



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 Argentina under article 29, paragraph 1, of the Convention**

1. The Committee on Enforced Disappearances considered the report submitted by Argentina under article 29, paragraph 1, of the Convention (CED/C/ARG/1) at its 60th and 61st meetings (CED/C/SR.60 and 61), held on 4 and 5 November 2013. At its 73rd meeting, held on 13 November 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Argentina under article 29, paragraph 1, of the Convention, drafted in accordance with the reporting guidelines, and the information contained in the report. 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/ARG/Q/1/Add.1) to the list of issues (CED/C/ARG/Q/1) and for the additional information provided in statements by the delegation.

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.

4. The Committee also notes with satisfaction that the State party has recognized the Committee's competence, under articles 31 and 32 of the Convention, in respect of communications from individuals and States.

5. The Committee applauds the State party's adoption of legislative and other measures relating to the Convention, in particular those pertaining to the reform of the military justice system (Act No. 26394), the regulation of the National Genetic Data Bank (Act No. 26548)

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** Approved by the Committee at its fifth session (4–15 November 2013).



and the system of declarations of absence by reason of enforced disappearance (Act No. 24321), in addition to the various laws on reparations.

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 Argentina.

C. Principal subjects of concern and recommendations

7. The Committee recognizes that the legislation in force in the State party to prevent and impose penalties for enforced disappearances is largely in line with the provisions of the Convention and the obligations it imposes on States. The Committee notes, however, that statistical data to enable it to assess compliance with the obligations set out in the Convention is lacking. The concerns expressed below and the recommendations made are intended to help the State party to strengthen existing legislation with a view to achieving full compliance with all provisions of the Convention and to ensure that it is also implemented and put into practice in line with the rights and obligations set out in the Convention.

General information

8. The Committee welcomes the State party's intention to give the Convention constitutional status. The Committee also notes that the Convention is being cited in the jurisprudence of the national courts, even though national legislation does not clearly establish the direct applicability of its provisions.

9. **The Committee invites the State party to accelerate the legislative process with a view to giving the Convention constitutional status, as recommended by the Working Group on Enforced or Involuntary Disappearances (A/HRC/10/9/Add.1 and Corr. 1, para. 84). The Committee also calls upon the State party to take all the requisite measures to ensure express recognition of the direct applicability of the Convention's provisions.**

10. The Committee takes note of the steps taken towards coordination at the federal and provincial levels; however, it is concerned that the uniform application of the Convention throughout the national territory has not been guaranteed.

11. **The Committee encourages the State to strengthen coordination measures in the national territory and to ensure the full application of the Convention throughout the territory, with no limitations or exceptions.**

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

12. The Committee notes with satisfaction that the State party has made enforced disappearance an offence under the Criminal Code. However, it notes with concern that application of the offence of enforced disappearance is somewhat problematic in practice. The Committee takes note with interest of the information provided by the State party on the reform of the Criminal Code (art. 2).

13. **The Committee encourages the State party to ensure that the reform of the Criminal Code is fully aligned with the obligations contained in the Convention, by incorporating all those changes that are needed to ensure that its application is in line with the mandate given in article 2 of the Convention.**

Criminal responsibility and judicial cooperation in matters of enforced disappearance (arts. 8–15)

14. The Committee notes with satisfaction the information from the State party on the progress made in the investigation and prosecution of persons responsible for offences of enforced disappearance perpetrated during the military dictatorship. However, the Committee expresses its concern about new cases of enforced disappearance in recent times, particularly targeting young persons in situations of extreme poverty and social marginalization; the disappearances are characterized by police violence and arbitrary detention, and are being used to cover up crimes and escape punishment (arts. 6 and 12).

15. The Committee encourages the State party to adopt all the necessary measures and to intensify its efforts to root out these contemporary forms of enforced disappearance. In addition, the Committee recommends that the State party should promote institutional reform of the police forces so as to eradicate violence and ensure that police officers who commit such offences are duly investigated, prosecuted and punished.

16. The Committee takes note with concern of reports of recent cases of enforced disappearance that have not been properly investigated, particularly cases in which the start of investigations was unduly delayed and all the persons allegedly involved in the crime were not investigated (art. 12).

17. In this connection, the Committee urges the State party to take all measures necessary to ensure that all cases of enforced disappearance are investigated in a complete, impartial, diligent and effective manner, even in the absence of a formal complaint, and that those investigations be pursued until the fate or the whereabouts of the disappeared person have been established.

18. The Committee acknowledges the work of prosecutors in investigating the human rights violations that occurred during the dictatorship; however, it is concerned about the news that some prosecutors with extensive experience in handling cases of enforced disappearance have been relieved of their duties (art. 12).

19. On this matter, the Committee recommends that, in view of the complexity of the exercise, the investigation of the crime of enforced disappearance should be handled by specially trained bodies, and that prosecutors' offices, in particular, should have the required level of specialist skills and experience in the investigation of such crimes.

20. The Committee welcomes the measures for the protection of victims and witnesses that currently exist in the State party. Nevertheless, the Committee is concerned about the following:

(a) The national protection programme for witnesses and state's witnesses (*Programa Nacional de Protección a Testigos e Imputados*) does not explicitly provide for its use in cases of enforced disappearance;

(b) In many cases, the conditions under which victims and witnesses are required to appear in court and provide testimony result in further traumatization and revictimization;

(c) The inadequacy of protection measures for witnesses deprived of their liberty; and

(d) The high-profile case of Jorge Julio López, a witness who was the victim of enforced disappearance, remains unresolved to the present day and continues to have an intimidating effect on other potential witnesses (art. 12).

21. **The Committee urges the State party to take all the necessary steps, legislative or otherwise, to ensure the effective implementation of existing protective measures and to make them applicable to all persons referred to in article 12, paragraph 1, of the Convention. In particular, it urges it to carry out the measures necessary to protect witnesses who are deprived of their liberty.**

22. The Committee notes with concern the lack of clarity about the guarantees available in existing legislation to prevent persons suspected of having committed an offence of enforced disappearance from influencing the course of the investigations. The Committee likewise notes with concern reports of cases in which the judicial authorities have not taken the necessary measures to keep police institutions and individuals under suspicion away from the investigations (art. 12).

23. **The Committee recommends that, in conformity with article 12, paragraph 4, of the Convention, the State party should take the necessary measures to ensure that persons suspected of having committed the offence of enforced disappearance are not in a position to influence or hinder the course of an investigation, directly or indirectly. It likewise recommends that the State party should adopt a legal provision specifically establishing a mechanism that will act as a guarantee that law enforcement officials suspected of having committed enforced disappearances do not participate in the investigation of those disappearances and that it should take all the necessary measures to ensure that the guarantee is respected in all investigations.**

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

24. The Committee takes note of the State party's assurances that there are no secret detentions in Argentina. However, the Committee observes with concern the existence of domestic regulations that make it possible for a person who has not been apprehended in the act of committing an offence to be placed in administrative detention without a warrant or subsequent judicial review. The Committee notes that, according to the information it has received, the enforced disappearances that are now occurring are generally linked to arbitrary administrative detention (art. 17).

25. **The Committee recommends that the State party should adopt all the necessary measures, including legislative, to ensure that all persons detained in the national territory are immediately placed under judicial supervision.**

26. The Committee takes note with great concern of reports that individuals are now being transferred from detention centres in an arbitrary manner or in order to cover up punishments being applied outside the regular process, which in some cases exposes detainees to the risk of enforced disappearance (art. 17).

27. **The Committee recommends that the State party should take all the necessary steps, including legislative, to ensure that all transfers are subject to judicial control and that they are only carried out with the knowledge of the detainee's counsel and family or other relatives. The Committee likewise calls on the State party to put in place the inspections and oversight necessary to prevent unlawful transfers and to ensure that such practices are appropriately punished.**

28. The Committee notes with interest the information provided by the State party regarding the computerized register of detainees currently being prepared. Nevertheless, it remains concerned about the following:

(a) The lack of standard operating procedures for all State officials responsible for individuals deprived of their liberty, in line with article 17, paragraph 3, of the Convention;

(b) The lack of a standardized computerized system of registers covering the entire national territory;

(c) The lack of sufficient and adequate supervision of the work of persons responsible for maintaining the registers in police stations and detention centres;

(d) Reports that in some cases registers are not being properly maintained or updated (art. 17).

29. **The Committee recommends that the State party should:**

(a) **Develop a set of standard operating procedures and an identical supervisory system for all centres holding persons deprived of their liberty throughout the national territory that are fully in line with article 17, paragraph 3, of the Convention;**

(b) **Take all the necessary measures to ensure that the computerized register of detainees is set up as rapidly as possible, as a matter of urgency, and that it is fully in line with article 17, paragraph 3, of the Convention;**

(c) **Ensure that registers and individual records of persons deprived of their liberty are duly completed with the information required under article 17, paragraph 3, of the Convention and promptly updated as required;**

(d) **Put in place an effective system of checks to ensure that records are being established and kept up to date in accordance with the provisions of the Convention, with appropriate sanctions for the failure to do so, where necessary.**

30. The Committee welcomes the adoption of the law establishing a national preventive mechanism but regrets the fact that the mechanism is not yet fully operational. The Committee reiterates the importance of independent mechanisms for monitoring centres of deprivation of liberty. The Committee emphasizes the importance of making all such places throughout the national territory accessible for the purposes of the mechanism. The Committee notes with concern that, according to information it has received, the Prison System Ombudsman does not have access to centres in which minors are detained (art. 17).

31. **The Committee recommends that the national preventive mechanism should be launched and made fully operational rapidly. It also urges the State party to protect the independence of the mechanism and to ensure that the monitors have effective and immediate access to all places of deprivation of liberty throughout the national territory.**

32. While it takes note with satisfaction of the human rights training being provided to government officials, the Committee regrets the fact that training on the provisions of the Convention is not being provided on a regular basis (art. 23).

33. **The Committee recommends that the State party should step up its efforts to provide public officials with training on the provisions of the Convention, in conformity with article 23 of the Convention.**

Measures for reparation and for the protection of children from enforced disappearance (arts. 24 and 25)

34. The Committee notes with satisfaction the various laws instituting measures for reparation to victims of human rights violations that occurred during the military dictatorship. Nevertheless, the Committee regrets the fact that the provisions of the laws cover only victims of events that occurred through December 1983 and that there is no analogous legislation for later victims of enforced disappearance. The Committee points out

that it is a standing obligation of the State party to provide reparation for the victims and to establish the truth regarding the circumstances of enforced disappearances (art. 24).

35. **The Committee encourages the State party to continue its efforts to ensure that its legal system guarantees all victims of enforced disappearance the right to obtain reparation, learn the truth and receive prompt, fair and adequate compensation. The Committee urges the State party to remove the time limit in the legislation referred to in the paragraph above.**

36. The Committee notes with concern the absence of systematic statistics on reparations granted to victims, particularly in recent cases of enforced disappearance (art. 24).

37. **The Committee recommends that the State party should collect statistics on reparations granted to victims of enforced disappearance, as a tool for improving the reparation measures.**

38. The Committee takes note of Act No. 24321, which provides for the possibility of declaring absence by reason of enforced disappearance for persons who disappeared up to 10 December 1983. The Committee regrets the fact that this declaration does not extend to enforced disappearances that occurred since then (art. 24).

39. **The Committee recommends that the State party should adopt the necessary measures to recognize the right of families of persons who disappeared since 10 December 1983 to request a declaration of absence by reason of enforced disappearance.**

D. Dissemination and follow-up

40. 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.

41. The Committee wishes to emphasize the particularly cruel effect of enforced disappearances on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender 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 reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including loss of identity. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

42. 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.

43. Noting that the State party submitted its core document in 1996 (HRI/CORE/1/Add.74), 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).

44. In accordance with the Committee's rules of procedure, by 15 November 2014 at the latest the State party should provide relevant information on its implementation of the Committee's recommendations as contained in paragraphs 15, 25 and 27.

45. Under article 29, paragraph 4, of the Convention, the Committee requests the State party to submit, no later than 15 November 2019, concrete, up-to-date 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.
