



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Cuba under article 29 (1) of the Convention*

I. General information

1. Please indicate whether the State party is considering making the declarations provided for in articles 31 and 32 of the Convention relating to the Committee's competence to receive and consider individual and inter-State communications.
2. Please indicate whether the State party is considering establishing an independent national human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

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

3. With regard to paragraphs 45 and 47 of the State party's report, please indicate whether, in the exceptional circumstances that may be declared under the Constitution and Act No. 75 on national defence, the national legal framework provides for the possibility of derogating from any of the rights or procedural guarantees enshrined in domestic law and international human rights treaties to which Cuba is a party that might be relevant for preventing and combating enforced disappearances. If so, please enumerate the rights and procedural guarantees from which it is possible to derogate and in which circumstances, under which legal provisions and for how long it is permissible to do so (art. 1).
4. With reference to paragraph 85 of the State party's report, please indicate whether there have been developments with regard to the draft amendment to the Criminal Code to incorporate enforced disappearance as a separate offence, as it is defined in article 2 of the Convention. If so, please provide information on the proposed definition and the penalties for the commission of the said offence. Please also indicate whether there are any legislative initiatives aimed at characterizing enforced disappearance as a crime against humanity and, if such is the case, please provide information on the proposed definition and the penalties for the commission of the offence (arts. 2 and 4 to 6).

* Adopted by the Committee at its eleventh session (3-14 October 2016).



5. While taking note of the information provided in paragraphs 95 to 100 of the State party's report, the Committee would appreciate receiving information about whether steps have been taken to expressly incorporate into national law the criminal responsibility of superiors as set out in article 6 (1) (b) of the Convention (art. 6).

III. Judicial procedure and cooperation in criminal matters (arts. 8-15)

6. With regard to paragraph 110 of the State party's report, please indicate the measures that are taken to ensure that, in the event of an enforced disappearance, the term of limitation for criminal proceedings commences from the moment when the enforced disappearance ceases, taking into account its continuous nature (art. 8).

7. With regard to paragraph 143 of the State party's report, please indicate whether measures have been taken or are planned in order to ensure that investigations and trials in the case of enforced disappearances remain expressly excluded from military jurisdiction in all cases and can be investigated and tried only in the ordinary courts. Please also provide information on the guarantees in the legal system that ensure the internal and external independence and impartiality of the courts (art. 11).

8. With regard to paragraph 150 of the State party's report, please clarify whether domestic law provides for the suspension from duties or dismissal, for the duration of the investigation, of State agents suspected of involvement in the commission of an enforced disappearance. Please also indicate whether there are any mechanisms in place to exclude a law-enforcement or security force, whether civilian or military, from the investigation into an enforced disappearance when one or more of its members are accused of involvement in the commission of an offence (art. 12).

9. With reference to paragraphs 151 and 216 of the State party's report, please provide detailed information on all the mechanisms provided for in the legal system to ensure that complainants, witnesses, relatives of disappeared persons and their defence counsel, as well as persons participating in the investigation of cases of enforced disappearance, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given (art. 12).

10. In relation to paragraph 175 of the State party's report, please clarify whether, in the absence of an autonomous crime of enforced disappearance, the provisions of the Criminal Code that could be invoked to deal with cases of enforced disappearance may be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives for the purpose of extradition. Please also indicate whether any extradition agreements with other States parties have been concluded since the entry into force of the Convention and, if so, indicate whether enforced disappearance has been included in such agreements, in accordance with article 13 (3) of the Convention (art. 13).

11. With regard to paragraphs 182 and 183 of the State party's report, please indicate whether the Convention can be considered as the legal basis for providing legal assistance to another State party under the terms of articles 14 and 15 of the Convention, in the absence of an agreement on mutual legal assistance and when it is not possible to invoke the principle of international reciprocity. With reference to paragraph 184 of the State party's report, please provide further information on the two requests for international cooperation relating to alleged acts of enforced disappearance received between 2012 and 2014, and on the measures taken by the State party with regard thereto (arts. 14 and 15).

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

12. Please provide information on:

(a) Regarding paragraph 190 of the State party's report, whether its domestic legislation explicitly prohibits carrying out an expulsion, return, surrender or extradition when there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance;

(b) The mechanisms and criteria applied in connection with expulsion, return, surrender and extradition procedures in order to assess and verify the risk of a person being subjected to enforced disappearance. Please also clarify whether, before carrying out any expulsion, return, surrender or extradition, a thorough individual assessment is conducted to determine whether the person in question is in danger of being subjected to enforced disappearance, even when there is an extradition treaty, or the individuals concerned have entered the country without having completed migration formalities or are undocumented;

(c) Whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority and using which procedure this may be done. Please also indicate whether the appeal has suspensive effect (art. 16).

13. With regard to article 243 of the Criminal Procedure Act, please provide information on the authorities that are authorized to issue arrest warrants and under what conditions (art. 17).

14. Please indicate whether the computerized records of the Ministry of the Interior to which reference is made in paragraph 208 of the State party's report contain all the information listed in article 17 (3) of the Convention. Please also specify whether such records contain information on all persons deprived of liberty, regardless of the nature of the place of deprivation of liberty, such as persons deprived of liberty in the disciplinary units of the Revolutionary Armed Forces. If that is not the case, please provide information about the content of the records kept in other places of deprivation of liberty (art. 17).

15. Please provide information on measures taken to ensure in practice that all records of persons deprived of liberty include all the information listed in article 17 (3) of the Convention and are updated immediately, and please include information about monitoring measures. Please also provide information on the penalties established by law for failure to register a deprivation of liberty or for registering incorrect information in cases where the official responsible for registering the deprivation of liberty knew or should have known that the information was incorrect. Lastly, please indicate whether there have been cases in which officials failed to enter a deprivation of liberty or other relevant information in the records on persons deprived of their liberty. If so, please provide information on what action was taken, the resulting penalties and the measures adopted, including any training, to prevent a recurrence of such incidents (arts. 17 and 22).

16. Please provide information on measures taken to guarantee in practice that all persons deprived of their liberty, regardless of the offence of which they are accused, including those detained under military law, have access to a lawyer and can inform their family or any other person of their choice of their deprivation of liberty from the moment they are detained. In that connection, please indicate whether there have been complaints or allegations regarding failures to observe these rights and, if so, please provide information about the proceedings and their outcome, including the penalties imposed (art. 17).

17. Concerning paragraphs 29, 30, 80 and 211 to 213 of the State party's report, please provide a list of all the entities that are authorized to carry out inspections of places of deprivation of liberty. In doing so, please include information on the frequency with which these entities undertake inspections; the nature of the inspections; and whether the

inspections cover all places of deprivation of liberty, regardless of the nature of such places (including the disciplinary units of the Revolutionary Armed Forces). Please indicate whether civil society organizations may inspect places of deprivation of liberty. Please also indicate whether the State party is considering ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 17).

18. While taking note of the information provided in paragraphs 259 to 279 of the report, the Committee would appreciate receiving information on whether the State party provides, or plans to provide, specific training on the Convention, in the terms set out in article 23 thereof, to 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 (art. 23).

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

19. In relation to paragraphs 229 and 280 to 282 of the State party's report, please clarify whether the law provides for all the forms of reparation referred to in article 24 (5) of the Convention, including rehabilitation. Please clarify whether access to compensation or other forms of reparation is dependent on the adoption of a judgment in criminal proceedings (art. 24).

20. Please provide information on current legislation pertaining to the legal situation of disappeared persons whose fate has not been clarified and their relatives, in areas such as social welfare, financial matters, family law and property rights (art. 24).

21. Please provide information on the existing legal framework that ensures compliance with article 24 (7) of the Covenant (art. 24).

22. While noting the offences of substituting one child for another and the sale and trafficking of minors, the Committee would appreciate receiving information on whether the State party plans to incorporate into its legislation as specific offences the acts described in article 25 (1) of the Convention (art. 25).

23. Please explain whether any legal procedures have been established to review and, if necessary, annul any adoption, placement or guardianship that originated in an enforced disappearance. If no such procedures have been established yet, please indicate whether an initiative has been taken to bring the national legislation into conformity with article 25 (4) of the Convention (art. 25).
