



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
8 May 2019
English
Original: Spanish

Committee on Enforced Disappearances

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

1. The Committee considered the report submitted by Chile pursuant to article 29 (1) of the Convention (CED/C/CHL/1) at its 279th and 280th meetings (CED/C/SR.279 and 280), held on 9 and 10 April 2019. At its 290th meeting, held on 17 April 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Chile pursuant to article 29 (1) of the Convention. The Committee appreciates the quality of 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, which dispelled many of its concerns. The Committee also thanks the State party for its written replies (CED/C/CHL/Q/1/Add.1) to the list of issues (CED/C/CHL/Q/1), which were supplemented by the delegation's oral statements during the dialogue, and for the additional information provided in writing.

B. Positive aspects

3. The Committee commends the State party for having ratified all the core United Nations human rights instruments and the majority of the optional protocols thereto, as well as the Inter-American Convention on Forced Disappearance of Persons and the Rome Statute of the International Criminal Court.

4. The Committee welcomes the fact that the State party has recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention.

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

(a) The adoption of various legislative and other measures on truth, justice and reparation in relation to the enforced disappearances and other serious human rights violations perpetrated during the period of military dictatorship from 11 September 1973 to 10 March 1990;

(b) The adoption by the Public Prosecution Service of communication No. 37 in 2019, which inter alia sets forth general instructions and guidelines to prosecutors for prosecuting enforced disappearance in the absence of a separate offence;

* Adopted by the Committee at its sixteenth session (8–18 April 2019).



(c) The promulgation in 2009 of Act No. 20357, defining crimes against humanity, genocide and war crimes;

(d) The promulgation in 2009 of Act No. 20405 establishing the National Human Rights Institute.

6. The Committee notes with satisfaction that the State party has extended a standing invitation to all special procedure mandate holders of the Human Rights Council to visit the country. In that connection, the Committee welcomes the visit to Chile of the Working Group on Enforced or Involuntary Disappearances in 2012 and encourages the State party to continue cooperating with that mechanism under its mandate.

C. Principal subjects of concern and recommendations

7. The Committee notes with satisfaction the significant progress that has been made in the State party, since the return to democracy, in the areas of truth, justice and reparation in connection with enforced disappearances perpetrated during the military dictatorship. Nonetheless, the Committee considers that, at the time of adoption of the present concluding observations, the regulatory framework in force in the State party does not comply fully with the obligations of States parties to the Convention. The Committee urges the State party to act upon its recommendations, which have been formulated in a spirit of constructive cooperation with the aim of helping the State party to give effect, in law and in practice, to its obligations under the Convention, and it encourages the State party to use the fact that various legislative initiatives are currently under consideration as an opportunity to implement the recommendations of a legislative nature made in these concluding observations and to ensure that its legal system is in full compliance with the Convention.

Definition and characterization of enforced disappearance (arts. 1–7)

Characterization of enforced disappearance as a separate offence

8. The Committee is concerned that enforced disappearance has not yet been defined as a separate offence. In that connection, it welcomes the bill amending the Criminal Code to establish the offence of enforced disappearance of persons (Bulletin No. 9818-17), which, in its current state, contains a definition of enforced disappearance that is in line with article 2 of the Convention and other provisions that, if adopted, would ensure compliance with other obligations established in the Convention. The Committee trusts that the State party will expedite the adoption of this legislation, in line with the commitment that it made during the dialogue (arts. 2 and 4–7).

9. **The Committee recommends that the State party adopt the legislative measures needed to ensure that enforced disappearance is defined as a separate offence in line with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties which take account of its extreme seriousness. In that regard, the Committee recommends that the State party expedite the procedure for the adoption of the bill amending the Criminal Code to establish the offence of enforced disappearance of persons (Bulletin No. 9818-17) and ensure that the provisions that are ultimately adopted are fully in line with the Convention.**

Appropriate penalties

10. The Committee notes with concern that the application of legal concepts such as irreproachable prior conduct as a mitigating factor (article 11 (6) of the Criminal Code) and partial statutory limitations (article 103 of the Criminal Code), as well as the replacement of sentences by probation measures and the granting of prison benefits such as conditional release, have led to some of those who perpetrated enforced disappearances during and after the dictatorship receiving short sentences or not serving their sentences in full. This means that the punitive action taken by the State party is not commensurate with the extreme seriousness of the offence. The Committee takes note of the information provided by the State party about the variety of judicial decisions taken on the application of partial

statutory limitations to cases of enforced disappearance perpetrated during the dictatorship and the adoption of Act No. 21124, which introduces additional requirements that govern the conditional release of convicted persons (arts. 7 and 12).

11. The Committee recommends that the State party take the measures needed to ensure that perpetrators of enforced disappearance are always punished with appropriate penalties that take into account the extreme seriousness of the offence.

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

Statute of limitations

12. The Committee welcomes the State party's assertion that, in accordance with the prevailing legal theory and practice, acts of enforced disappearance are not subject to statutory limitations, even when they do not amount to crimes against humanity, because they are understood to involve offences the commission of which is ongoing (CED/C/CHL/1, para. 85). However, it notes with concern that this principle is not enshrined in domestic legislation. In this regard, it notes that article 95 of the Criminal Code establishes that the term of limitation commences on the day on which the offence was committed and makes no exception for offences of a continuous nature (art. 8).

13. The Committee recommends that the State party take the measures necessary to expressly establish in its criminal legislation that, if a statute of limitations is applied in respect of enforced disappearance, the term of limitation for criminal proceedings should be of long duration and should commence from the moment when the offence of enforced disappearance ceases, given its continuous nature. The Committee encourages the State party to adopt the bill establishing the offence of enforced disappearance (Bulletin No. 9818-17), which, among other things, stipulates that statutory limitations should not apply to criminal proceedings and penalties for the offence of enforced disappearance.

Military jurisdiction

14. The Committee notes with satisfaction that, under current legislation, civilians and minors are not subject to the jurisdiction of military courts under any circumstances. The Committee notes that, according to the information provided by the State party during the dialogue, ordinary offences committed by members of the armed forces or the Carabineros (police) against other members of those forces do not fall under the jurisdiction of military courts either. It is concerned, however, that exclusion from military jurisdiction in such cases is not specifically provided for by law (art. 11).

15. Recalling its statement on enforced disappearances and military jurisdiction (A/70/56, annex III), the Committee recommends that the State party take the necessary steps to ensure that it is expressly stipulated in national legislation that the investigation and prosecution of enforced disappearances committed by members of the armed forces or the Carabineros against other members of those forces should remain outside military jurisdiction and be investigated and tried only by ordinary courts. In this regard, the Committee encourages the State party to pass the bill establishing the offence of enforced disappearance (Bulletin No. 9818-17), which, among other things, expressly states that cases of enforced disappearance should remain outside military jurisdiction.

Investigation of enforced disappearances

16. The Committee acknowledges the progress made in investigating enforced disappearances carried out during the dictatorship and notes that 834 cases involving kidnapping, unlawful detention, torture and disappearance are pending. The Committee is concerned that there are 355 cases involving recognized victims in which legal proceedings have not yet been initiated, but it notes that the Human Rights Unit will review these cases in 2019 in order to determine whether they can feasibly be prosecuted. Although the

Committee notes with concern that investigations are governed by the old Code of Criminal Procedure, which establishes that preliminary investigations should be conducted in secret, it also notes the State party's assertion that, in practice, in most cases, the complainants are aware of the investigation and the accused are granted access to its contents as soon as they are sent for trial. It further notes that the bill that would give courts access to the information collected by the National Commission on Political Prisoners and Torture (Bulletin No. 10883-07) has not yet been passed. The Committee welcomes the State party's assertion that the Amnesty Decree-Law (No. 2191) has not been applied by the courts since 1998 but is concerned that the Decree-Law remains in force and could therefore be applied if there was a change in case law (arts. 12 and 24).

17. The Committee recommends that the State party:

(a) Continue and step up its efforts to initiate and expedite investigations into enforced disappearances carried out during the dictatorship and to ensure that the persons who participated in those disappearances are tried and, if found guilty, punished with appropriate penalties that take into account the extreme seriousness of their acts;

(b) Take appropriate measures to ensure that any individual who has suffered harm as the direct result of an enforced disappearance is able to exercise his or her right to know the truth regarding the progress and results of the investigations;

(c) Take the necessary measures to ensure that the authorities investigating enforced disappearances have access to all relevant documentation and other information so that they are able to conduct the investigation effectively;

(d) Ensure that domestic legislation does not contain provisions that would allow perpetrators of enforced disappearance to be exempted from any appropriate legal proceedings or criminal penalty. In this regard, the Committee recommends that the Amnesty Decree-Law (No. 2191) be declared null and void;

(e) Ensure that the institutions involved in the investigation of enforced disappearances have adequate financial and technical resources and qualified staff to be able to perform their work promptly and effectively.

18. The Committee notes with concern the slow progress made in the investigations of three of the four cases of enforced disappearance that allegedly took place after the dictatorship (arts. 12 and 24).

19. The Committee recommends that the State party continue and step up its efforts to prevent enforced disappearances and to ensure that all enforced disappearances are promptly, thoroughly and effectively investigated; that the perpetrators are prosecuted and, if found guilty, punished with appropriate penalties that take into account the extreme seriousness of their acts; and that the victims receive full reparation in accordance with article 24 (4) and (5) of the Convention.

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

Training on the Convention

20. The Committee takes note of the information provided by the State party regarding the human rights training provided in the civil and military institutions responsible for law enforcement and notes with satisfaction that the topic of enforced disappearance has been incorporated into some of the training activities. However, it notes that there is a failure to provide specific training on a regular basis on the relevant provisions of the Convention in accordance with article 23 thereof (art. 23).

21. The Committee recommends that the State party continue its efforts with regard to human rights training for State officials, ensuring in particular that all military and civilian law enforcement personnel, medical personnel, public officials and 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 specific training on a regular basis concerning the provisions of the Convention, in accordance with article 23 (1) thereof.

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

Definition of victim

22. The Committee considers that the exhaustive list, in order of precedence, of persons who may be considered victims of an offence under article 108 of the Code of Criminal Procedure is not fully consistent with the definition of victim established in article 24 (1) of the Convention. In this regard, it welcomes the assertion made by the State party during the dialogue that, in practice, the Public Prosecution Service applies a broad definition of victim, for example when it comes to the provision of protection and information. However, it is concerned that the current wording of article 108 of the Code of Criminal Procedure could prevent some persons who have suffered harm as the direct result of an enforced disappearance from being able to exercise all their rights under the Convention (art. 24).

23. **The Committee recommends that the State party consider taking the necessary measures to ensure that domestic legislation contains a definition of a victim of enforced disappearance that is consistent with the definition set forth in article 24 (1) of the Convention, so as to ensure that all persons who have suffered harm as the direct result of an enforced disappearance can fully exercise the rights enshrined in the Convention, in particular the rights to justice, truth and reparation.**

Right to obtain reparation and prompt, fair and adequate compensation

24. The Committee welcomes the considerable efforts made by the State party to guarantee the right to reparation of victims of enforced disappearances perpetrated during the dictatorship, including the creation of the Compensation and Comprehensive Health-Care Programme. The Committee regrets that, according to the State party, the establishment of a standing commission for the classification of victims, which would help to determine whether there are any victims of enforced disappearance who were not recognized by the truth commissions, is not an absolute priority. Nevertheless, it notes with interest that victims of enforced disappearance who were not recognized by the truth commissions but who are recognized as such by the courts have access to the social benefits enjoyed by persons who are on the truth commissions' lists of victims. The Committee notes with satisfaction that, since 2011, the Supreme Court has held that civil actions for damages arising from enforced disappearances perpetrated during the dictatorship are not subject to statutory limitations; it also notes, however, that this non-applicability of statutory limitations is not enshrined in domestic law (art. 24).

25. **The Committee recommends that the State party: (a) Continue its efforts to ensure that all persons who have suffered harm as the direct result of enforced disappearances perpetrated during the dictatorship, including victims who were not recognized as such by the truth commissions, receive full reparation; (b) Ensure that the institutions dealing with reparation, including symbolic reparation, have adequate financial and technical resources and qualified staff. The Committee also encourages the State party to reflect in its legislation the position adopted by the Supreme Court with respect to the non-applicability of statutory limitations to civil actions for damages arising from enforced disappearances; or, if a statute of limitations is applied in respect of civil actions of that kind, the Committee recommends that the State party take the necessary steps to ensure, by means of its legislation, that the term of limitation is of long duration and commences from the moment when the enforced disappearance ceases.**

Search for missing persons

26. The Committee recognizes the efforts made by the State party to search for persons allegedly subjected to enforced disappearance during the dictatorship and is aware of the challenges it faces, particularly due to the passage of time. However, it is concerned about

the limited number of victims of enforced disappearance from the dictatorship who have been located to date. It is also concerned that the four people who were apparently subjected to enforced disappearance after the dictatorship have not been located (art. 24).

27. The Committee recommends that the State party continue and step up its efforts to locate any persons subjected to enforced disappearance during or after the dictatorship and whose fate is not yet known and, in the event of death, to identify and return their remains in a dignified manner. In particular, the Committee recommends that the State party:

(a) Continue its efforts with a view to ensuring efficient coordination, cooperation and cross-referencing of data between the agencies responsible for investigating enforced disappearances, searching for missing persons and identifying their remains in case of death;

(b) Ensure that the agencies responsible for searching for missing persons and identifying their remains in case of death have the financial and technical resources and qualified staff necessary to conduct their work promptly and effectively;

(c) Ensure that searches are conducted by the competent authorities with the active involvement of the relatives of the disappeared person, if they so request;

(d) Ensure that the search continues until the fate of the disappeared person has been established. This includes identification, preservation and protection of all sites where it is suspected that human remains of disappeared persons might be found.

Legal situation of disappeared persons whose fate has not been clarified and that of their relatives

28. The Committee notes with appreciation that Act No. 20377 envisages the possibility of declaring absence due to enforced disappearance in relation to enforced disappearances perpetrated during the dictatorship. However, it regrets that it has received no clarification on whether existing legislation provides for the possibility of declaring an enforced disappearance in relation to enforced disappearances perpetrated after the dictatorship (art. 24).

29. The Committee encourages the State party to take the steps necessary to ensure that legislation establishes a procedure whereby a declaration of absence due to enforced disappearance may be obtained irrespective of the date on which the disappearance began, in order to ensure that the legal situation of disappeared persons whose fate has not been clarified and that of their families is appropriately regulated.

Wrongful removal of children

30. While noting the crimes of child abduction and of forgery of official documents, as well as provisions in criminal law penalizing the procurement or direct handover of children conducted without following the procedures set forth in the Adoption Act, the Committee is concerned that existing legislation does not include specific provisions penalizing all acts relating to the wrongful removal of children, under article 25 (1) of the Convention. The Committee takes note of the information provided by the State party regarding investigations into the removal and/or irregular adoption of 341 children, 279 of which allegedly occurred during the dictatorship. The Committee also notes that a special file has been opened in relation to the detention during the dictatorship of 10 pregnant women, whose children might have been born in captivity and survived. The Committee notes that those children could have been particularly vulnerable to becoming victims of identity substitution (art. 25).

31. The Committee recommends that the State party adopt the necessary legislative measures to make the actions described in article 25 (1) (a) of the Convention specific offences, and that it establish penalties for such actions commensurate with their extreme seriousness. It also recommends that the State party (a) expedite investigations into cases of removal and/or irregular adoption of minors and

disappearance of pregnant women; (b) ensure that victims are able to exercise their right to recover their identity if it emerges that that identity was changed.

D. Dissemination and follow-up

32. The Committee wishes to draw attention to 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.

33. 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 are 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. The Committee therefore places special emphasis on the need for the State party to take account of gender perspectives and child-sensitive approaches when upholding the rights and fulfilling the obligations set out in the Convention.

34. The State party is encouraged to ensure wide dissemination of the Convention, its report submitted under article 29 (1) of the Convention, the 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 active in the State party and the general public. The Committee further encourages the State party to promote the involvement of civil society in the process of implementing the present concluding observations.

35. In accordance with the Committee's rules of procedure, the State party is requested to provide, no later than 18 April 2020, relevant information on the implementation of the Committee's recommendations contained in paragraphs 9 (characterization of enforced disappearance as a separate offence), 17 (investigation of enforced disappearances) and 27 (search for missing persons) of the present concluding observations.

36. In accordance with article 29 (4), of the Convention, the Committee requests the State party to submit, by 18 April 2025, specific, up-to-date information on the implementation of all its recommendations, as well as any other new information relating to the implementation of the obligations contained in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29 of the Convention (CED/C/2, para. 39). The Committee encourages the State party, when preparing this information, to consult civil society, including organizations of relatives of victims.