



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 Peru under article 29 (1) of the Convention*

1. The Committee considered the report submitted by Peru under article 29 (1) of the Convention (CED/C/PER/1) at its 281st and 282nd meetings (CED/C/SR.281 and CED/C/SR.282), held on 10 and 11 April 2019. At its 291st meeting, held on 17 April 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Peru under article 29 (1) of the Convention and the information contained therein. The Committee would also like to express its appreciation for the open and constructive dialogue with the diverse and representative delegation from the State party on the measures taken to implement the Convention.

3. The Committee would also like to thank the State party for its written replies (CED/C/PER/Q/1/Add.1) to the list of issues (CED/C/PER/Q/1), which were supplemented by the oral statements by the delegation during the dialogue, and for the additional information provided in writing.

B. Positive aspects

4. The Committee commends the State party for having ratified all the United Nations core human rights instruments and seven optional protocols thereto, and for having recognized the competence of the Committee to receive and consider individual communications (article 31 of the Convention). It also welcomes the fact that the State party has ratified the Inter-American Convention on Forced Disappearance of Persons and the Rome Statute of the International Criminal Court.

5. The Committee also welcomes the steps taken by the State party to address issues related to the Convention, including:

(a) The adoption, in 2005, of Act No. 28592 establishing the Comprehensive Reparations Plan, and, in 2006, of its implementing regulations (Supreme Decree No. 015-2006-JUS);

(b) The adoption, in 2016, of Act No. 30470 on the Search for Persons Who Disappeared during the Violence of 1980–2000;

(c) The adoption, in 2016, of the National Plan on the Search for Persons Who Disappeared between 1980 and 2000, and the establishment of a working group comprising

* Adopted by the Committee at its sixteenth session (8–18 April 2019).



humanitarian actors involved in the search for disappeared persons (Ministerial Decision No. 0373-2018-JUS);

(d) The amendment, in 2017, of article 320 of the Criminal Code, which criminalizes enforced disappearance (Legislative Decree No. 1351);

(e) The creation, in 2017, of the Directorate General for the Search for Disappeared Persons (Supreme Decree No. 013-2017-JUS);

(f) The creation, in 2018, of the Genetic Databank for Use in Locating Disappeared Persons in Peru (Legislative Decree No. 1398), and the adoption, in 2019, of its implementing regulations (Supreme Decree No. 014-2018-JUS).

6. The Committee notes with satisfaction that the State party has extended an open invitation to all special procedures mandate holders of the Human Rights Council to visit the country.

C. Principal subjects of concern and recommendations

7. The Committee finds that, at the time of adoption of the present concluding observations, the legislation in force, its implementation and the performance of certain authorities are not in full compliance with the State party's obligations under the Convention. The Committee encourages the State party to implement its recommendations, which are made in a constructive spirit with the aim of ensuring that the existing legal framework and the manner in which it is implemented by State authorities are fully consistent with the rights and obligations set forth in the Convention.

General information

Individual and inter-State communications

8. The Committee is concerned that the State party has not recognized the competence of the Committee to receive and consider inter-State communications under article 32 of the Convention.

9. The Committee encourages the State party to recognize the Committee's competence to receive and consider inter-State communications under article 32 of the Convention.

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

Absolute prohibition of enforced disappearance

10. The Committee takes note of the figures provided by the State party on cases of enforced disappearance that took place in Peru between 1980 and 2000 and were recorded by different State agencies. However, it is concerned to note that there is no consolidated register that also includes cases of enforced disappearance that have occurred since 2000. It also finds that there are gaps and inconsistencies in the figures and that they have not been analysed in such a way as to discern different groups of victims, the causes and dynamics of enforced disappearance and patterns of behaviour, whereas such analyses are essential for the development of an effective public policy to prevent the commission of this offence (art. 1).

11. The Committee urges the State party to establish a consolidated register of all cases of enforced disappearance that have occurred in Peru, including those that have taken place since the period 1980–2000. The register should reflect the total number of disappeared persons, the number who have subsequently been found, whether alive or dead, and the number who are still missing.

12. The Committee takes note of the delegation's assertion that "enforced disappearance will never be authorized" by reason of a state of emergency. The Committee is nonetheless concerned to note that national legislation does not expressly provide that exceptional

circumstances may not be invoked as a justification for derogating from or restricting the prohibition of enforced disappearance (art. 1).

13. The Committee recommends that the State party take the necessary steps to ensure that the absolute prohibition of enforced disappearance is enshrined in its national legislation, in keeping with article 1 (2) of the Convention.

Definition of enforced disappearance and appropriate penalties

14. The Committee takes note of the amendments that were made to article 320 of the Criminal Code in 2017. However, it is concerned to note that the amended definition is not fully consistent with the Convention. The definition refers to acts carried out by “public officials or public servants”, not “agents of the State”, the language used in article 2 of the Convention. Also of concern is Supreme Court plenary decision No. 9-2009/CJ-116 and its application to cases of enforced disappearance, as it prevents persons suspected of having committed the offence from being investigated if they no longer have the status of a public official or public servant at the time of the investigation. In this connection, the Committee welcomes the delegation’s statement that this plenary decision is to be set aside. The Committee is also concerned to note that the criminal legislation in force does not criminalize both of the two forms of enforced disappearance that are set out in the Convention. It notes that, under article 320 of the Criminal Code, the minimum and maximum prison sentences for the offence of enforced disappearance are set at 15 years and 35 years, respectively. However, it is concerned that the average sentence imposed for the offence is 15 years. Also troubling is the fact that enforced disappearance is not among the offences for which pardons may not be granted (arts. 2, 4, 5 and 7).

15. The Committee recommends that the State party take all necessary legal and other measures to ensure that:

(a) **The definition of enforced disappearance is fully consistent with article 2 of the Convention and refers to acts committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, as established in article 2 of the Convention;**

(b) **There are no legal provisions, including Supreme Court plenary decision No. 9-2009/CJ-116, that might hinder the investigation and prosecution of all alleged perpetrators of enforced disappearance;**

(c) **The offence of enforced disappearance is defined in both of its forms, as a separate offence (art. 2) and as a crime against humanity (art. 5);**

(d) **The offence of enforced disappearance is punished, in practice, with appropriate penalties that take due account of its extreme seriousness;**

(e) **The necessary measures are taken to make it impossible for pardons to be granted in respect of international crimes, including enforced disappearance.**

Criminal responsibility of superiors

16. The Committee notes with concern that the State party’s criminal legislation does not provide for the criminal responsibility of superiors, as set out in article 6 (1) (b) of the Convention, nor does it provide for the criminal responsibility of non-military authorities (art. 6).

17. The Committee recommends that the State party take the necessary measures to ensure that criminal legislation provides for the criminal responsibility of any superior who:

(a) **Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;**

(b) **Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance;**

(c) **Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.**

Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)

Complaints and investigations of cases of enforced disappearance

18. The Committee finds it regrettable that it has not received clear and consolidated official information on the number of complaints received, disaggregated according to whether the events in question took place before or after the entry into force of the Convention and according to the sex, age and nationality of the victim. The Committee takes note of the data provided by the delegation on the total number of investigations and convictions. In this regard, the Committee is concerned that there have been very few prosecutions and convictions in cases of enforced disappearance and that a significant proportion of such proceedings have resulted in acquittals, thereby perpetuating impunity. While the Committee takes note of the information provided by the delegation, it remains concerned about barriers to the effective investigation of cases of enforced disappearance, including: (a) the insufficient resources made available to the competent authorities; (b) restrictions on the competent authorities' access to relevant information and records, in particular information in the possession of the armed forces and the national police; (c) alleged instances in which the Ministry of Defence has used judicial conciliation proceedings as a means of suspending ongoing legal proceedings; and (d) the fact that agents of the State who are suspected of involvement in an enforced disappearance are still able to influence the investigations from other positions of power, in cases where they have been promoted despite having been suspended from duty (arts. 1, 7, 12 and 24).

19. **The Committee recommends that the State party:**

(a) **Expedite the investigations of enforced disappearance that are currently under way and ensure that all cases of enforced disappearance, without exception, are promptly investigated and that alleged perpetrators are prosecuted and, if found guilty, punished with appropriate penalties that take into account the extreme seriousness of the offence, while ensuring that no act of enforced disappearance is left unpunished;**

(b) **Provide the authorities that are competent to investigate cases of enforced disappearance with sufficient human, financial and technical resources to carry out their work effectively;**

(c) **Ensure access to relevant information and records, particularly information in the possession of the armed forces and the national police;**

(d) **Ensure that no agent of the State, whether civil or military, who is suspected of having committed an offence of enforced disappearance is in a position to influence the progress of an investigation.**

Protection of complainants and of persons participating in the investigation of an enforced disappearance

20. The Committee takes note of the victim and witness protection and assistance programme established in 2008 and observes with concern that it refers only to "witnesses, experts, victims and collaborators involved in criminal proceedings" and does not cover all the persons referred to in article 12 (1) of the Convention. The Committee is further concerned at reports that victims, their relatives and their defence counsel have been subjected to harassment, threats, intimidation and aggression as a consequence of having filed complaints of human rights violations (arts. 12 and 24).

21. **The Committee recommends that the State party intensify its efforts to prevent and punish acts of intimidation and/or ill-treatment to which any of the persons referred to in article 12 (1) of the Convention might be subjected.**

Measures to prevent enforced disappearance (arts. 16–23)

Expulsion, return, surrender and extradition mechanisms

22. The Committee takes note of the information provided by the delegation to the effect that, in practice, persons are not expelled, returned, surrendered or extradited when there are substantial grounds for believing that they might be subjected to enforced disappearance. The Committee is nonetheless concerned that national legislation does not expressly provide for this prohibition and even permits extradition to a State in which the offence of enforced disappearance carries the death penalty, if that State gives assurances to the State party that the death penalty will not be imposed. The Committee notes the existence of special commissions that carry out proceedings related to extradition. It regrets, however, that insufficient information has been provided on the criteria and procedures applied to assess and verify a person's risk of being subjected to enforced disappearance in the country of destination before a decision on expulsion, return, surrender or extradition is made. The Committee is also concerned that, under the Legislative Decree on Migration (No. 1350) and its implementing regulations (Supreme Decree No. 007-2017-IN), decisions on expulsion have immediate effect, and that, according to information provided by the delegation, the only available remedy in such cases is a petition for habeas corpus (arts. 13 and 16).

23. **The Committee recommends that the State party take all necessary measures to:**

(a) **Expressly incorporate into its domestic law a prohibition on expelling, returning, surrendering or extraditing a person where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance;**

(b) **Ensure that there are clear and specific criteria and procedures for assessing and verifying a person's risk of being subjected to enforced disappearance in the country of destination before an expulsion, return, surrender or extradition is carried out, and that, if there is such a risk, the person concerned is not expelled, extradited, surrendered or returned;**

(c) **Ensure effective access to a remedy of appeal, with suspensive effect, against any decision to expel, return, surrender or extradite a person.**

Fundamental legal safeguards and registers of persons deprived of their liberty

24. While the Committee takes note of the information provided by the delegation with respect to the safeguards set out in the Constitution and in the new Code of Criminal Procedure, it is concerned about reports that persons deprived of their liberty have been transferred without due notification of their relatives or lawyers. The Committee welcomes the State party's undertaking, expressed during the dialogue, to ensure that all the information referred to in article 17 (3) of the Convention is included in existing registers of persons deprived of their liberty, in particular the National Register of Detainees and Persons Sentenced to Imprisonment (art. 17).

25. **The Committee recommends that the State party take all necessary measures to ensure that:**

(a) **From the outset of deprivation of liberty, all persons deprived of their liberty have immediate access to a lawyer, and their families or any other persons of their choosing are informed of their detention and the place at which they are being held, and of any place to which they are transferred;**

(b) **All cases of deprivation of liberty, without exception, are entered in up-to-date official registers and/or records, including, at a minimum, the information required under article 17 (3) of the Convention.**

Training on the Convention

26. The Committee takes note of the human rights training provided to some agents of the State. It observes, however, that this training does not include specific and regular training on enforced disappearance and the provisions of the Convention (art. 23).

27. **The Committee recommends that the State party continue its efforts to provide human rights training for agents of the State and, in particular, that it ensure that all law enforcement personnel, whether civil or military, 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 officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1) thereof.**

Measures to provide reparation and to protect children from enforced disappearance (arts. 24 and 25)**Definition of “victim” and the right to obtain reparation and prompt, fair and adequate compensation**

28. The Committee is concerned to note that, under Act No. 30470 on the Search for Persons Who Disappeared during the Violence of 1980–2000 and Act No. 28592 establishing the Comprehensive Reparations Plan, only disappeared persons and members of their families, not all the persons referred to in article 24 (1) of the Convention, are regarded as victims, and that this definition excludes persons such as the spouses or partners of lesbian, gay, bisexual, transgender and intersex persons. The Committee is also concerned that, under Act No. 28592, members of subversive organizations are not regarded as victims and are expressly excluded from the programmes referred to in article 4 of the Act, and about reports that, in practice, this exclusion applies also to members of the families of such persons. The Committee observes that the number of applications for registration in the Central Register of Victims by reason of enforced disappearance is much higher than the number of victims actually registered. In this regard, the Committee is concerned about the excessive requirements for inclusion in the Register, as they may have left a large number of victims of enforced disappearance without access to reparations. It is further concerned about the lack of measures to provide reparations to victims of enforced disappearances that have taken place since 2000 (art. 24).

29. **The Committee recommends that the State party take the necessary measures to:**

(a) **Ensure that the definition of a victim in domestic law is consistent with article 24 (1) of the Convention, in order to ensure that any individual, without exception, who has suffered harm as the direct result of an enforced disappearance can exercise the rights set forth in the Convention;**

(b) **Ensure that all victims of enforced disappearance have access to full reparation and that all obstacles and restrictions hindering their registration in the Comprehensive Reparations Programme are eliminated;**

(c) **Ensure that the system for awarding reparations takes into account the personal circumstances of the victims, such as their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability, and is fully in line with the provisions of article 24 (4) and (5);**

(d) **Ensure that full reparation is available to victims of enforced disappearances that have taken place subsequent to the period 1980–2000.**

Legal situation of disappeared persons whose fate has not been clarified

30. The Committee welcomes the delegation’s statement that the authorities intend to revise the procedure for regularizing the legal situation of the relatives of persons who disappeared in the period 1980–2000. However, it is concerned that, at present, in order to regularize their situation, judicial declarations of absence by reason of enforced

disappearance granted under Act No. 28413 must be recorded in the National Registry of Identification and Civil Status as decrees of presumption of death, even though the fate of such persons has not been ascertained. In this regard, the Committee is concerned to note that the number of such cases that have been recorded in the National Registry is considerably smaller than the number of absences by reason of enforced disappearance that have been registered by the Ombudsman's Office (art. 24).

31. The Committee recommends that the State party adopt the legislative measures necessary to ensure that, in accordance with article 24 (6) of the Convention, the legal situation of disappeared persons whose fate or whereabouts have not been clarified and that of their relatives is regularized in fields such as social welfare, family law and property rights, without the need to declare that the disappeared person is presumed dead. In this connection, the Committee encourages the State party to provide, by law, for the issuance of declarations of absence by reason of enforced disappearance.

Search for disappeared persons and return of remains

32. The Committee welcomes the creation of a genetic databank for use in locating disappeared persons in Peru and of the Directorate General for the Search for Disappeared Persons. However, it is concerned to note the limited progress made to date in searching for disappeared persons whose whereabouts are unknown and the potential difficulty of ensuring coordination between the Directorate General and the specialized forensic team of the Institute of Legal Medicine and Forensic Sciences. The Committee is further concerned at the lack of a system for the immediate launch of urgent search operations in respect of persons who might have been subjected to enforced disappearance since the period 1980–2000 (arts. 19 and 24).

33. The Committee recommends that the State party intensify its efforts to search for, locate and release all disappeared persons and, in the event that they are found dead, to arrange for the dignified return of their remains. In particular, it should:

- (a) **Ensure in practice that, when a disappearance is reported, a search is initiated automatically, without delay;**
- (b) **Ensure that the search is conducted by the competent authorities and that the relatives of the person concerned may take part in it if they so wish;**
- (c) **Provide for effective coordination, cooperation and cross-checking of data between the agencies responsible for searching for disappeared persons and, in the event that such persons are found dead, for identifying their remains;**
- (d) **Provide the agencies responsible for such searches with the necessary human, financial and technical resources;**
- (e) **Ensure that the investigations continue until the fate of the disappeared person has been clarified.**

Legislation concerning the wrongful removal of children

34. The Committee finds it regrettable that it has not received sufficient information on the measures in place under domestic law to prevent and punish the acts referred to in article 25 (1) of the Convention, to return the children referred to in article 25 (1) (a) to their families of origin and to help adults who believe themselves to be the children of parents subjected to enforced disappearance to have their true identity re-established (art. 25).

35. The Committee recommends that the State party:

- (a) **Review its criminal legislation with the aim of incorporating as specific offences the acts described in article 25 (1) of the Convention and of providing for appropriate penalties that take into account the extreme seriousness of the offences;**
- (b) **Establish specific procedures for returning the children referred to in article 25 (1) (a) to their families of origin;**

(c) Establish specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship that originated in an enforced disappearance and for re-establishing the true identity of the children concerned, with retroactive effect.

D. Dissemination and follow-up

36. 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.

37. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves are subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

38. The State party is encouraged to widely disseminate the Convention, its report submitted under article 29 (1) of the Convention, its 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.

39. In accordance with the Committee's rules of procedure, the State party is requested to provide, no later than 18 April 2020, relevant information on the implementation of the Committee's recommendations contained in paragraphs 15 (definition of enforced disappearance and appropriate penalties), 29 (definition of "victim" and the right to obtain reparation) and 33 (search for disappeared persons) of the present concluding observations.

40. In accordance with article 29 (4), of the Convention, the Committee requests the State party to submit, by 18 April 2025, specific, up-to-date information on the implementation of all its recommendations, as well as any other new information relating to the implementation of the obligations contained in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29 of the Convention (CED/C/2, para. 39). The Committee encourages the State party, when preparing this information, to consult civil society, including organizations of relatives of victims.