



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
24 October 2019
English
Original: Spanish

Committee on Enforced Disappearances

Concluding observations on the report submitted by the Plurinational State of Bolivia under article 29 (1) of the Convention*

1. The Committee considered the report submitted by the Plurinational State of Bolivia under article 29 (1) of the Convention (CED/C/BOL/1) at its 297th and 301st meetings (CED/C/SR.297 and 301), held on 1 and 4 October 2019. At its 310th meeting, held on 10 October 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by the Plurinational State of Bolivia under article 29 (1) of the Convention and the information contained therein. The Committee also expresses its appreciation for the open and constructive dialogue with the high-level delegation of the State party about the measures taken to implement the provisions of the Convention.

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

B. Positive aspects

4. The Committee welcomes the fact that the State party has ratified all the core United Nations human rights treaties and nine of their optional protocols. It also commends the State party on its ratification of the Inter-American Convention on Forced Disappearance of Persons and the Rome Statute of the International Criminal Court.

5. The Committee welcomes the measures taken by the State party in areas relevant to the Convention, such as:

- (a) The establishment of the Truth Commission (Act No. 879) in 2016;
- (b) The enactment of Act No. 458 on the Protection of Complainants and Witnesses of 19 December 2013;
- (c) The criminalization of enforced disappearance in article 292 bis of the Criminal Code through Act No. 3326 of 2006;
- (d) The adoption of Act No. 2640, in 2004, and its regulations (Supreme Decree No. 28015 of 22 February 2005 and Supreme Decree No. 29214 of 2 August 2007), which

* Adopted by the Committee at its seventeenth session (30 September–11 October 2019).



establish the procedure for compensating persons subjected to acts of political violence between 1964 and 1982;

(e) The establishment of the Inter-Agency Council of Inquiry on Enforced Disappearances in 2003 pursuant to Supreme Decree No. 27089.

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 the authorities of the State party are fully consistent with the rights and obligations set forth in the Convention.

1. 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 individual and inter-State communications (arts. 31 and 32).

9. **The Committee encourages the State party to recognize the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention.**

2. 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 between 1964 and 1982. However, it 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 the national territory. 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.**

Definition of enforced disappearance and appropriate penalties

12. The Committee welcomes the incorporation in 2006 of the crime of enforced disappearance into the Criminal Code through article 292 bis. However, it is concerned that the phrase "thereby impeding access to remedies and procedural safeguards" included in the definition may be interpreted as a necessary element of intent (*animus*) for an act to be considered criminal conduct rather than being understood as a consequence thereof. The Committee is also concerned that the criminal legislation in force does not criminalize both of the two forms of enforced disappearance that are set out in the Convention. While the Committee notes the minimum (5 years) and maximum (15 years) sentences for an autonomous crime of enforced disappearance, it is concerned that the minimum sentence is not commensurate with the extreme seriousness of the offence and that criminal legislation does not include the mitigating and aggravating circumstances listed in article 7 (2) of the Convention (arts. 2, 4, 5 and 7).

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

(a) **The phrase “thereby impeding access to remedies and procedural safeguards” in article 292 bis of the Criminal Code is understood as a consequence of the commission of the crime of enforced disappearance and not as a necessary element of intent (animus) for the act to be considered criminal conduct, including through appropriate training for judges and prosecutors;**

(b) **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);**

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

(d) **All the mitigating and aggravating circumstances referred to in article 7 (2) of the Convention are included.**

Criminal responsibility of superiors and due obedience

14. The Committee notes with concern that criminal legislation: (a) 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; and (b) does not expressly provide that due obedience may not be invoked to justify enforced disappearance (arts. 6 and 23).

15. **The Committee recommends that the State party take the necessary measures to ensure that criminal legislation:**

(a) **Incorporates the responsibility of superiors under the terms set out in article 6 (1) (b) of the Convention;**

(b) **Expressly prohibits the invocation of the orders or instructions of a superior to justify an offence of enforced disappearance.**

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

Jurisdiction over offences of enforced disappearance

16. The Committee is concerned that criminal legislation does not guarantee that the State party can exercise jurisdiction over offences of enforced disappearance committed abroad, as required by article 9 (1) (b) and (c) and (2) of the Convention, or bring criminal proceedings in accordance with article 11 (1) of the Convention (arts. 9 and 11).

17. **The Committee recommends that the State party take the necessary measures to fully guarantee that the Bolivian courts can exercise jurisdiction over all offences of enforced disappearance, including those committed against Bolivian nationals abroad.**

Independent and impartial investigation

18. The Committee is concerned that national legislation does not specifically provide for the exclusion of the jurisdiction of military courts to investigate allegations of enforced disappearance committed by military personnel (art. 11).

19. **The Committee recommends that the State party ensure that crimes of enforced disappearance allegedly committed by members of the armed forces are investigated and prosecuted by competent, independent and impartial prosecutors and judges who have no institutional ties to the entity to which the individual under investigation belongs.**

Complaints and investigations of cases of enforced disappearance

20. The Committee regrets that it has not received clear and consolidated official information on the number of complaints of enforced disappearance received. It is concerned at the low number of prosecutions and convictions for this crime, as well as

reports of obstacles to effective investigation, including: (a) a lack of coordination between the authorities responsible for investigations of enforced disappearance; (b) insufficient resources available to the competent authorities; (c) restricted access by the competent authorities, the Truth Commission and the Ombudsman's Office to the information contained in the archives concerning the armed forces; and (d) the lack of measures in the legal system to prevent alleged perpetrators of enforced disappearance from influencing investigations, including suspension from duty during the investigation if the alleged perpetrator is a State agent, whether civil or military (arts. 1, 7, 12 and 24).

21. 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 are promptly and impartially 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 in practice to all relevant information and, in particular, the information contained in the archives concerning the armed forces;**

(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

22. The Committee takes note of the Programme for the Protection of Victims, Witnesses, Complainants and Members of the Public Prosecution Service and the fact that none of the participants in the programme are involved in proceedings connected to the crime of enforced disappearance. However, the Committee regrets that it has not received detailed information on the practical implementation of the programme and its effectiveness (arts. 12 and 24).

23. The Committee recommends that the State party take the necessary measures to ensure the effectiveness of the Programme for the Protection of Victims, Witnesses, Complainants and Members of the Public Prosecution Service and to provide it with the resources necessary to enable it to function properly.

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

Expulsion, return, surrender and extradition mechanisms

24. The Committee is concerned that national legislation does not explicitly prohibit the expulsion, return, surrender or extradition of a person where there are substantial grounds to believe that he or she is at risk of being subjected to an enforced disappearance. It regrets the lack of information on the criteria and procedures applied to assess a person's risk of being subjected to enforced disappearance in the country of destination before a decision is taken on expulsion, return, surrender or extradition (arts. 13 and 16).

25. 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.

Fundamental legal safeguards and registers of persons deprived of their liberty

26. The Committee is concerned about reports that, in practice, the due process guarantees of detainees, including the rights to access legal counsel and to communicate with their families, are not always respected while they are deprived of their liberty. It is also concerned that the information provided by the State party does not clearly specify which guarantees are restricted during incommunicado detention (arts. 17, 18, 19 and 20).

27. The Committee recommends that the State party take the necessary measures to ensure that, from the outset of deprivation of liberty, all detained persons, including persons held in incommunicado detention, have immediate access to a lawyer and can communicate with their families or any other person of their choice and that their families are informed of their deprivation of liberty and where they are being detained.

28. The Committee notes the existence of the Bolivian prison information system (SIPENBOL), which is currently being rolled out, and the computerized system of the Supreme Court of Justice (TULLIANUS). However, it regrets the lack of information on the existence of registers of persons deprived of liberty outside the prison system and is concerned that, pending the full implementation of the SIPENBOL system, existing records do not contain all the information referred to in article 17 (3) of the Convention. It also regrets that it has not received sufficient information on the legal provisions covering the obligation to record all deprivations of liberty and on the sanctions applicable 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 (arts. 17, 20 and 22).

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

(a) **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;**

(b) **Failure to comply with the obligation to record all deprivations of liberty, the registration of inaccurate or incorrect information, the refusal to provide information on a deprivation of liberty and the provision of inaccurate information are punished.**

Training on the Convention

30. While the Committee takes note of the human rights training provided to some State agents, it observes that this does not include specific and regular training on the provisions of the Convention (art. 23).

31. The Committee recommends that the State party continue its efforts to provide human rights training 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.

5. Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

Definition of victim

32. The Committee is concerned that, under article 292 bis of the Criminal Code and Act No. 2640, only disappeared persons and their widows or widowers and heirs are considered victims. It also regrets that it has not received information on the criteria and

procedures for victims of acts of enforced disappearance that occurred outside the context of the dictatorship to be recognized as such and whether it is necessary to initiate criminal proceedings for that purpose.

33. The Committee recommends that the State party take the necessary measures to 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.

Rights to truth, to obtain reparation and to prompt, fair and adequate compensation

34. The Committee is concerned that the Truth Commission does not have sufficient resources to carry out its task of investigating cases of enforced disappearance. It is also concerned about the high number of applications declared inadmissible by the National Commission on Compensation for Victims of Political Violence and the Technical Certification Commission as well as the restrictive application of the requirements set out in the implementing regulations of Act No. 2640, which may have resulted in a large number of victims of enforced disappearance being denied access to reparations. The Committee is also concerned that the reparations granted to victims do not include all the forms mentioned in article 24 (5) of the Convention and that only 20 per cent of the amount to be granted to victims has actually been paid. It is also concerned about the lack of measures to ensure reparation to victims of enforced disappearance that may occur today (art. 24).

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

(a) **Ensure that the Truth Commission has the financial, human and technical resources it needs to carry out its task of investigating cases of enforced disappearance;**

(b) **Ensure that all victims of enforced disappearance – whether it occurred in the period between 1964 and 1982 or occurs subsequently – have access to comprehensive reparations;**

(c) **Ensure the full payment of the amount established by law to all victims of enforced disappearance;**

(d) **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).**

Legal situation of disappeared persons whose fate has not been clarified

36. The Committee considers that a system for determining the legal situation of disappeared persons whose fate has not been established such as the one provided for in articles 32 and 39 et seq. of the Civil Code, which requires a declaration of the absence and in some cases the death of the disappeared person, does not accurately reflect the complexity of enforced disappearance (art. 24).

37. 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

38. The Committee is concerned about the limited progress made in the search for disappeared persons whose whereabouts are not known and in the identification and return of remains. In addition, it regrets the lack of information on the existence of a system to allow for the immediate and urgent search for persons who might be subjected to enforced

disappearance today. It also regrets that the establishment of a genetic database that offers all the guarantees provided for under the Convention has not been completed (arts. 19 and 24).

39. **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, the State party 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) **Pursue its efforts to establish a genetic database to store genetic information on human remains that have been found so that it can be checked against the data of disappeared persons' relatives in order to facilitate their identification;**

(d) **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 and returning them to their relatives.**

Legislation concerning the wrongful removal of children

40. The Committee regrets that it has not received information on the measures in place under domestic law to prevent and punish the acts referred to in article 25 (1) of the Convention and to return the children referred to in article 25 (1) (a) to their families of origin (art. 25).

41. **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, taking into account the best interests of the child.**

D. Dissemination and follow-up

42. **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.**

43. **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 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 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.

44. The State party is urged to disseminate the Convention as widely as possible, as well as the content of its report submitted under article 29 (1) of the Convention, the written replies it has provided in response to the list of issues prepared by the Committee and the present concluding observations, in order to create awareness among the judicial, legislative and administrative authorities, civil society and the non-governmental organizations that are active in the State party, as well as the general public. The Committee further encourages the State party to facilitate the participation of civil society, especially the organizations of victims' families, in the implementation of the present concluding observations.

45. In accordance with the Committee's rules of procedure, the State party is requested to provide, no later than 11 October 2020, relevant information on the implementation of the Committee's recommendations contained in paragraphs 27 (fundamental safeguards), 29 (registers) and 39 (search for disappeared persons) of the present concluding observations.

46. Under article 29 (4) of the Convention, the Committee requests the State party to submit, no later than 11 October 2025, specific and updated 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 the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2, para. 39). The Committee encourages the State party to involve civil society, in particular the organizations of victims' families, in the process of preparing this information.
