



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

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## Committee on Enforced Disappearances Sixteenth session

### Summary record (partial)\* of the 286th meeting\*\*

Held at the Palais Wilson, Geneva, on Monday, 15 April 2019, at 10 a.m.

*Chair:* Ms. Janina

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\* No summary record was prepared for the rest of the meeting.

\*\* No summary records were issued for the 284th or 285th meetings.

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*The meeting was called to order at 10.05 a.m.*

### **Meeting with States Members of the United Nations**

1. **The Chair** said that, during the previous week, the Committee had held three constructive dialogues with States parties and aimed to adopt its draft guiding principles for the search for disappeared persons by the end of the current session. The principles would serve all those involved in the fight against enforced disappearance and the Committee was grateful for the input that had been received from a number of stakeholders, including States parties and organizations of victims of enforced disappearance.

2. In terms of procedure, the Committee would resort to reviewing a State party's implementation of the Convention in the absence of a report only where absolutely necessary. It would therefore continue to offer support to States whose reports were overdue with a view to helping them submit the reports in a timely fashion. She was pleased to be able to note that, of the States parties concerned, Brazil and Mali had signalled they were preparing their reports and would submit them soon.

3. The increasing number of urgent action requests – over 560, of which 500 were currently active – and the proposed reviews of the situation in States parties in the absence of reports compounded the problems arising from the shortage of human resources in the secretariat: for instance, in the current session, the Committee had been obliged to postpone the approval of a list of issues for review in the absence of a report because the secretariat could not provide the necessary support. Although the Petitions Unit, which also worked for other committees, had managed to deal with the urgent action requests by taking on additional staff, that was a temporary solution, dependent on the availability of extra-budgetary funding. The Committee would also need more resources to develop a follow-up procedure under article 29 (4) of the Convention. She therefore appealed to Member States to find a durable solution to address those urgent matters, which had not been taken into account when General Assembly resolution 68/268 had been adopted. The Committee would ask the Secretary-General to include them in his forthcoming report to the General Assembly to ensure that they were factored into the calculations for meeting time and staff. The Committee had fully supported the process related to the 2020 review of the treaty body system from the outset: it had been among the first treaty bodies to respond to the questionnaire issued by the annual meeting of Chairs of the human rights treaty bodies and had appointed two members as focal points to follow up the work. At the next annual meeting of Chairs in June 2019, it would continue to seek to adopt common positions with other treaty bodies in respect of the 2020 review.

4. The forthcoming meeting of States parties to the Convention, in June 2019, would see the election of five new Committee members to replace those whose mandates were ending. Besides the elections, the meeting could also serve as an opportunity to hold substantive discussions regarding the challenges to States parties' implementation of the Convention, particularly that of achieving universal ratification of the Convention, in line with the campaign launched by the former United Nations High Commissioner for Human Rights to double the number of ratifications. She thanked all States that had put effort into that drive, focusing notably on parts of the world with particularly low levels of ratification, and especially those, such as Japan, which had given earmarked funding.

5. **Ms. Gérardin** (France) said that France and Argentina had played an important role in the adoption of the Convention and remained committed to promoting its universal ratification. She particularly wished to thank outgoing member Mr. Decaux for the contribution he had made to the Committee's work, and noted that France had put forward Mr. Olivier de Frouville as a candidate to replace him. In light of the forthcoming 2020 review of the treaty body system, she wondered how the Committee planned to better coordinate its work with that of other treaty bodies on urgent actions and on the legal grounds used as a basis for their decisions.

6. **Ms. Lecaros Terry** (Peru), supporting the comments made by the representative of France in respect of the 2020 review, said that, from her delegation's experience, there seemed to be a great deal of overlap between the work of the Committee and that of the Committee against Torture. It would therefore be useful to consider how the two

Committees could better coordinate their work. She also agreed that it would be useful to hold substantive discussions at the next meeting of States parties to the Convention with a view to increasing the number of ratifications.

7. The constructive dialogue during the Committee's consideration of her country's initial report had been productive and dynamic, and she would like to thank Mr. Huhle and Ms. Galvis Patiño, the country rapporteurs, and the other outgoing members, including Mr. Figallo Rivadeneyra, for their commitment to the work of the Committee.

8. **Mr. Valdés** (Chile) said that his country had been pleased with the previous week's constructive dialogue with the Committee, particularly in the light of his country's history and its process of transitional justice. Chileans still suffered on account of enforced disappearances that had taken place during the 1973–1990 military dictatorship. The dialogue had provided an opportunity to evaluate the legal, political and institutional progress the country had made since its return to democracy and its ratification of the Convention. For that reason, government departments had been represented at the highest level. The Government would take careful note of all the Committee's recommendations and would like to highlight the work undertaken during the reporting process by the national human rights institution and civil society. The two-part format of the dialogue was helpful as it had facilitated the preparations. However, it was difficult to provide enough information in the limited time available and so the delegation appreciated the possibility of submitting further information within 48 hours of the meeting. Streamlining the treaty bodies' work remained important, especially to avoid duplication between committees.

9. **Mr. Masméjean** (Switzerland) said that he would like to hear more about the Committee's experience of examining State parties' implementation of the Convention in the absence of a report, whether it was a new practice and whether the Committee would continue with it.

10. **Mr. Okaniwa** (Japan) said that Japan attached great importance to the Convention, as demonstrated by the fact that it had recommended, through the universal periodic review process, that States not yet parties, particularly those in the Asia-Pacific region, ratify the Convention. In addition, the Committee had continuously had Japanese members since its establishment. That notwithstanding, the outcome of the Committee's review of Japan in November 2018 had been highly regrettable. Despite the delegation being well-prepared and answering questions sincerely, the Committee had not taken its explanations into account and had issued concluding observations seemingly based on misunderstandings. The Committee had also exceeded its mandate, in contravention of the explicit provisions of the treaty, in regard to certain issues. Japan had made its position clear in a letter from Ambassador Yoshifumi Okamura to Ms. Janina. Japan requested that the Committee improve its impartiality, fairness and accuracy. As long as the Committee's reliability was not ensured, it would be difficult to increase the number of States parties to the Convention. The Government was considering submitting its opinion, including on that issue, as part of the 2020 review process.

11. **Mr. Ruiz Gayol** (Mexico) said that he would like to know when the final version of the guiding principles for the search for disappeared persons would be adopted and issued, with a view to promoting their implementation by the States parties, and suggested that the Human Rights Council might be an appropriate forum for doing so. On urgent actions, it seemed that the Petitions Unit now sent States parties automatic reminders with respect to urgent action requests; unfortunately the reminders received recently by Mexico had, in some cases, not included sufficient information to enable it to find its records of the cases easily; other requests had concerned information already submitted. He hoped the Committee would look into the issue with a view to facilitating communication and dealing with urgent action requests more efficiently.

12. **Ms. Koumby Missambo** (Gabon) said that, although her country had ratified the Convention in 2011, it had not yet managed to bring its legislation into line with the Convention due, inter alia, to a lack of case law on enforced disappearance. However, Gabon understood the importance of working with the Committee to prevent enforced disappearance and made every effort to honour its international commitments in that area. In 2017, despite facing exceptional circumstances, Gabon had appeared before the

Committee and had since submitted its replies to the Committee's concluding observations. She echoed the request made by the representative of Peru for improved coordination with other treaty bodies. Gabon would also like to ask the Committee to help build its capacity with a view to incorporating the Convention in its new Criminal Code.

13. **Ms. Gutierrez Alvaro** (Argentina), thanking the outgoing members for their commitment to the work of the Committee, said that her country continued, through the universal periodic review mechanism, to encourage Member States who had not yet done so to ratify the Convention. She hoped that her country's experience in searching for disappeared persons could be a useful contribution to the development of the draft guiding principles. She supported the suggestion that the next meeting of States parties to the Convention should include substantive discussions and would convey that message to her colleagues in New York.

14. **Ms. Ariun** (Mongolia) said that Mongolia had ratified the Convention in 2014 and submitted its initial report in December 2018. There had been no cases of enforced disappearance in Mongolia and so the Government's efforts had concentrated on creating the legislative environment to prohibit it and prevent it occurring. In view of the 2020 review, she agreed that substantive discussions at the next meeting of States parties would help to encourage countries to ratify the Convention; Mongolia did what it could to promote ratification through the universal periodic review process.

15. **Mr. Abdullatteef** (Iraq) said that Iraq was currently preparing its next report. He wished to draw attention to the fact that a number of the complaints lodged with the Committee in respect of Iraq concerned cases of enforced disappearance perpetrated by terrorist organizations; others were not credible; but they remained open on the Committee's files. He would be grateful, therefore, if the Committee could examine cases thoroughly before submitting them to States parties, in order to improve its credibility.

16. **The Chair**, responding to the question from the Japanese delegate, said that the Committee was maintaining a continuous dialogue with his Government and had responded to its most recent letter. The Committee strove to maintain a high level of transparency and worked on the basis of a victim-oriented interpretation of the Convention.

17. With regard to the 2020 review, the meeting of the Chairs of the human rights treaty bodies in June 2019 would be the last opportunity for all the treaty bodies to engage in a discussion with a view to agreeing upon a common approach. Under article 28 of the Convention, the Committee was obliged to cooperate with other treaty bodies and it made every effort to do so: it endeavoured to maintain intersessional dialogue with them, its focal point had recently attended an informal meeting to that end in Copenhagen and, during its fifteenth session, it had held a formal discussion with the Committee against Torture.

18. The Committee's new working methods had been approved at its fifteenth session and could be found on its website. A review could be conducted in the absence of a report if the State party concerned had failed to meet its reporting requirements for a period of five years. However, the Committee would seek to exhaust all other options before resorting to such a review, as it remained committed to constructive dialogue.

19. **Mr. Decaux**, thanking the delegations for their comments, said that, while the significant change in Committee membership in 2019 could lead to continuity issues, it also represented an opportunity to bring in fresh ideas. The Convention was of a very technical nature and it was therefore important that the new experts were experienced, specialized, independent and impartial. The review provided for in article 27 of the Convention had presented a challenge for the Committee and he would therefore like to pay homage to those, notably the Ambassadors of France and of Argentina, who had helped ensure that the Committee's mandate was confirmed.

20. Under article 28 of the Convention, the Committee was obliged to cooperate and maintain a dialogue with the other treaty bodies. To that end, it would be useful to take advantage of the presence in Geneva of other treaty bodies to hold joint meetings with them, as had been done during the previous session with the Committee against Torture. The Committee had always acted in line with the spirit of General Assembly resolution 68/268, and the Addis Ababa guidelines, on the independence and impartiality of members

of the human rights treaty bodies, and the San Jose guidelines against Intimidation or Reprisals had served as a guide for its work since their adoption.

21. In the lead up to the 2020 review, the focal points of the treaty bodies had engaged in informal discussions. He was confident that the review would serve to strengthen the treaty body system, despite the lack of available resources.

22. He wished to highlight the innovative nature of the Convention, which provided for a new human right, thus adding value to the international system of human rights. The provisions of the Convention were more advanced and specific than those of the International Covenant on Economic, Social and Cultural Rights and there was therefore no overlap in jurisprudence. While there may be some overlap with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it was sometimes necessary for issues to be examined by more than one treaty body, especially when violations were systematic.

23. It was important to note the flexibility of the reporting obligations under article 29 of the Convention. The Committee understood that the preparation of reports could be a burden to Governments and would therefore continue to be flexible in that regard. Given the limited resources with which it was working, the Committee was keen to address the most pressing issues.

24. **Ms. Galvis Patiño**, welcoming the presence of such a large number of delegates, said that the Committee's discussions on the draft guiding principles for the search for disappeared persons had been fruitful and she hoped that the principles would be approved before the end of the current session. Consultations would then take place with the States parties regarding the most effective way of disseminating them.

25. With regard to the reminders for urgent action that had been sent to the Mexican Government in error, the secretariat was working to resolve technical issues with the database. However, it lacked financial and human resources to address that matter and to monitor urgent action cases, of which there were more than 500. The issue of urgent action reminders would be discussed with a view to avoiding any further inconvenience to States parties.

26. In response to the issue raised by the delegate from Iraq regarding urgent action cases, she wished to emphasize that the Committee followed a pro-victim approach, in accordance with the Convention. When it received requests for urgent action, the Committee entered into a dialogue with the Government and, if appropriate, the case might be closed following an exchange with all involved. She encouraged the Government of Iraq to continue to engage with the Committee, which was committed to finding a solution in line with the Convention.

27. **Mr. Teraya** said that, while the goal of achieving 114 ratifications of the Convention by 2022 was not achievable, he was heartened to note the presence at the meeting of representatives of Member States which had not yet ratified the Convention, although, unfortunately, there were not many from the Asia-Pacific region. Negotiation and dialogue at all levels were necessary to improve that situation.

28. **Mr. Figallo Rivadeneyra** said that, despite the seeming overlap of their work, the treaty bodies each had a unique mandate and examined issues from a distinct perspective. Many human rights violations were multidimensional and could therefore fall under the jurisdiction of more than one treaty body. It was important to listen to a range of views and reports on every violation of human rights and the Committee considered carefully all information and views provided by States parties. Recognizing the significant efforts made by Governments to address human rights issues, he emphasized the importance of constructive dialogue, a spirit of openness and a focus on victims.

29. **Mr. Salama** (Office of the United Nations High Commissioner for Human Rights) said that the main issue raised by the Member States seemed to be the divergence in approaches, jurisprudence and methodologies between the treaty bodies. The Committee was the most specialized of all the treaty bodies. The Convention was the most recent and therefore served as a model convention. Its narrow focus and the consequent requirement

for its experts to be highly specialized ensured the high quality of its work and helped to avoid overlap with other treaty bodies.

30. The issues regarding methods of work and overlap were related to the need for coherence and rationalization of the efforts of the treaty bodies and the States parties, but also to the financial resources available to the secretariat for the system to function. It might be recalled that, in 2014, following a process involving input from various stakeholders, the Member States had established a new approach that used objective criteria to determine the resources required by each treaty body. Unfortunately, that new approach had not been implemented. It was his opinion that the Member States should discuss that matter again. The treaty bodies were working both independently and collaboratively, as well as with external stakeholders, with a view to presenting a coherent vision to the Member States.

31. It was vital that representatives of Governments in Geneva, as the experts on the treaty body system, communicated the consensus reached regarding the 2020 review to their colleagues in New York, who were responsible for taking the final decision in that regard. The third report of the Secretary-General on the status of the human rights treaty body system would also provide useful information.

32. **Ms. Kountouri-Tapiero** (Office of the United Nations High Commissioner for Human Rights) said that the secretariat had requested input from Member States regarding the implementation of General Assembly resolution 68/268, to be received by 30 April 2019. The third report of the Secretary-General was to be made available in January 2020 with a view to it informing the review, which was due for completion in April 2020. The report would set out the trends and activities that had not been included in the resolution, such as urgent actions and follow-up.

33. **The Chair** said that the Committee would keep working to contribute to a more efficient treaty body system with a view to safeguarding human rights around the world.

*The meeting was suspended at 11.25 a.m. and resumed at 11.35 a.m.*

#### **Meeting with non-governmental organizations and other stakeholders**

34. **Mr. Zoller** (Geneva for Human Rights – Global Training) said he was pleased to note that, in line with its rules of procedure and working methods, the Committee adopted a victim-oriented approach both in its examination of State party reports and in addressing communications. His organization welcomed the draft guiding principles for the search for disappeared persons, which were focused on the victims, the need to protect relatives and defenders and the fact that the search procedure was an ongoing obligation of States parties. The principles were also an obligation for many non-States parties under other international instruments. The study undertaken by the Working Group on Enforced or Involuntary Disappearances on standards and public policy for an effective investigation of enforced disappearance was therefore complementary to the Committee's guiding principles.

35. His organization noted with serious concern that, notwithstanding the appeal launched by the United Nations High Commissioner for Human Rights in February 2017 aimed at doubling the number of ratifications of the Convention within five years, the anticipated figures had not been achieved. The new High Commissioner should, in his organization's view, launch a renewed campaign for ratification together with States parties and other supporters of the Convention.

36. Regular reminders should be sent to the numerous States parties that had failed to submit their reports, and the Committee should consider undertaking examinations in the absence of a report. States parties should also be reminded of the legal obligation to respond to requests for follow-up reports on urgent appeals and for country visits. His organization had expressed dismay in May 2018 at the statement by Mexico that it was not in a position to accept a visit. States parties should fully respect the independence of Committee members in such circumstances.

37. His organization was also concerned that the current treaty body reform process failed to take into account the requirement under the Convention to take speedy action, which required additional resources. The secretariat should be more proactive and make concrete proposals to ensure that the Committee could fulfil its mandate. The proposed

master calendar should be flexible, the harmonization of working methods should be limited to initial State party reports, and the victim-oriented approach should be protected and not be automatically integrated into a common system for petitions.

38. His organization had promoted the Committee since its first session, in particular through expert seminars, and it planned to continue supporting its work.

39. **Mr. Araya** (Secretary of the Committee), speaking on behalf of the organization “Todos los niños robados son también mis niños”, which had been unable to attend the meeting, said that the organization had submitted a bill concerning kidnapped babies in Spain to the Spanish Congress of Deputies, the lower house of parliament, on 25 September 2018. The bill had been discussed and unanimously approved on 20 November 2018. However, no further progress had been made because of the suspension of parliamentary proceedings pending the elections to be held in late April 2019. The organization hoped that the bill would be enacted once the proceedings were resumed.

40. The organization was promoting an investigation into Spanish disappearances that was being conducted by a judge in Argentina on the basis of the principle of universal justice. It was also conducting activities aimed at instituting legal proceedings in Spain. However, the obstacles to such proceedings included the current amnesty, the existence of a statute of limitations and legislative obstacles to search and investigation procedures.

41. **The Chair** said that the organization’s full report would be distributed to Committee members.

42. **Mr. Baati** said that the issue of a master calendar or harmonization of timetables was of great importance. It was therefore essential to involve the Committee’s Chair in the process through prior consultations, rather than relying solely on the administrative work undertaken by the secretariat. As initial reports were of prime importance for the Committee, the harmonization process should respect the specificity of the Convention. The meeting of Chairs of the human rights treaty bodies to be held in late June 2019 would provide a final opportunity to harmonize diverse positions prior to the 2020 review of the treaty body strengthening process.

43. **Ms. Galvis Patiño** said that it was vital for the Committee to remain in contact with civil society organizations, which provided valuable first-hand information about developments in their countries and regions.

44. **The Chair** said that the Committee would maintain its dialogue with civil society organizations because their support and advice was of crucial importance.

*The discussion covered in the summary record ended at 12 noon.*