



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

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## Concluding observations on the report submitted by Paraguay under article 29, paragraph 1, of the Convention\*

1. The Committee on Enforced Disappearances considered the report submitted by Paraguay under article 29, paragraph 1, of the Convention (CED/C/PRY/1) at its 102nd and 103rd meetings (CED/C/SR.102 and 103), held on 16 and 17 September 2014. At its 114th meeting, held on 24 September 2014, the Committee adopted the following concluding observations.

### A. Introduction

2. The Committee welcomes the report submitted by Paraguay under article 29, paragraph 1, of the Convention, which was prepared in accordance with the reporting guidelines, and the information contained therein. The Committee appreciates the constructive dialogue held with the high-level delegation from the State party on the measures taken by the latter to implement the provisions of the Convention, which has dispelled many of its concerns.

3. The Committee thanks the State party for its written replies (CED/C/PRY/Q/1/Add.1) to the list of issues (CED/C/PRY/Q/1), while noting that they were submitted after the due date, and for 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 almost all the optional protocols thereto, as well as the Rome Statute of the International Criminal Court and the Inter-American Convention on Forced Disappearance of Persons.

5. The Committee also welcomes the measures adopted by the State party regarding matters related to the Convention, including:

(a) The establishment of the non-applicability of statutory limitations to the offence of enforced disappearance in the National Constitution;

(b) The establishment of the National Mechanism for the Prevention of Torture and its commencement of its work; and

\* Adopted by the Committee at its seventh session (15–26 September 2014).



(c) The establishment in 2003 of the Truth and Justice Commission to investigate acts which constituted or may have constituted human rights violations committed by State or parastatal agents between May 1954 and October 2003, as well as its effective start-up in August 2004 and the publication of its report “Anive haguä oiko” in August 2008.

6. The Committee is pleased to note that the State party invited civil society organizations to contribute to the preparation of the report submitted under article 29, paragraph 1, of the Convention.

7. The Committee welcomes the launch of the Recommendations Monitoring System (SIMORE) and encourages the State party to pursue its efforts to ensure its effective operation.

### **C. Principal subjects of concern and recommendations**

8. While welcoming the measures taken by the State party in relation to enforced disappearance, including its classification as an offence, the Committee considers that, at the time of writing, the legal framework in force in the State party is not fully in line with the provisions of the Convention and the obligations that the latter imposes on States that have ratified it. The Committee recommends that the State party take account of its recommendations, which are made in a constructive and cooperative spirit, with a view to ensuring that its legal order and the application thereof by State authorities are fully aligned with the rights and obligations established in the Convention. In this respect, it would encourage the State party to take advantage of the current discussions concerning legislative reforms to ensure that its legal order is in full compliance with the Convention.

### **General information**

#### **Individual and inter-State communications**

9. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention respectively, but that it is studying the possibility of doing so (arts. 31 and 32).

**10. The Committee encourages the State party to recognize without delay the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, respectively, with a view to strengthening the system of protection against enforced disappearances provided for in the Convention.**

#### **National human rights institution**

11. The Committee takes note with satisfaction of the functions assigned to the Ombudsman’s Office with respect to enforced disappearance. It is concerned, however, at the fact that the Ombudsman’s mandate expired in 2008 and that no successor has yet been appointed. While the Committee takes note of the procedure initiated in the Senate to draw up a list of candidates, it is concerned by reports that the Ombudsman’s Office has not been given adequate resources for the effective performance of its functions.

**12. The Committee recommends that the State party take the necessary steps to appoint a new, suitably qualified ombudsman as soon as possible. It further recommends that the State party take steps to ensure that the Ombudsman’s Office is**

supplied with the necessary financial, material and staffing resources to carry out its mandate effectively and independently, in accordance with the Paris Principles.

### **Definition of the offence of enforced disappearance (arts. 1–7)**

#### **The offence of forced disappearance**

13. The Committee notes with satisfaction that enforced disappearance is defined in article 236, paragraph 1, of the Criminal Code in conformity with the definition given in article 2 of the Convention. It is nevertheless concerned that the phrase “placing them outside the protection of the law” may be construed as an intentional element (*animus*) that would have to be present in order for the act to constitute criminal conduct, instead of being considered a consequence of such conduct. In this regard, the Committee takes note of the State party’s assurance that there are no judicial precedents to date in Paraguay regarding this issue (arts. 2, 4 and 6).

14. **The Committee recommends that the State party take the necessary measures, including the provision of suitable training for judges and prosecutors, to ensure that the phrase “placing them outside the protection of the law” that appears in article 236, paragraph 1, of the Criminal Code be considered a consequence of the commission of the offence of enforced disappearance rather than an intentional element (*animus*) that would have to be present in order for the act to constitute criminal conduct.**

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

#### **Prevention and punishment of acts that hinder the progress of investigations**

15. The Committee takes note of the information provided by the State party regarding the measures that could be adopted under current legislation to prevent any impediment to criminal investigations, including pretrial detention, alternatives to or substitutes for pretrial detention and the power of the Attorney General to order the temporary suspension of officials of the Public Prosecution Service (art. 12).

16. **In order to strengthen the existing legal framework and ensure that, in accordance with article 12, paragraph 4, of the Convention, all acts that would hinder the progress of investigations are prevented and punished and, in particular, to ensure that all persons suspected of having committed an offence of enforced disappearance are not in a position to directly or indirectly influence, the progress of an investigation, either through their own actions or through those of others, the Committee recommends that the State party adopt legal provisions that expressly establish: (a) the suspension, for the duration of the investigation, of any officials suspected of having committed an offence of enforced disappearance; and (b) a mechanism that ensures that law enforcement or security forces, whether civilian or military, whose members are suspected of having committed an offence of enforced disappearance do not take part in the investigation.**

#### **Investigation of enforced disappearances**

17. The Committee takes note of the information provided by the State party regarding the judgements handed down to date, as well as the investigations currently under way into human rights violations believed to have been committed between 1954 and 1989, including enforced disappearances. It is nevertheless concerned at reports of how few of those responsible have been tried and punished and at the fact that, despite the amount of

time that has elapsed, the relevant investigations have still not been concluded (arts. 12 and 24).

18. **The State party should take the necessary steps to ensure that all cases of enforced disappearance, including those that may have been committed during the period 1954–1989, are investigated without delay, even in cases in which no formal charges have been brought, and that those responsible are punished in accordance with the gravity of their acts. The State party should also take the necessary measures to ensure that adequate technical, financial and human resources are provided to the authorities in charge of investigating enforced disappearances so that they will be able to discharge their duties promptly and effectively.**

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

### **Communication of persons deprived of liberty**

19. While the Committee is pleased to note that the Constitution establishes the right of persons deprived of their liberty to have their families or any person of their choosing informed immediately of their detention, the Committee is concerned by reports that the appropriate material conditions are not in place to give effect to this right in practice (art. 17).

20. **The Committee recommends that the State party take the necessary measures, including the adoption of compulsory enforcement protocols and the allocation of appropriate resources, to ensure that, in practice, all persons deprived of their liberty may communicate without delay with their families, a lawyer or any person of their choosing and, in the case of foreigners, with their consular authorities.**

### **Register of persons deprived of their liberty**

21. The Committee takes note of the information provided by the State party regarding the registers of persons deprived of their liberty kept in police stations, detention centres and the military detention centre of Viñas Cue. It is nevertheless concerned that, when persons are taken to police stations for identification, only a limited number of items of information are entered in the logbooks. It is also concerned by reports of cases in which people were taken into custody that were allegedly not recorded properly (arts. 17 and 22).

22. **The State party should take the necessary steps to ensure that:**

(a) **Information on all persons deprived of their liberty, without exception, is entered in registers and/or records in accordance with standard protocols and that the information contained therein includes, as a minimum, that required under article 17, paragraph 3, of the Convention;**

(b) **All registers and/or records of persons deprived of their liberty are accurately and promptly completed and kept up to date; and**

(c) **All registers and/or records of persons deprived of their liberty are regularly checked and that, in the event of irregularities, the officials responsible are sanctioned.**

### **Training on the Convention**

23. The Committee welcomes the human rights training provided to military and police personnel and, in particular, the training in the investigation of cases of enforced disappearance given to officials of the Public Prosecution Service. Nevertheless, it notes

that no specific, regular instruction is given to State officials on the relevant provisions of the Convention, as provided for in article 23 thereof (art. 23).

**24. The Committee recommends that the State party take the necessary measures to ensure that all military and civilian law enforcement personnel, medical personnel, officials and any other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive suitable information on a regular basis concerning the provisions of the Convention, in accordance with article 23 thereof.**

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

#### **The right to receive reparation and prompt, fair and adequate compensation**

25. The Committee is concerned to note that no provision is made in the State party's legal order for a comprehensive system of reparation which fully meets the requirements of article 24, paragraphs 4 and 5, of the Convention and is applicable to all cases of enforced disappearance regardless of when they occurred. At the same time, while it takes note of the measures of reparation adopted thus far in relation to human rights violations committed between 1954 and 1989, including enforced disappearances, the Committee is concerned by reports concerning the difficulties encountered by enforced disappearance victims when seeking to exercise their right to full reparation (art. 24).

**26. The Committee recommends that the State party adopt the necessary legislative or other measures to guarantee the right to reparation and to prompt, fair and adequate compensation of all persons who have suffered direct harm as a result of an enforced disappearance, regardless of when it was perpetrated. To this effect, it recommends that the State party:**

(a) **Adopt the necessary legislative measures to establish a comprehensive, gender-sensitive system of reparation that is fully in line with article 24, paragraphs 4 and 5, of the Convention; and**

(b) **Intensify its efforts and adopt the necessary measures to ensure that all persons who have suffered direct harm as a result of an enforced disappearance committed between 1954 and 1989 may exercise their right to receive full reparation, including medical and psychological rehabilitation, in accordance with the terms of article 24, paragraphs 4 and 5, of the Convention and are not subject to requirements that could hinder the full exercise of that right.**

#### **The search for persons who disappeared between 1954 and 1989**

27. The Committee, while taking note of the information provided by the State party on the activities undertaken to search for and identify persons who were victims of enforced disappearances between 1954 and 1989, is concerned that only a small number of victims have been located and that they have not yet been identified (art. 24).

**28. In the light of article 24, paragraph 3, of the Convention, the State party should intensify its efforts to locate and identify all persons who suffered enforced disappearance between 1954 and 1989 and whose fate is not yet known. The Committee particularly recommends that the State party adopt all necessary means to:**

- (a) **Ensure that the agencies responsible for searching for and identifying disappeared persons have sufficient economic, technical and human resources to enable them to carry out their work promptly and effectively;**
- (b) **Expedite the development and launch of the DNA database; and**
- (c) **Guarantee, in the event of the death of a victim and the identification of the remains, respect for and the restitution of the remains.**

#### **The legal situation of disappeared persons and their relatives**

29. The Committee considers that a declaration of absence with presumption of death as a means of establishing the legal situation of persons who have disappeared does not adequately reflect the complexity of the phenomenon of enforced disappearance. In particular, and in view of the continuous nature of enforced disappearance, it considers that, in principle and unless there is 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 (art. 24).

30. **In accordance with article 24, paragraph 6, of the Convention, the Committee recommends that the State party adopt the necessary measures to deal appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in areas such as social welfare, financial matters, family law and property rights. In this regard, the Committee encourages the State party to adopt specific legal provisions which establish a procedure for obtaining a declaration of absence due to enforced disappearance.**

#### **Legislation concerning the removal of children**

31. The Committee notes with concern that the State party's criminal laws do not include provisions which specifically penalize conduct relating to the removal of children referred to in article 25, paragraph 1, of the Convention (art. 25).

32. **The Committee recommends that the State party adopt the necessary legislative measures to make the actions described in article 25, paragraph 1, of the Convention specific offences and that it establish penalties for such actions that are commensurate with their extreme gravity.**

### **D. Dissemination and follow-up**

33. The Committee wishes to recall the obligations undertaken by States upon their ratification of the Convention and, in this connection, urges the State party to ensure that all the measures that it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations that it assumed upon its ratification of the Convention and other relevant international instruments. In particular, the Committee urges the State party to ensure that effective investigations are conducted into all enforced disappearances and that the rights of victims as set forth in the Convention are fully upheld.

34. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender violence. Female relatives of a disappeared person are particularly likely to suffer from serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including the loss of their identity. The

Committee therefore places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches inform the actions taken to uphold the rights and fulfil the obligations set out in the Convention.

35. The State party is encouraged to ensure the wide dissemination of the Convention, the report that it has submitted under article 29, paragraph 1, of the Convention, its written replies to the list of issues drawn up by the Committee and the present concluding observations in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of relatives of victims, in the actions taken in line with the present concluding observations.

36. In accordance with the Committee's rules of procedure, by 26 September 2015 at the latest, the State party should provide relevant information on the actions taken in response to the recommendations made by the Committee in paragraphs 12, 20 and 26.

37. Under article 29, paragraph 4, of the Convention, the Committee also requests the State party to submit specific, up-to-date information by 26 September 2010 on the action taken in response to all its recommendations, together with any other new information on the fulfilment of the obligations under the Convention. The document containing this information should be prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of relatives of victims, in the preparation of this information.

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