



# International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General  
8 May 2019  
English  
Original: Spanish  
English, French and Spanish only

## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by the Plurinational State of Bolivia under article 29 (1) of the Convention\*

#### I. General information

1. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications (arts. 31 and 32).
2. Please provide additional information on the consultations that have taken place with 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 State party's report (CED/C/BOL/1). 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.

#### II. Definition and criminalization 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 the date of their disappearance, the number of such persons who have been located and the number of cases in which there may have been 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 occurred after the entry into force of the Convention. In the light of paragraph 20 of the State party's report, please indicate whether there is any legislation in place to specifically prohibit the invocation of exceptional circumstances as a justification for enforced disappearance (arts. 1, 2, 3 and 12).
4. With reference to the definition of enforced disappearance set forth in article 292 bis of the Criminal Code, please state what punishment would be imposed, under Bolivian law, for "arrest, detention, abduction or any other form of deprivation of liberty", for "refusal to acknowledge a deprivation of liberty or for concealment of the fate or whereabouts of the disappeared person", and on "persons or groups of persons acting with the authorization, support or acquiescence of the State". Please clarify whether the phrase "thereby impeding access to remedies and procedural safeguards" should be understood as a necessary element of intent for an act to be considered criminal conduct or whether, on the contrary, it should



be understood as a consequence thereof. Please indicate whether there are any legislative initiatives to bring the definition of enforced disappearance contained in article 292 bis of the Criminal Code into line with the definition contained in article 2 of the Convention (arts. 1, 2 and 4).

5. In connection with paragraph 23 of the State party's report, please provide additional information on how the acts defined in article 2 of the Convention are prohibited and prosecuted when they are committed by persons or groups acting without the authorization, support or acquiescence of the State. In that connection, please indicate whether any complaints of such conduct have been filed, and if so, please provide disaggregated data on the investigations carried out and their results, including the proportion of proceedings launched that resulted in convictions, and on the sanctions imposed on the perpetrators (arts. 3 and 12).

6. In relation to paragraph 25 of the State party's report, please indicate whether there are any initiatives to define enforced disappearance as a separate offence and as a crime against humanity in the Criminal Code, in accordance with the Convention (art. 5).

7. Please specify the minimum and maximum penalties established for the offence of enforced disappearance as a crime against humanity, indicate to what extent the penalties proposed for this crime, both as a separate offence and as a crime against humanity, take into account its extreme seriousness, and describe how these penalties are comparable to those handed down for similar offences. In this connection, please provide information on how the State party ensures that no amnesty decrees shall be applied to the offence of enforced disappearance. 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. In this connection, please clarify the mitigating circumstances that might apply to the offence of enforced disappearance and specify the corresponding reduction in sentences. Please also indicate how article 4 of the Criminal Code is compatible with article 7 of the Convention (arts. 2, 4, 5, 7 and 24).

8. With regard to paragraphs 28 to 35 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 under the terms set forth in article 6 (1) (b) of the Convention, including superiors of non-military authorities. In this regard, please provide information on domestic provisions that expressly prohibit the issuance by public authorities of orders or instructions directing, 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 proceedings and cooperation in criminal matters (arts. 8–15)**

9. With regard to paragraphs 40 to 43 of the State party's report, please clarify whether domestic legislation provides for the non-applicability of the statute of limitations to enforced disappearance as a separate offence. If that is the case, please provide information on the relevant provisions. If no such provisions are in place, please provide information on the applicable statute of limitations and on the measures taken to ensure that it does not commence from the moment an enforced disappearance begins. Please also clarify whether the statute of limitations applies to the bringing of criminal, civil or administrative actions by victims and provide information on the legislation guaranteeing the right of victims to an effective remedy during the term of limitation (art. 8).

10. In the light of paragraph 46 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 that connection, please include examples of cases over which the State party has exercised its jurisdiction. Please also indicate whether Bolivian 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. Please provide information on 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. Please also 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 (arts. 9 and 11).

11. Please provide information on the domestic legal measures that apply 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 (art. 10).

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

(a) With reference to paragraph 86 of the State party's report, please provide updated statistical data, disaggregated by sex, age and nationality, on: (i) the number of complaints received concerning cases of alleged enforced disappearance that occurred during the period of the dictatorship; (ii) the number of complaints received concerning cases of alleged enforced disappearance that occurred prior to the entry into force of the Convention and in which the fate of the disappeared person has not been clarified; (iii) the number of complaints received concerning cases of alleged enforced disappearance that occurred after the entry into force of the Convention; and (iv) the total number of investigations carried out and their results, including the sentences handed down to the perpetrators and the number of investigations that were initiated ex officio (art. 12);

(b) With reference to paragraph 72 of the State party's report, please clarify whether criminal prosecutions of offences of enforced disappearance are always initiated ex officio. If this is not the case, indicate the determining factors for instituting ex officio criminal prosecutions for such offences. Please provide additional information on the authorities involved in investigating enforced disappearances, the process that they follow to shed light on and establish the facts relating to an enforced disappearance, and the measures taken to ensure that the search for individuals allegedly subjected to enforced disappearance begins immediately and that the various authorities involved in searching for disappeared persons and investigating cases of enforced disappearance cooperate effectively. In that connection, please provide information on the role of the Human Rights Unit of the Prosecution Service and the Inter-Agency Council of Inquiry on Enforced Disappearances in the investigation of enforced disappearances. Please also describe the human, financial and technical resources made available to the competent authorities to enable them to conduct investigations effectively, and indicate whether the relevant officials are properly trained in the investigation of enforced disappearances. Please provide information on the measures in place to ensure that these authorities and the Ombudsman's Office have access to the relevant documentation, including documentation in the possession of the armed forces (art. 12);

(c) Please provide 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 measures provided for in law to prevent the alleged perpetrators of an enforced disappearance from influencing the investigations, including suspension from duty during an investigation when the alleged perpetrator is a military or civilian State official, and indicate whether there are any mechanisms in place to exclude a law enforcement agency or security force from 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 75 to 81 of the State party's report, please provide further information on the mechanisms in place to ensure that complainants, witnesses,

relatives of disappeared persons and their 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. Please also provide information on the procedures for gaining access to such protection mechanisms. In particular, please provide information on the system of protection established by the Act on the Protection of Complainants and Witnesses, including how the system is supplemented by or relates to the measures established in article 11 of the Organic Act No. 260 on the Public Prosecution Service. 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).

13. Please provide information on whether the Truth Commission established by the Government in August 2017 has received sufficient funding to carry out its task of investigating enforced disappearances. Please clarify whether the armed forces have made available the relevant files to assist in searching for and uncovering the truth, and whether the Truth Commission has sufficient administrative and political independence to carry out its work (arts. 12 and 24).

14. In relation to paragraphs 93 to 97 of the State party's report, please indicate whether limitations or conditions may be placed on requests for judicial assistance or cooperation under the terms of articles 14 and 15 of the Convention. Please provide additional information on the role of the Special Unit for Extradition, Cooperation in Criminal Matters and International Relations and the Ministry of Foreign Affairs in the field of judicial assistance, and confirm whether requests for judicial assistance or cooperation have been received in connection with cases of enforced disappearance, in the light of the information contained in paragraphs 93, 94, 99 and 101 of the State party's report. Please also provide information on the outcome of the requests referred to in paragraphs 94 and 101 of the State party's report. Please provide information on judicial cooperation treaties applying to enforced disappearance that have been concluded with other States parties and on existing cooperation with States not party to 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. With regard to paragraphs 103 and 104 of the State party's report, please indicate whether any similar initiatives are in place and what results they have produced (arts. 14 and 15).

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

15. In connection with paragraphs 90 to 107 of the State party's report, please provide information on the domestic legislation that prohibits the expulsion, return, surrender or extradition to another State of persons other than refugees and asylum seekers 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 describe the mechanisms and criteria that are used in determining whether such a risk exists and in assessing it. In this regard, please 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 48, 87 to 91 and 95 of the State party's report, please indicate the measures taken to ensure that the offence of enforced disappearance is extraditable under the terms of all treaties between the State party and other States, irrespective of whether or not they are parties to the Convention. Please provide information on any potential obstacles to 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 (arts. 9, 13, 14 and 16).

17. With regard to deprivation of liberty:

(a) In the light of paragraph 110 of the State party's report, please provide information on the provisions of national legislation prohibiting secret detention, including in places of deprivation of liberty other than prisons. Please indicate whether there have been cases of deprivation of liberty in places that are not officially recognized or inspected (art. 17);

(b) Please provide information on any provisions aimed at ensuring that, in law and in practice, all persons deprived of liberty, irrespective of their 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 concerning failures to give effect to these rights and, if so, please provide information about the proceedings launched and their outcomes, including any sanctions imposed (arts. 10 and 17);

(c) Please provide further information on the mandate and powers of the Service for the Prevention of Torture and on how the State party guarantees its independence. Please state whether, in addition to the mechanisms referred to in paragraphs 115 and 119 of the State party's report, any other independent national or international bodies or mechanisms are authorized to obtain access to places of deprivation of liberty, and describe the guarantees ensuring that they can inspect all places of deprivation of liberty, including those other than prisons (arts. 12 and 17);

(d) Please provide information on legal provisions guaranteeing the right of any persons with a legitimate interest to take proceedings before a court in order that the court may decide without delay on the lawfulness of the deprivation of liberty, as set out in article 17 (2) (f) of the Convention. In this regard, please provide information on the penalties for delaying or obstructing such proceedings (art 17);

(e) Please explain the relationship between the registers referred to in paragraphs 109, 111, 112, 114 and 129 of the State party's report. Please also indicate whether there is a centralized register containing information on all persons deprived of their liberty in all places of deprivation of liberty in the State party and, if not, whether there are other registers, in addition to those referred to in the paragraphs mentioned, in which the deprivation of liberty is recorded. Please provide information on 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 that they are updated. Please provide additional information on the domestic legal provisions covering the obligation to record all deprivations of liberty and on 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 paragraphs 124 to 129 of the State party's report, please provide information on the provisions that guarantee the right of any persons with a legitimate interest to have access to the information referred to in article 18 (1) of the Convention and to avail themselves of a prompt and effective judicial remedy to obtain that information without delay. In this regard, please indicate whether there are any restrictions on access to this information. 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) With reference to paragraphs 136 to 141 of the State party's report, please provide additional information on the measures that are in place for determining beyond doubt that persons set for release have indeed 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 82 to 85 and 146 to 155 of the State party's report, please indicate whether the State party intends to provide 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 to protect children against enforced disappearance (arts. 24 and 25)**

19. Please provide information on how the term "victim" is defined outside the context of the dictatorship that existed between 1964 and 1982, and on the requirements to be met – including whether it is necessary for criminal proceedings to have been initiated – and the procedures to be followed in order for a victim of enforced disappearance to be recognized as such. Please explain how the definition of victim contained in Act No. 2640 is in line with the definition contained in article 24 (1) of the Convention (art. 24).

20. Please provide information on the measures in place to guarantee reparation to victims of enforced disappearances occurring outside the context of the dictatorship, and indicate whether access to reparation is contingent upon the issuance of a judgment in criminal proceedings. With regard to paragraphs 182 and 183 of the State party's report, please indicate whether there have been any other initiatives to grant certification to victims of acts of enforced disappearance giving rise to reparation and compensation in addition to those already carried out by the National Commission on Compensation for Victims of Political Violence and the Technical Certification Commission. 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 Act No. 2640, are recognized as such and have access to the corresponding rights to reparation. In this respect, please explain how article 10 of Act No. 2640 is compatible with articles 24 (1) and (4) of the Convention insofar as it guarantees all victims of enforced disappearance the right to reparation and compensation. With regard to paragraphs 182 and 184 of the State party's report, please clarify how many requests for certification of enforced disappearance have been submitted and how many of them resulted in the granting of victim status. With regard to paragraphs 185 to 191 of the State party's report, please provide updated information on the reparations and compensation granted to victims of enforced disappearance. Please indicate whether the reparations granted to victims include all the forms of reparation established in article 24 (5) of the Convention and whether they incorporate a gender perspective (art. 24).

21. Please provide 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 that context, to be informed of the progress and outcome of the corresponding investigations and to participate in the relevant proceedings. With reference to paragraphs 159 to 164 of the State party's report, please provide information on the process for selecting members of the Truth Commission. Please provide additional information on the budget allocated to the Truth Commission and report on the results the Commission has obtained to date. With regard to paragraph 175 of the State party's report, please provide additional information on the measures relating to the right to truth that are contained in the Plurinational Policy on Human Rights for 2015–2020 (arts. 12 and 24).

22. Please provide information on the existing protocols for searching for, locating and releasing persons who have disappeared both in the context of the period of violence and

more recently. With respect to paragraph 166 of the State party's report, please provide information on the results obtained by the National Commission for the Investigation of Enforced Disappearances. With regard to paragraphs 103, 104, 165 to 169 and 172 to 175 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. In this regard, and in the light of the data provided in paragraphs 104, 172 and 176 of the State party's report, please clarify and provide updated information on the number of persons whose remains have been found, identified and returned to their families. Please also clarify the relationship between the Truth Commission and the Inter-Agency Council of Inquiry on Enforced Disappearances with regard to the location, identification and return of remains. Please also provide additional information on the functions of the system for the administration of records of enforced disappearances. Please indicate whether there is a system in place for undertaking immediate and urgent searches when a disappearance is brought to the attention of the authorities (art. 24).

23. With regard to paragraphs 104 and 176 of the State party's report, please clarify whether there is a database containing genetic data from disappeared persons and their family members to assist in the identification of victims of enforced disappearance, including outside the context of the dictatorship. If there is not, please indicate whether steps have been taken to establish such a database and whether it contains genetic material from persons whose disappearance occurred outside the context of violence and from their family members (arts. 19, 22 and 24).

24. Please provide information on existing legislation in areas such as social welfare, financial matters, family law and property rights pertaining to the legal status of disappeared persons whose fate has not been clarified and to that of their family members. Please also provide information on existing legislation and administrative procedures that guarantee the rights of victims to form and participate in associations working to combat enforced disappearances (art. 24).

25. 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 on those applicable to the falsification, concealment or destruction of documents attesting to the true identity of such children. Please provide information on the procedures in place to guarantee the right of disappeared children, and adults who believe they are the children of parents subjected to enforced disappearance, to recover their true identity, and to review and, if necessary, annul any adoption, placement or guardianship arrangement originating from an enforced disappearance. Please include information on 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, on the efforts made and mechanisms set up to enable persons to search for and identify, on their own initiative, disappeared children and on the procedures made available in the 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 search for and identify the children of disappeared parents (art. 25).