



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

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## Committee on Enforced Disappearances

### Report on follow-up to the concluding observations of the Committee on Enforced Disappearances\*

#### I. Introduction

1. The present report reflects the information received by the Committee between its thirteenth and fifteenth sessions in follow-up to its concluding observations on Bosnia and Herzegovina (CED/C/BIH/CO/1/Add.1), Colombia (CED/C/COL/CO/1/Add.1), Cuba (CED/C/CUB/CO/1/Add.1), Ecuador (CED/C/ECU/CO/1/Add.1) and Senegal (CED/C/SEN/CO/1/Add.1) and the assessments and decisions that it adopted at its fifteenth session.

2. During the eleventh and twelfth sessions of the Committee, a constructive dialogue took place with the States parties concerned and concluding observations were adopted. The assessments contained in the present report refer only to the specific recommendations that were selected for the follow-up procedure and in relation to which the States parties were requested to submit information within one year of the adoption of the concluding observations. The present report does not constitute an assessment of the implementation of all the recommendations made to the State party in the concluding observations, nor a comparison between States parties.

3. To carry out its assessment of the information provided by the States parties concerned, the Committee uses the criteria described below:

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#### *Assessment of replies*

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#### **A Reply/action satisfactory**

Reply largely satisfactory

#### **B Reply/action partially satisfactory**

Substantive action taken, but additional information required

Initial action taken, but additional information and measures required

#### **C Reply/action not satisfactory**

Reply received but action taken does not implement the recommendation

Reply received but not relevant to the recommendation

No reply received concerning a specific matter in the recommendation

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\* Adopted by the Committee at its fifteenth session (5–16 November 2018).



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*Assessment of replies*

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**D No cooperation with the Committee**

No reply received after reminder(s)

**E The measures taken are contrary to the Committee's recommendations**The reply reveals that the measures taken are contrary to the Committee's recommendations

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**II. Assessment of follow-up information****A. Bosnia and Herzegovina****Eleventh session (October 2016)**

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*Bosnia and Herzegovina*

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**Concluding observations:** CED/C/BIH/CO/1, adopted 12 October 2016**Recommendations to be followed up:** Paragraphs 18, 20 and 32**Reply:** CED/C/BIH/CO/1/Add.1, due 14 October 2017, received 20 October 2017

**Paragraph 18: The Committee recommends that the State party continue its efforts to establish the truth and determine the fate and whereabouts of all the individuals who have been reported as missing and, in the event of death, the identification of their remains. It recommends, in particular, that the State party:**

(a) **Provide the Prosecutor's Office of Bosnia and Herzegovina with adequate human and financial resources and appoint additional forensic experts to ensure that exhumations and identifications take place as swiftly as possible upon the location of mortal remains;**

(b) **Expedite the process of verifying data in the Central Record of Missing Persons.**

**State party's reply**

The reply of the State party can be consulted in CED/C/BIH/CO/1/Add.1.

**Committee's evaluation**

[B]: The Committee takes notes of the information provided by the State party and welcomes the additional financial and human resources provided to the Prosecutor's Office and the establishment of the TERRA operational team. However, while welcoming the employment of 28 staff members through the Instrument for Pre-accession Assistance project, it notes that the Prosecutor's Office will not employ new staff members from its regular budget. The Committee notes with concern that the Forensic Medicine Institute has not been established yet and that, therefore, no additional forensic experts have been appointed to the Prosecutor's Office. In this regard, the Committee notes that the State party has not clarified the status of the amendment to the Law on Federation Ministries and Other Administrative Bodies, for example whether it has entered into force, and whether any measures have been taken to ensure the establishment and operation of the Forensic Medicine Institute. While welcoming the information provided by the State party with regard to the number of verified cases, the Committee notes that it has not received information on any measures taken to expedite the verification process in the Central Record of Missing Persons or on any information or data that would allow it to assess the pace of the verification process, for example statistical data on cases verified per month. The Committee would like to emphasize the obligation of States under the Convention to

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*Bosnia and Herzegovina*

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guarantee the right of the victims to know the truth about the circumstances of an enforced disappearance and to locate and respect the remains and return them to the next of kin. In view of the above, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 44 of its concluding observations, to provide additional information on the progress of the initiative for the establishment of the Forensic Medicine Institute and on any other measures taken to ensure the appointment of additional forensic experts to the Prosecutor's Office, and statistical data on the progress in verifying cases in the Central Record of Missing Persons.

**Paragraph 20: The Committee recommends that the State party provide the Missing Persons Institute with the financial, human and technological resources necessary to adequately fulfil its mandate and expedite the appointment of the members of the Board of Directors.**

**State party's reply**

The reply of the State party can be consulted in CED/C/BIH/CO/1/Add.1.

**Committee's evaluation**

[B]: The Committee welcomes the temporary appointment of the Board of Directors of the Missing Persons Institute. However, the Committee is concerned that the insufficient number of staff and financial resources allocated to the Missing Persons Institute is an impediment to searching effectively for disappeared persons and clarifying their fate. In particular, the Committee observes that the State party has not provided additional information on the status of the request for equipment made by the Missing Persons Institute to the Ministry of Finance and Treasury. In view of all of the above, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 44 of its concluding observations:

- (a) To provide information on measures taken to appoint a permanent Board of Directors of the Missing Persons Institute;
- (b) To provide additional information on the allocation of adequate human and financial resources to the Missing Persons Institute.

**Paragraph 32: The Committee recommends that the State party expedite the establishment of the national preventive mechanism, make it fully operational rapidly and provide it with sufficient human and financial resources.**

**State party's reply**

The reply of the State party can be consulted in CED/C/BIH/CO/1/Add.1.

**Committee's evaluation**

[B]: The Committee takes note of the information provided by the State party and welcomes the proposed amendment to the Law on the Ombudsman for Human Rights of Bosnia and Herzegovina. However, the Committee observes that the State party has not provided additional information about the status of the amendment to the Law on the Ombudsman for Human Rights, whether it has entered into force, or any measures taken to ensure the effective implementation of the national preventive mechanism. Therefore, the Committee, recalling its recommendation, requests that the State party, when submitting information in accordance with paragraph 44 of its concluding observations (CED/C/BIH/CO/1):

- (a) Clarify whether the amendment to the Law on the Ombudsman for Human Rights of Bosnia and Herzegovina has entered into force;
- (b) Provide further information with regard to the process of making the preventive mechanism operational;

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(c) Include information on the measures taken to ensure that the preventive mechanism is allocated sufficient human and financial resources to enable it to function properly.

**Action to be taken**

A letter should be sent to the State party communicating the Committee's evaluation.

**Follow-up information on the implementation of all the recommendations to be submitted by:** 14 October 2022

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**B. Colombia****Eleventh session (October 2016)**

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*Colombia*

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<b>Concluding observations:</b>	CED/C/COL/CO/1, adopted 12 October 2016
<b>Recommendations to be followed up:</b>	Paragraphs 14, 20 and 26
<b>Reply:</b>	CED/C/COL/CO/1/Add.1, due 14 October 2017, received 4 December 2017

**Paragraph 14: The Committee recommends that the State party expedite the process of cleansing and consolidating data on disappeared persons in order to generate reliable and accurate information that will result in more effective prevention, investigation and search measures. Accordingly, it invites the State party to set a time frame for completing the data cleansing process for the Register, with a view to effectively consolidating all cases of disappeared persons as soon as possible, while retaining the most comprehensive information possible. The Committee further recommends that the State party:**

(a) **Make greater efforts to ensure that, without exception, all cases of disappeared persons are consistently and exhaustively recorded in the National Missing Persons Register immediately after a disappearance is reported and that the Register is continuously updated;**

(b) **Adopt effective measures to move forward in the classification of as many cases as possible;**

(c) **Take the necessary steps to generate statistical information that indicates the extent of the problem of enforced disappearances in the strict sense of the term, that is, disappearances where State agents were allegedly involved, directly or indirectly, in committing the offence.**

**State party's reply**

The reply of the State party can be consulted in CED/C/COL/CO/1/Add.1.

**Committee's evaluation**

[C]: The Committee takes note of the information provided by the State party and welcomes the measures adopted to expedite the process of cleansing and consolidating data on disappeared persons. In particular, the Committee takes note of decisions No. 0045 of 2017 and No. 3481 of 31 of October 2016 relating to the reform of the structure of the Office of the Special Prosecutor for Transitional Justice. Furthermore, the Committee welcomes the creation of the internal working group on the consolidation of figures on enforced disappearance and the establishment of the "Observatory" tool. However, the Committee notes that the State party has not provided information on the

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time frame that has been set for completing the data cleansing process for the National Missing Persons Register. It also notes that it has not received information on the measures taken to ensure that, without exception, all cases of disappeared persons are consistently and exhaustively recorded in the National Missing Persons Register immediately after a disappearance is reported, and on the measures taken to ensure that the Register is continuously updated. While noting the information provided in paragraphs 14 and 15 regarding the classification of cases, the Committee notes that it has not received sufficient information on how the measures mentioned have contributed to the classification of more cases. The Committee also observes that no statistical information on the problem of enforced disappearances in the strict sense of the term has been provided in the *Forensis: Datos para la Vida* report, since the information featured in the report only refers to the phenomenon of disappearances in general terms. In view of the above, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 44 of its concluding observations (CED/C/COL/CO/1), to provide:

- (a) Information on the progress made towards setting a time frame for completing the data cleansing process for the Register;
- (b) Information on measures undertaken to prevent discrepancies between the various databases relating to enforced disappearances;
- (c) Information on any measures taken to ensure that all cases of disappeared persons are consistently and exhaustively recorded in the National Missing Persons Register immediately after a disappearance is reported and that the Register is continuously updated;
- (d) Information on any additional measures taken to move forward in the classification of cases of enforced disappearance, apart from the revisions made to the format for registering missing persons, so that it includes additional fields relating to the context; as well as updated statistical information on the progress made in classifying cases, including on the number of cases that have been classified;
- (e) Additional information on the steps taken to generate statistical information that indicates the extent of the problem of enforced disappearances in the strict sense of the term, that is, disappearances where State agents were allegedly involved, directly or indirectly, in committing the offence.

**Paragraph 20: The Committee recommends that the State party:**

- (a) **Ensure that in practice, where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, a thorough, impartial investigation is undertaken immediately, even if there has not been a formal complaint;**
- (b) **Expedite the investigations of enforced disappearance that are under way, including those carried out as part of the special criminal proceedings being conducted in the framework of the justice and peace process, while ensuring that no act of enforced disappearance is left unpunished;**
- (c) **Expand its efforts to allow the relatives of disappeared persons to submit complaints; encourage and facilitate their participation in investigations and in all the procedural steps included within the framework of due process; and ensure that they are regularly informed about the progress and results of investigations;**
- (d) **Ensure effective coordination and cooperation between all the agencies involved in investigations so that they mutually reinforce, rather than impede, each other's work; and ensure that they have the necessary financial, technical and human resources to perform their duties expeditiously and effectively;**

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(e) **Adopt a common approach to investigations, following specific strategies based on similar crime commission patterns and regional contexts and avoiding fragmented investigations that undermine their own effectiveness;**

(f) **Ensure that the authorities involved in the investigation of enforced disappearances have effective and timely access to all documentation and other information relevant to the investigation that may be in the possession of State agencies, in particular documentation held by intelligence agencies and by armed and security forces.**

#### **State party's reply**

The reply of the State party can be consulted in CED/C/COL/CO/1/Add.1.

#### **Committee's evaluation**

[C]: The Committee takes note of the information provided by the State party and welcomes the prioritization plan designed by the Office of the Special Prosecutor of the Attorney General's Office to identify patterns related to enforced disappearances; the adoption, in 2017, of Legislative Act No. 01, which creates the components of a comprehensive system of truth, justice, reparation and non-repetition; the promulgation, also in 2017, of Decree-Law No. 589, which provides for the establishment of the special unit for searching for persons presumed disappeared in the context of and by reason of the armed conflict; the online tools available to relatives of disappeared persons, managed by the National Institute of Forensic Medicine and Science in conjunction with the newspaper *El Tiempo*, and the Institute's location of forensic statistical information (LIFE) web page; and the publication and dissemination of the Minimum Forensic Standards for the Search for Disappeared Persons and the Recovery and Identification of Corpses. However, the Committee observes that it has not been provided with information on the measures taken to ensure that a thorough and impartial investigation is undertaken immediately, even if there has not been a formal complaint, where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, in the strict sense of the term. The Committee further observes that the State party has not provided any information on the measures taken to expedite the investigations into enforced disappearance that are under way, including those carried out as part of the special criminal proceedings being conducted in the framework of the justice and peace process. The Committee notes that it has not received information on any efforts made to allow the relatives of disappeared persons to submit complaints, and to encourage and facilitate their participation in all stages of the investigations and judicial processes. While taking note of the measures taken to strengthen institutional coordination related to the search for disappeared persons, the Committee notes that it has not been provided with information with regard to measures taken to ensure effective coordination and cooperation between all the agencies involved in investigations and to ensure that they have the necessary financial, technical and human resources to perform their duties. Finally, the Committee notes that the State party has not provided information on the measures taken to ensure that the authorities involved in investigating enforced disappearances have effective and timely access to all documentation and other information relevant to the investigation, in particular documentation held by intelligence agencies and by armed and security forces. Therefore the Committee reiterates its recommendation, and requests the State party, when submitting information in accordance with paragraph 44 of its concluding observations, to provide:

(a) Information on the measures taken to ensure that in practice, where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, in the strict sense of the term, a thorough and impartial investigation is undertaken immediately, even if there has not been a formal complaint;

(b) Information on the measures taken to expedite the investigations into enforced disappearance that are under way, including those carried out as part of the

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special criminal proceedings being conducted in the framework of the justice and peace process. In this respect, please provide additional information on the progress made towards the establishment of the special unit for searching for persons presumed disappeared and on the measures taken to ensure that it has the necessary financial, technical and human resources to enable it to carry out its work promptly and effectively;

(c) Information on any efforts made to allow the relatives of disappeared persons to submit complaints, and to encourage and facilitate their participation in all stages of the investigations and judicial processes;

(d) Information on any measures taken to ensure effective coordination and cooperation between all the agencies involved in investigations and to ensure that they have the necessary financial, technical and human resources to perform their duties. Please also provide additional information on the results achieved with the minimum forensic standards in searching for disappeared persons and recovering and identifying corpses;

(e) Information on the measures taken to ensure that the authorities involved in investigating enforced disappearances have effective and timely access to all documentation and other information relevant to the investigation, in particular documentation held by intelligence agencies and by armed and security forces.

**Paragraph 26: The Committee recommends that the State party pursue and intensify its efforts to search for, locate and release disappeared persons and, in the event of death, to locate, handle with respect and return their remains. In particular, the Committee recommends that the State party:**

(a) **Ensure in practice that, when a disappearance is reported, a search is initiated automatically, without delay; that practical, effective search measures are adopted in order to increase the chances of finding the person alive; and that the search is continued until the fate of the disappeared person is established;**

(b) **Intensify its efforts to locate bodily remains; enhance the Genetic Profile Bank, in particular by conducting extensive campaigns to collect ante-mortem information and genetic samples from disappeared persons' relatives, with a special focus on rural areas; and expedite the identification and handover of the exhumed remains;**

(c) **Adopt more effective measures to ensure coordination, cooperation and data cross-checking between the agencies responsible for searching for disappeared persons and, in the event of death, for identifying their remains, and see to it that they have the necessary qualified personnel and economic and technical resources;**

(d) **Redouble its efforts to ensure that all relevant authorities receive regular, specialized training on the measures provided for in the existing regulatory framework pertaining to the search for disappeared persons and, in the event of death, on handling with respect and returning their remains, in particular, the correct implementation of the National Plan on the Search for Disappeared Persons and the Urgent Search Mechanism;**

(e) **Ensure that searches are conducted by the competent authorities with the active involvement of the relatives of the disappeared person where necessary;**

(f) **Intensify its efforts to ensure that all actions to identify and return remains duly take into account the traditions and customs of the peoples or communities to which the victims belong, in particular indigenous peoples or Afrodescendent communities.**

*Colombia*

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### **State party's reply**

The reply of the State party can be consulted in CED/C/COL/CO/1/Add.1.

### **Committee's evaluation**

[C]: The Committee takes note of the measures adopted by the State party to reinforce the system in place for searching for disappeared persons. In particular, the Committee welcomes the introduction into the Missing Persons and Corpses Information Network of new fields for the follow-up of the Urgent Search Mechanism; the amendment of the working methods of the internal working group on searching for, identifying and returning disappeared persons to prioritize the provision of information and documentation about corpses and their return to their families; the implementation of the national plan for searching for, identifying and ensuring the dignified return of the remains of persons who disappeared in the context of and by reason of the armed conflict; and the measures to reinforce the databank of genetic profiles of disappeared persons. However, the Committee notes that it has not been provided with information on any measures taken to ensure that, in practice, when a disappearance is reported, a search is initiated automatically and without delay, that practical and effective search measures are adopted in order to increase the chances of finding the person alive, and that the search is continued until the fate of the disappeared person is established. The Committee further notes that it has not received sufficient information on the process of identification of remains that have been recovered, in particular those mentioned in paragraph 54 of the State party's reply, nor on the extent to which campaigns to collect ante-mortem information and genetic samples from disappeared persons' relatives is focused particularly on rural areas. While taking note of the statistical information provided in paragraphs 55–59, the Committee observes that it has not been provided with sufficient information on the concrete measures taken to ensure coordination, cooperation and data cross-checking between the agencies responsible for searching for disappeared persons or on the human, economic and technical resources allocated to those agencies. It further observes that it has not received sufficient information on the training provided to authorities, particularly regarding which authorities have benefited from the training mentioned in paragraphs 61 and 62, and on the concrete impact of those training initiatives on the correct implementation of the National Plan on the Search for Disappeared Persons and the Urgent Search Mechanism by the relevant authorities. In addition, the Committee notes that the State party has not provided any information on the efforts made to ensure that searches are conducted with the active involvement of the relatives of the disappeared person, or on the measures adopted to ensure that all actions to identify and return remains duly take into account the traditions and customs of the peoples or communities to which the victims belong, in particular indigenous peoples or communities of African descent. Therefore, the Committee, recalling its recommendation, requests the State party, when submitting information in accordance with paragraph 44 of its concluding observations (CED/C/COL/CO/1), to provide:

- (a) Information on any measures taken to ensure, in practice, when a disappearance is reported, that a search is initiated automatically and without delay, that practical and effective search measures are adopted in order to increase the chances of finding the person alive, and that the search is continued until the fate of the disappeared person is established;
- (b) Additional information on the process of identifying the remains that have been recovered and on the extent to which campaigns to collect ante-mortem information and genetic samples from disappeared persons' relatives is focused particularly on rural areas;
- (c) Information on the concrete measures taken to ensure coordination, cooperation and data cross-checking between the agencies responsible for searching for disappeared persons;

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(d) Additional information on the training provided to authorities, particularly regarding which authorities have benefited from the training carried out, and on the concrete impact of those training initiatives on the correct implementation of the National Plan on the Search for Disappeared Persons and the Urgent Search Mechanism by the relevant authorities;

(e) Information on the efforts made to ensure that searches are conducted with the active involvement of the relatives of the disappeared person;

(f) Information on the measures adopted to ensure that all actions to identify and return remains duly take into account the traditions and customs of the peoples or communities to which the victims belong, in particular indigenous peoples or communities of African descent.

**Action to be taken**

A letter should be sent to the State party communicating the Committee's evaluation.

**Follow-up information on the implementation of all the recommendations to be submitted by:** 14 October 2019

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**C. Cuba****Twelfth session (March 2017)**

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*Cuba*

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**Concluding observations:** CED/C/CUB/CO/1, adopted 14 March 2017

**Recommendations to be followed up:** Paragraphs 26, 28 and 30

**Reply:** CED/C/CUB/CO/1/Add.1, due 17 March 2018, received 13 April 2018

**Paragraph 26: The Committee recommends that the State party adopt the measures necessary to guarantee, in law and in practice, that all persons deprived of liberty have access to a lawyer from the outset of the deprivation of liberty.**

**State party's reply**

The reply of the State party can be consulted in CED/C/CUB/CO/1/Add.1.

**Committee's evaluation**

[C]: While taking note of the information provided by the State party, the Committee observes that the State party has not provided information on any measures taken to implement its recommendation since the adoption of its concluding observations (CED/C/CUB/CO/1). In particular, the Committee remains concerned that, according to article 249 of the Criminal Procedure Act, a person deprived of liberty may establish communication and meet with his or her defence counsel only from the time when an order has been made to apply any of the precautionary measures authorized under the Act, which could take up to six days from the deprivation of liberty, rather than from the very outset of the deprivation of liberty. Therefore, the Committee reiterates its recommendation and requests that the State party, when submitting information in accordance with paragraph 40 of the concluding observations, provide information on any actions taken to ensure that, in law and in practice, all persons have access to a lawyer, not only when a criminal procedure is opened, but from the very outset of the deprivation of liberty.

*Cuba*

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**Paragraph 28: The Committee recommends that the State party adopt the measures necessary to ensure that all persons under arrest who are not released are brought promptly before a judge for the hearing of an application for the adoption of any measure entailing deprivation of liberty, and most particularly pretrial detention.**

**State party's reply**

The reply of the State party can be consulted in CED/C/CUB/CO/1/Add.1.

**Committee's evaluation**

[C]: While taking note of the information provided by the State party and, in particular, article 247 of the Criminal Procedure Act and the existence of the habeas corpus procedure, the Committee observes that it has not received any information on the measures taken to implement the Committee's recommendation since the adoption of its concluding observations (CED/C/CUB/CO/1). In this respect, the Committee remains concerned that the power to order pretrial detention lies with the prosecutor, who is responsible for instituting and conducting public criminal proceedings as the representative of the State, and that persons under arrest are not brought before a judge until the investigation process has been completed and the proceedings have been submitted in order to enable the case to be heard and the oral trial to commence. Therefore, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 40 of its concluding observations, to provide information on the measures taken to ensure that all persons under arrest who are not released are brought promptly before a judge in order for the judge to hear the application for the adoption of any measure that entails deprivation of liberty.

**Paragraph 30: The Committee recommends that the State party establish a specific independent mechanism with the power to undertake, without hindrance, regular unannounced visits to any place that may hold persons deprived of liberty. The Committee invites the State party to reconsider ratification of the Optional Protocol to the Convention against Torture.**

**State party's reply**

The reply of the State party can be consulted in CED/C/CUB/CO/1/Add.1.

**Committee's evaluation**

[C]: The Committee takes note of the information provided by the State party, and in particular of the legal attribution and responsibility of the Attorney General to visit penitentiary facilities, as well as of the high number of inspections carried out by this authority. However, the Committee observes that no information has been provided by the State party on any measures taken to establish an independent mechanism to carry out regular visits to all the places where persons deprived of liberty may be held. Furthermore, the Committee takes note with regret of the information provided by the State party that it has no intention of ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Therefore, recalling its recommendation, the Committee requests the State party, when submitting information in accordance with paragraph 40 of its concluding observations (CED/C/CUB/CO/1), to provide information on measures taken to establish a specific independent mechanism in charge of undertaking regular unannounced visits to any place that may hold persons deprived of liberty. The Committee also reiterates its recommendation to invite the State party to reconsider its position in relation to the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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Cuba

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### Action to be taken

A letter should be sent to the State party communicating the Committee's evaluation.

**Follow-up information on the implementation of all the recommendations to be submitted by:** 17 March 2023

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## D. Ecuador

### Twelfth session (March 2017)

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Ecuador

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**Concluding observations:** CED/C/ECU/CO/1, adopted 15 March 2017

**Recommendations to be followed up:** Paragraphs 10, 16 and 22

**Reply:** CED/C/ECU/CO/1/Add.1, due 17 March 2018, received 23 April 2018

#### Paragraph 10: The Committee recommends that the State party:

(a) **Take the necessary measures to expedite the judicial proceedings for enforced disappearance relating to the period from 1984 to 2008 that are under way; bring to trial, as soon as possible, cases that are at the preliminary investigation stage; and ensure that all suspected perpetrators are prosecuted and, if found guilty, punished in accordance with the grave nature of their acts;**

(b) **Step up its efforts to locate any persons subjected to enforced disappearance during the period from 1984 to 2008 and whose fate is not yet known and, in the event of death, to identify, respect and return their remains in a dignified manner;**

(c) **Continue and strengthen its efforts to ensure that all persons who have suffered harm as a direct result of an enforced disappearance perpetrated during the period from 1984 to 2008 receive full reparation, including measures for their rehabilitation.**

#### State party's reply

The reply of the State party can be consulted in CED/C/ECU/CO/1/Add.1.

#### Committee's evaluation

[C]: The Committee takes note of the information provided by the State, in particular Resolution 001-FGE-2018 by which the Truth Commission and Human Rights Directorate has become the Human Rights and Citizen Participation Directorate (*Dirección de Derechos Humanos y Participación Ciudadana*). It also notes that the Directorate does not work with the police as a subsidiary body on investigations into allegations of enforced disappearance. However, the Committee remains concerned that none of the judicial proceedings on enforced disappearances relating to the period from 1984 to 2008 have been brought to trial. While welcoming the adoption of the protocol of action for search, investigation and tracking in regard to missing persons, and the implementation of the *Alerta Emilia*, the Committee observes that the State party has not provided any information on any measures taken to step up its efforts to locate persons subjected to enforced disappearance during the period from 1984 to 2008, and in the event of death, to identify and return their remains. The Committee would like to emphasize the obligation of States parties under the Convention to guarantee the right of victims to know the truth about the circumstances of an enforced disappearance and to locate and respect the remains and return them to the next of kin. The Committee takes note of the

*Ecuador*

information provided by the State party, in particular with regard to the steps taken towards the establishment of the *Museo de la Memoria*. While taking note of the reparation measures mentioned in paragraph 14 of the State party's reply, the Committee observes that the State party has not provided information on other forms of reparation such as guarantees of non-repetition. In addition, the Committee notes with concern that reparations are not provided to all victims as defined in article 24 of the Convention — that is, the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance. In this respect, the Committee notes that the State party only provides reparation to the spouses or partners of the disappeared person and family members of the disappeared person up to the second degree of consanguinity. While noting that, at the request of an interested party, a declaration of presumed death may be made as a result of the presumption of death by disappearance, the Committee reiterates its position that a declaration of absence by reason of enforced disappearance should be awarded, rather than a declaration of presumed death. In view of the above, the Committee reiterates its recommendation and requests that the State party provide:

- (a) Additional information on the progress of the judicial proceedings on enforced disappearances relating to the period from 1984 to 2008;
- (b) Information on concrete measures taken to search for and locate all persons who were forcibly disappeared between 1984 and 2008 and whose fate is not yet known, and, in the event of death, information on measures taken to identify and respect their remains and return them to their families;
- (c) Information on other forms of reparation, such as guarantees of non-repetition, afforded to victims of enforced disappearance during the period from 1984 to 2008.

**Paragraph 16: The Committee recommends that the State party ensure that no one is expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would face a risk of being subjected to enforced disappearance, in particular by ensuring that regulations relating to applications for refugee status are applied in a manner fully consistent with the prohibition of refoulement provided for in article 16 of the Convention.**

**State party's reply**

The reply of the State party can be consulted in CED/C/ECU/CO/1/Add.1.

**Committee's evaluation**

**[B]:** The Committee takes note of the information provided by the State party, in particular the publication of the General Regulations of the Human Mobility Act in August 2017, and welcomes the actions adopted by the State party to ensure the operation and implementation of the provisions of the legal framework applicable to enforced disappearances in Ecuador. However, the Committee observes that the State party has not provided any information on measures taken to ensure that no one is expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would face a risk of being subjected to enforced disappearance, including during the 90-day period after entry into the State party to apply for refugee status as established by the Human Mobility Act. The Committee reiterates its concern that the application of this time period for seeking refugee status may give rise to cases of refoulement, in violation of the prohibition enshrined in article 16 of the Convention. In view of the above, the Committee reiterates its recommendation and requests that the State party, when submitting information in accordance with paragraph 26 of its concluding observations, provide information on the measures taken to implement it.

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**Paragraph 22: In the light of article 24 (6) of the Convention, the Committee recommends that the State party adopt the measures necessary to ensure that domestic law deals appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, without the presumed death of the disappeared person having to be declared. In this respect, the Committee encourages the State party to establish a procedure to obtain a declaration of absence by reason of enforced disappearance.**

**State party's reply**

The reply of the State party can be consulted in CED/C/ECU/CO/1/Add.1.

**Committee's evaluation**

[C]: While taking note of the information provided by the State party, the Committee observes that it has not received any information on measures taken to ensure that domestic legislation deals appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives. The Committee remains concerned that article 6 of the Act on Reparation for Victims provides that a declaration of presumed death and of definitive possession of the property of the victims of enforced disappearance may be made as a result of the presumption of death by disappearance, in order to deal with the legal situation of a disappeared person. The Committee would like to emphasize that, in view of the continuous nature of enforced disappearance, in principle and unless there is concrete evidence to the contrary, there is no reason to presume that a disappeared person has died so long as his or her fate has not been determined. In this regard, the Committee notes that the State party has not provided any information on measures taken to ensure that domestic law provides for a procedure to obtain a declaration of absence by reason of enforced disappearance that would allow those concerned to deal appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, without the presumed death of the disappeared person having to be declared. Therefore, the Committee reiterates its recommendation and requests that the State party, when submitting information in accordance with paragraph 26 of its concluding observations (CED/C/ECU/CO/1), provide information on any measures taken to implement it.

**Action to be taken**

A letter should be sent to the State party communicating the Committee's evaluation.

**Follow-up information on the implementation of all the recommendations to be submitted by: 17 March 2023**

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**E. Senegal**

**Twelfth session (March 2017)**

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<b>Concluding observations:</b>	CED/C/SEN/CO/1, adopted 15 March 2017
<b>Recommendations to be followed up:</b>	Paragraphs 14, 18 and 34
<b>Reply:</b>	CED/C/SEN/CO/1/Add.1, due 17 March 2018, received 7 May 2018

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**Paragraph 14: The Committee recommends that the State party expedite the process of revising the Criminal Code to give effect to the Convention with a view to defining and characterizing enforced disappearance as an autonomous offence, in line with the definition contained in article 2 of the Convention, that is subject to appropriate penalties that take into account the extremely serious nature of the offence.**

**State party's reply**

The reply of the State party can be consulted in CED/C/SEN/CO/1/Add.1.

**Committee's evaluation**

[C]: While taking note of the information provided by the State party that several sections of the national criminal law reform bills aimed at revising the Criminal Code and the Code of Criminal Procedure have already been adopted, the Committee notes with concern that the provisions to define the crime of enforced disappearance as an autonomous offence in accordance with article 2 of the Convention are still under consideration. The Committee observes that no information has been provided on any actions taken to ensure that the crime of enforced disappearance is subject to appropriate penalties that take into account the extremely serious nature of the offence. The Committee would like to recall that States parties, pursuant to article 4 of the Convention, are obliged to take the necessary measures to ensure that enforced disappearance constitutes an offence in their criminal code, in conformity with the definition enshrined in article 2 of the Convention. The Committee would like to emphasize that criminalizing enforced disappearance as an autonomous offence can serve as an important safeguard against impunity and as a preventive measure to ensure the non-occurrence of this crime. Therefore, the lack of an autonomous offence for this crime may prevent the State party from accomplishing its obligations to combat impunity for the crime, to guarantee the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person and to make the offence of enforced disappearance punishable by appropriate penalties in line with article 7 of the Convention. Therefore, the Committee reiterates its recommendation and requests that the State party, when submitting information in accordance with paragraph 46 of its concluding observations (CED/C/SEN/CO/1), provide:

- (a) Additional information on the progress achieved to criminalize enforced disappearance as an autonomous offence, in line with the definition contained in article 2 of the Convention;
- (b) Information on actions taken to ensure that the offence is punishable by appropriate penalties that take into account its extreme seriousness, while avoiding the imposition of the death penalty, and to establish the specific mitigating and aggravating circumstances provided for in article 7 (2) of the Convention.

**Paragraph 18: The Committee recommends that the State party amend its criminal legislation on enforced disappearance as a crime against humanity, especially article 431-2 (1) (6) of the Criminal Code, in order to ensure that it complies with article 5 of the Convention. In particular, the Committee recommends that enforced disappearance be mentioned separately from subjection to slavery and abduction and that article 431-2 expressly state that an act of enforced disappearance constitutes a crime against humanity.**

**State party's reply**

The reply of the State party can be consulted in CED/C/SEN/CO/1/Add.1.

**Committee's evaluation**

[B]: The Committee welcomes the information provided by the State party that the amendments to the Criminal Code will take account of the Committee's recommendation and that a separate paragraph will be inserted into article 431-2 of the Criminal Code that

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will characterize enforced disappearance as an underlying element of a crime against humanity. However, the Committee has not received sufficient information on the wording of this paragraph to allow it to assess its compatibility with article 5 of the Convention. In addition, the Committee notes that these amendments are still under consideration and that the crime of enforced disappearance is still not defined and criminalized as a crime against humanity under the Senegalese Criminal Code. Therefore, the Committee reiterates its recommendation and requests that the State party, when submitting information in accordance with paragraph 46 of its concluding observations (CED/C/SEN/CO/1), provide:

- (a) Additional information on the progress achieved to ensure that enforced disappearance as a crime against humanity is criminalized, in accordance with the standards provided for under article 5 of the Convention;
- (b) Information on the wording of the provisions that will criminalize enforced disappearance as a crime against humanity in the new Criminal Code.

**Paragraph 34: The Committee recommends that the State party take the necessary measures to ensure that:**

- (a) All registers or records of persons deprived of their liberty are accurately and promptly completed and updated in such a way as to contain all the information required under article 17 (3) of the Convention;**
- (b) Records are regularly subject to verification and, in the event that registers are not correctly completed and updated, the officials responsible are duly sanctioned, including through criminal proceedings, in accordance with the relevant legislation;**
- (c) All persons deprived of liberty, irrespective of the offence of which they are accused, are afforded, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided for under article 17 of the Convention;**
- (d) Any person with a legitimate interest can have prompt and easy access to at least the information listed in article 18 (1) of the Convention, including during the period of police custody, and the right of recourse where a request for access has been denied.**

#### **State party's reply**

The reply of the State party can be consulted in CED/C/SEN/CO/1/Add.1.

#### **Committee's evaluation**

[C]: While taking note of the information provided by the State party with regard to the registration of persons deprived of their liberty, the Committee observes that it has not received sufficient information on the legal provisions that regulate this. The Committee also observes that the legislation mentioned in paragraph 3 does not require custody records to include all the information contained in article 17 (3) of the Convention. Furthermore, the Committee notes that no information has been provided on the measures taken to ensure that all registers or records of persons deprived of their liberty are accurately and promptly completed and updated in such a way as to contain all the information required under article 17 (3) of the Convention. The Committee takes note of the provisions of article 59 of the Code of Criminal Procedure with regard to acts of abuse committed by criminal investigation police officers in connection with the application of custodial measures. However, the Committee observes that the State party has not provided information on the effective implementation of legislation to ensure regular verification of records of persons deprived of liberty nor on the sanctions applicable or effectively applied to officials who fail to correctly record a deprivation of liberty or to update the registers and/or records of persons deprived of liberty. While taking note of article 55 of the Code of Criminal Procedure, the Committee remains concerned that

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national legislation does not provide for a comprehensive set of fundamental legal safeguards for persons deprived of liberty in line with article 17 of the Convention. The Committee observes that the State party has not provided sufficient information on the legal provisions that guarantee that all persons deprived of liberty are afforded, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided for under article 17 of the Convention. While taking note of the assurances of the State party that access to the information listed in article 18 (1) of the Convention is “always available to the persons concerned”, the Committee notes with concern that this right is not guaranteed in domestic legislation, including during the period of police custody. The Committee welcomes the intention of the State party to take account of the Committee’s recommendation in the current legislative reform process with a view to amending its legislation to guarantee this right. However, the Committee observes that it has not received any information on the measures taken to guarantee the right of recourse where a request for access to the information listed in article 18 (1) of the Convention has been denied. Therefore, the Committee reiterates its recommendation and requests that the State party, when submitting information in accordance with paragraph 46 of its concluding observations (CED/C/SEN/CO/1), provide:

(a) Information on any measures taken to ensure that all registers or records of persons deprived of their liberty are accurately and promptly completed and updated in such a way as to contain all the information required under article 17 (3) of the Convention;

(b) Additional information on the legal provisions that regulate the registration of persons deprived of their liberty;

(c) Additional information on any measures taken to ensure that registers and/or records of persons deprived of liberty are subject to periodic checks, and, in the event of irregularities, that the officials responsible are adequately sanctioned;

(d) Additional information on the legal provisions that guarantee that all persons deprived of liberty are afforded, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided for under article 17 of the Convention;

(e) Information on the measures taken to ensure that all persons deprived of liberty are afforded, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided for under article 17 of the Convention;

(f) Additional information on the progress made towards amending national legislation with a view to ensuring that any person with a legitimate interest can promptly and easily access anywhere in the territory of the State party at least the information listed in article 18 (1) of the Convention, including during the period of police custody. In this respect, please also provide the wording of the proposed amendment;

(g) Information on the measures taken to guarantee the right of recourse where a request for access to the information listed in article 18 (1) of the Convention has been denied.

**Action to be taken**

A letter should be sent to the State party communicating the Committee’s evaluation.

**Follow-up information on the implementation of all the recommendations to be submitted by: 17 March 2023**

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