



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

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Item 6 of the provisional agenda

Consideration of reports of States parties to the Convention

List of issues to be taken up in connection with the consideration of the report presented by Argentina under article 29, paragraph 1, of the Convention (CED/C/ARG/1)

I. General information

1. Please provide information on the report preparation process and, in particular, on the consultations held with different governmental agencies, the Ombudsman, organizations of families of victims, human rights defenders who are active in the area of enforced disappearances, NGOs and other interested parties.
2. Please indicate whether or not the International Convention for the Protection of All Persons from Enforced Disappearance is to be given constitutional status.
3. Please provide examples, if any are available, of legal cases in which the provisions of the Convention and/or article 142 ter of the Criminal Code have been invoked and/or applied.

II. Definition of enforced disappearance as a criminal offence (arts. 1 to 7)

4. With regard to the crime of enforced disappearance referred to in article 142 ter of the Criminal Code, please clarify what is meant by “public official” in Argentine law and, in particular, whether all State agents are categorized as public officials (arts. 2 and 4).
5. The Committee has been informed that amendments to the Criminal Code are being proposed. Please clarify whether there are plans to modify any provisions relating to the crime of enforced disappearance and/or the responsibility regime relating to that crime. In addition, please provide information on the status of this process and indicate the time frame for the passage of the amendments to the Code and for the amended Code’s entry into force (arts. 2, 4 and 7).

6. Please provide detailed information on the measures in place with respect to the prohibition and prosecution of the acts defined in article 2 of the Convention when they are carried out by persons or groups of persons who are acting without the authorization, support or acquiescence of the State (art. 3).

7. Please provide detailed information on current legislation on the offence of enforced disappearance, including attempted enforced disappearance, and comment on the alignment of the relevant laws with article 6, paragraph 1 (a), of the Convention. In particular, please state whether, under the national laws in force, any person who orders or induces the commission of an enforced disappearance or is an accomplice to an enforced disappearance may be held to be criminally responsible for that offence. Please also provide information on whether existing legislation includes provisions that guarantee that a person that refuses to obey an order that prescribes, authorizes or encourages enforced disappearance will not be punished (arts. 6 and 23).

8. Please indicate whether there are plans to rescind the existing legislative provision under which due obedience constitutes grounds for exemption from punishment, as stipulated in article 34, paragraph 5, of the Criminal Code, for commission of the crime of enforced disappearance (art. 6).

III. Criminal responsibility and mutual assistance in respect of enforced disappearance (arts. 8 to 15)

9. Please clarify what the applicable statute of limitations is under current legislation for the crime of enforced disappearance as set forth in article 142 ter of the Criminal Code (art. 8).

10. Please indicate whether current legislation provides for Argentine jurisdiction over the offence of enforced disappearance (Criminal Code, art. 142 ter) in the cases referred to in article 9, subparagraphs 1 (b) and (c) and paragraph 2, of the Convention. In addition, please indicate whether the provision dealing with jurisdiction set forth in article 118 of the Constitution (paragraph 47 of the report) is applicable to the offence of enforced disappearance described in article 142 ter of the Criminal Code. Please also provide detailed information on the laws related to article 10 of the Convention (arts. 9, 10 and 11).

11. With regard to paragraph 59 of the report, please specify what legal provisions prevent military authorities from investigating or prosecuting cases of enforced disappearance (art. 11).

12. Please explain what mechanisms are in place to provide protection against all forms of intimidation or ill-treatment for complainants, as well as for victims and witnesses, relatives of the disappeared person and their defence counsel, and persons participating in the investigation. Please also describe the protective measures that can be ordered by the courts (see paragraph 80 of the report). Please indicate whether there are legal provisions and mechanisms in place that guarantee protection against any ill-treatment, intimidation or sanction for persons who request access to the information specified in article 18 of the Convention (arts. 12 and 18).

13. Please provide detailed information on the steps taken to ensure that prompt and effective investigations into cases of alleged enforced disappearance are undertaken. In addition, please indicate whether the competent authorities can undertake an investigation, even if there has been no formal complaint, in cases where there are reasonable grounds for believing that a person has been subjected to enforced disappearance (art. 12).

14. Please explain whether national laws provide for the adoption of measures to prevent suspects from being in a position to influence the progress of an investigation, as

stipulated in article 12, paragraph 4, of the Convention, whether or not they are members of the security forces and/or participate in the investigation (art. 12).

15. Please provide examples, if any, of extradition treaties that have been concluded between Argentina and other countries in which the crime of enforced disappearance is expressly established as a basis for extradition. In addition, please provide examples, if any, of instances where the Convention has been used as a basis for extradition and of cases where extradition requests have been granted in cases of enforced disappearance (art. 13).

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

16. Please provide detailed information on existing legislation on the expulsion, return or surrender of persons. Also furnish information on the identity of the competent authorities and on the applicable procedures. In particular, please indicate: (a) if, under national law, the expulsion, return or surrender of a person is prohibited when there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance or when his or her life or well-being would be threatened; and (b) whether or not it is possible to appeal a decision on expulsion, return, surrender or extradition and, if so, indicate with which authority such appeals would be filed, what procedures would be applicable and whether the appeal would have suspensive effect (art. 16).

17. Please indicate whether there is any legal provision that specifically prohibits secret or unofficial detention. In addition, please indicate whether existing legislation contains provisions that require prompt notification of and access to doctors, family members and, in the case of foreign nationals, consular officials and whether the law establishes specific conditions regarding the authorization of all persons deprived of their liberty to communicate with and be visited by their family or any other person of their choice (art. 17).

18. Please indicate whether up-to-date records are kept in all centres where persons are deprived of their liberty that include all of the information listed in article 17, paragraph 3, of the Convention. Please update the information provided in paragraph 134 of the report and indicate whether all the elements described in article 17, paragraph 3, of the Convention are being taken into account in the course of the evaluation process mentioned in paragraph 134. Also please specify whether the National Registry of Repeat Offenders referred to in paragraph 135 of the report fulfils the requirements set out in article 17, paragraph 3, of the Convention and whether it contains other information on all persons deprived of their liberty, apart from an indication of the nature of the detention centre in which they are being held (art. 17).

19. With regard to the National Genetic Databank, please provide the following information (art. 19):

(a) Are data that can be collected under the terms of article 218 bis of the Code of Criminal Procedure stored in the National Genetic Databank? If not, where are these data stored and how are they processed?

(b) Is it possible that data related to cases that may have taken place after 10 December 1983 might be stored in the National Genetic Databank?

20. Please provide information on existing laws that provide that personal information, apart from the genetic data referred to in the report, which is collected or transmitted in the course of the search for a disappeared person cannot be used or revealed for reasons other than the location of the person in question. In addition, please provide detailed information

on the content and scope of the Protection of Personal Data Act (Act No. 25326) referred to in paragraph 154 of the report (art. 19).

21. Please indicate whether training courses have been or are to be offered that specifically encompass the necessary education and information regarding the provisions of the Convention, as specified in article 23, including training on the matters referred to in paragraph 3 of that article. In particular, please discuss the training that is given to all persons who may be involved in the custody or treatment of any person deprived of liberty at the national, provincial or local level, regardless of the type of detention centre concerned (art. 23).

V. Reparations and measures to protect children from enforced disappearances (arts. 24 and 25)

22. Please indicate whether current legislation contains a definition of victims that reflects the definition set forth in article 24, paragraph 1, of the Convention and, if not, whether measures have been adopted in that regard (art. 24).

23. Please state whether current legislation provides for the possibility of declaring a person “absent by reason of enforced disappearance” outside of the time frame referred to in article 1 of Act No. 24321. If not, please provide information on the legislation applying to the legal situation of disappeared persons whose fate has not been clarified, and that of their relatives, outside of the time frame referred to in Act. No. 24321. In either case, please provide details on the procedures followed and the effects which the application of the corresponding legislation has. Also provide information on the legal implications of the certificate mentioned in paragraph 223 of the report (art. 24).

24. Please provide information on current legislation related to the reparations described in article 24, paragraphs 4 and 5, of the Convention for cases of enforced disappearance occurring after the time period covered by the laws referred to in paragraphs 184 to 189 of the report (art. 24).

25. Please provide information on the legislation applying to the acts referred to in article 25, paragraph 1 (b), of the Convention (art. 25).

26. Please indicate whether existing legislation provides for the possibility of reviewing the adoption or placement procedure, and, where appropriate, annulling any adoption or placement of children that originated in an enforced disappearance (art. 25).

27. Please indicate whether there are laws and procedures in place to make sure that, for all measures adopted by public institutions, courts, administrative authorities or legislative bodies that affect children, the primary consideration will be the best interests of the child. In addition, please provide information on the procedures used to ensure that children who are capable of forming their own views are guaranteed the right to express those views freely on all matters related to the enforced disappearance in question. Also please provide information on the extent to which their opinions are considered and/or respected (art. 25).