art. 16).

16. In relation to paragraphs 96, 97 and 103 of the State party's report, please indicate what measures have been taken to ensure that, when the offence of enforced disappearance is classified as a separate offence, it is extraditable under the terms of all treaties which the State party has with other States, regardless of whether or not they are parties to the Convention. With reference to paragraphs 98 (e) and 99 of the report, please provide information on obstacles encountered in considering the Convention as a legal basis for extradition in the absence of an extradition treaty. Please also describe any potential obstacles to extradition that might exist under national legislation, extradition treaties or agreements concluded with third countries with regard to the offence of enforced

disappearance. In connection with paragraphs 77, 96 and 99 of the report, please provide updated information on cases in which the State has requested, or received a request, to extradite persons accused of committing an offence of enforced disappearance and on the outcome of such requests. With regard to paragraph 95 of the report, please clarify whether enforced disappearance is regarded as a political offence, an offence connected with a political offence or an offence inspired by political motives when it is not classified as a crime against humanity (arts. 9, 13, 14 and 16).

17. With regard to deprivation of liberty:

(a) Please provide information on the conditions under which orders to deprive a person of his or her liberty may be issued and indicate which authorities have the power to issue such orders and whether there have been cases of deprivation of liberty in which persons have been held in places that are not officially recognized and supervised (art. 17);

(b) In relation to paragraphs 81 and 114 to 118 of the State party's report, please provide information on any legal provisions aimed at ensuring that all persons deprived of liberty, including persons held incommunicado, irrespective of the place of detention, can communicate with, and be visited by, their families, lawyers or any other persons of their choice and, in the case of foreign nationals, can communicate with the relevant consular authority, in accordance with article 17 (2) (d) of the Convention. In this regard, please indicate whether such safeguards apply from the moment that deprivation of liberty commences and whether any exceptions are permitted. Please indicate whether there have been complaints or reports regarding failures to observe these rights and, if so, please provide information about the proceedings undertaken and their outcomes, including any sanctions imposed (arts. 10 and 17);

(c) In relation to paragraphs 119 and 120 of the State party's report, please provide information on the independent national and international bodies or mechanisms authorized to obtain access to places of deprivation of liberty and the measures that are in place in order to ensure that they can inspect all places of deprivation of liberty (arts. 12 and 17);

(d) With regard to paragraph 121 of the State party's report, please indicate whether there are any other legal provisions that guarantee the right of any person with a legitimate interest to take proceedings before a court so that it may decide, without delay, on the lawfulness of the deprivation of liberty in cases other than those involving orders for preliminary detention and pretrial detention, as set out in article 17 (2) (f) of the Convention (art. 17);

(e) In connection with paragraphs 110, 111 and 122 to 125 of the State party's report, please describe the relationship between the National Register of Detainees and Persons Sentenced to a Custodial Penalty, the Prison Registry Office of the National Prison Institute and the National Judicial Registry. Please indicate whether the National Register contains information on all persons deprived of their liberty in all places of deprivation of liberty of the State and, if not, whether there are other registers in which the deprivation of liberty is recorded. Please indicate who may have access to registers of persons deprived of their liberty and what measures, including supervisory measures, are taken to ensure that all the registers contain all the information listed in article 17 (3) of the Convention and are updated. In relation to paragraphs 143 and 144 of the report, please provide additional information on the domestic legal provisions covering the obligation to record all deprivations of liberty and describe the sanctions set out by law in cases where an official does not record a deprivation of liberty, records incorrect or inaccurate information, refuses to provide information on a deprivation of liberty or provides inaccurate information. Please also indicate whether there have been any complaints of such cases and, if so, provide information on the sanctions imposed and the measures taken to ensure that such omissions are not repeated (arts. 17, 18 and 22);

(f) In relation to paragraph 128 of the State party's report, please provide additional information on the provisions that guarantee the right of any person with a legitimate interest to have access to the information referred to in article 18 (1) of the Convention and indicate whether there are any restrictions on access to this information. In relation to paragraphs 136 and 137 of the report, please clarify how article 71 (4) of the new

Code of Criminal Procedure would be applied as a prompt and effective judicial remedy in a case of enforced disappearance to ensure that any person with a legitimate interest could obtain, without delay, the information referred to in article 18 (1) of the Convention. Please also provide additional information on the application of the remedy of *habeas data* as a means of obtaining access to the information referred to in article 18 (1) of the Convention, including information on who can apply for such a remedy in a case of enforced disappearance. In relation to paragraph 130 of the report, please provide additional information on the measures taken to ensure the protection of the persons specifically mentioned in article 18 (1) of the Convention from all forms of ill-treatment, intimidation or punishment (arts. 17, 18, 20 and 22);

(g) In relation to paragraphs 139 to 141 of the State party's report, please provide additional information on the measures that are in place for determining beyond a doubt that persons who have been deprived of their liberty have been released, not only from prison but from all places of deprivation of liberty, and for ensuring the safety and physical integrity of released persons and their ability to exercise their rights. Please also provide additional information on the authorities responsible for supervising their release (art. 21).

18. In relation to paragraphs 145 to 168 of the State party's report, please indicate whether the State party intends to have specific training programmes on enforced disappearance and the Convention, in particular on the prevention and investigation of cases of enforced disappearance, for all military or civilian law enforcement officers, members of the security forces, medical staff, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty (art. 23).

V. Measures to provide reparation and protect children from enforced disappearance (arts. 24–25)

19. Please provide information on how the term "victim" is defined outside the context of the period of violence of 1980–2000 and on the requirements to be met (including whether it is necessary for criminal proceedings to have been initiated) and the procedures used in order for a victim of enforced disappearance to be recognized as such. Please describe how the definitions of a victim set out in Act No. 30470 on the search for persons who disappeared during the violence of 1980–2000 and in the regulations of the Central Register of Victims of the Reparations Council are in accordance with the definition contained in article 24 (1) of the Convention (art. 24).

20. Please provide information on existing laws in areas such as social welfare, financial matters, family law and property rights pertaining to the legal status of persons whose disappearance occurred outside the context of the period of violence of 1980–2000 and whose fate has not been clarified and those pertaining to the legal status of their family members. Please clarify whether judicial declarations of absence granted under Act No. 28413 are entered in the National Register of Identity and Civil Status as decrees of presumption of death and whether persons for whom a declaration of absence has been issued are listed in the National Register of Detainees. In this connection, please provide updated information on the number of certificates of absence by reason of enforced disappearance issued by the Ombudsman's Office and the number of cases recorded as such in the National Register of Identity and Civil Status. Please also provide information on the impact of judicial declarations of absence by reason of enforced disappearance in areas such as social welfare, financial matters, family law and property rights (art. 24).

21. Please provide information on the measures in place to guarantee reparation to victims of enforced disappearances occurring outside the context of the period of violence of 1980–2000 and indicate whether access to reparation is contingent upon the issuance of a judgment in criminal proceedings. In relation to paragraph 205 of the State party's report, specify how many of the persons registered in the Central Register of Victims are victims of enforced disappearance as defined in article 24 (1) of the Convention and provide information on the number of applications received for registration in the Central Register of Victims by reason of enforced disappearance. Please also explain how the State party ensures that all victims of enforced disappearance, including those who do not meet the

requirements set out in the regulations of the Central Register of Victims of the Reparations Council, are recognized as such and have access to the corresponding rights to reparation. Please also indicate what results have been obtained to date under the Comprehensive Reparations Plan, whether the reparations granted to victims include all the forms of reparation provided for in article 24 (5) of the Convention and whether the established forms of reparation incorporate a gender perspective. Please also provide information on the progress made in promoting the right to truth, justice and reparation and guarantees of non-repetition (art. 24).

22. In relation to paragraphs 175 and 177 of the State party's report, please provide additional information on existing mechanisms for guaranteeing the right of victims of enforced disappearances, both those that occurred in the context of the period of violence and those occurring outside of that context, to be informed of the progress and outcome of the corresponding investigations and to participate in the relevant proceedings (arts. 12 and 24).

23. Please provide information on the existing protocols for searching for, locating and releasing persons who have disappeared outside the context of the period of violence of 1980–2000, including those involved in recent or current cases. With regard to paragraphs 185 to 200 of the State party's report, please provide information on the progress made in locating, identifying and returning the remains of victims of enforced disappearance and on the difficulties encountered in doing so. Please also indicate whether there is a system for undertaking urgent searches immediately when disappeared persons are thought to be still alive. In this respect, please describe the relationship between the National Register of Disappeared Persons and Burial Sites and the AMPM database mentioned in paragraph 201 of the report. Please indicate whether the AMPM database includes genetic material from persons who disappeared outside the context of the period of violence of 1980–2000 and their family members. Please also provide detailed information on the progress made in setting up the genetic databank whose establishment is provided for in Legislative Decree No. 1398 of 7 September 2018 and which is to be administered by the General Directorate for the Search for Disappeared Persons of the Ministry of Justice and Human Rights (arts. 19, 22 and 24).

24. Please provide information on the legislation and sanctions applicable to the abduction of children subjected to enforced disappearance, children whose parents were subjected to enforced disappearance and babies born to women in captivity who were victims of enforced disappearance and those applicable to the falsification, concealment or destruction of documents attesting to the true identity of such children. With regard to paragraphs 241 and 242 of the State party's report, please clarify whether, aside from the procedures mentioned above, there are specific legal procedures for guaranteeing the right of disappeared children, and adults who believe they are the children of parents subjected to enforced disappearance, to recover their true identity. Also please clarify if procedures of this nature exist for reviewing and, if necessary, annulling any adoption, placement or guardianship arrangement originating from an enforced disappearance, including any possible limitations on the invalidation of such adoptions, placements or guardianship arrangements. Please also provide information on the procedures in place for guaranteeing families the right to search for child victims of enforced disappearance and describe the efforts made and mechanisms set up to enable persons to search for and identify, on their own initiative, disappeared children and the procedures made available in the country's domestic courts for returning such children to their families of origin, including the use of DNA databases. Lastly, please provide information on the State party's involvement in international cooperation efforts to identify and search for the children of disappeared parents (art. 25).