



# 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 293rd meeting\*\*

Held at the Palais Wilson, Geneva, on Thursday, 18 April 2019, at 3 p.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 287th to 292nd meetings.

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*The discussion covered in the summary record began at 5.05 p.m.*

## **Other matters**

### *Informal report on the sixteenth session*

1. **Mr. Teraya** (Rapporteur), presenting an overview of the Committee's informal report on its sixteenth session, said that it had adopted lists of issues in relation to the initial reports of the Plurinational State of Bolivia and Slovakia, appointed a new country rapporteur for the former and appointed country rapporteurs who would draft the lists of issues in relation to the initial reports of Switzerland and Mongolia. The adoption of the list of issues drafted in relation to Nigeria in the absence of a report had been postponed until the Committee's seventeenth session in September/October 2019. The Committee had also adopted concluding observations on the initial reports submitted by Chile, Italy and Peru under article 29 (1) of the Convention and adopted its follow-up report on requests for urgent action under article 30 of the Convention. The secretariat had been instructed to send notes verbales to the Permanent Mission of Brazil and to the Permanent Mission of Mali requesting them to submit their overdue reports in 2019 and reminding them that the Committee would proceed to adopt a list of issues in the absence of a report if they failed to do so. A note verbale would also be sent to the Permanent Mission of Argentina concerning its approach to following up on communications. A reminder would likewise be sent to the Permanent Mission of Iraq requesting it to submit its overdue follow-up report as soon as possible. The secretariat would continue to explore with the Permanent Mission of Argentina and the Permanent Mission of France in New York the possibility of holding a substantive dialogue on approaches to implementing the Convention during the Fifth Meeting of the States Parties, to be held in New York in June 2019. A note verbale would be transmitted to the Permanent Mission of Mexico reiterating the Committee's request to conduct a visit to the State party under article 33 of the Convention.

2. During its sixteenth session, the Committee had adopted the Guiding Principles for the Search for Disappeared Persons and guidelines on the adoption of lists of issues in the absence of a report. It had likewise conveyed its position on the 2020 review of the treaty body system to the United Nations High Commissioner for Human Rights. It would also request that the upcoming report by the Secretary-General on the implementation of General Assembly resolution 68/268 should reflect all the activities undertaken by the Committee that were not mentioned in the resolution, including its urgent action procedure under article 30, activities related to the consideration of additional information submitted by States parties under article 29 (4) and visits conducted under article 33 of the Convention. Moreover, the Committee had reiterated its request to the Office of the United Nations High Commissioner for Human Rights (OHCHR) to give effect to the fifth week of meeting time that had been allocated by the General Assembly and asked it to update the existing fact sheet on the Convention. It had likewise reiterated its decision to hold regular meetings with the Working Group on Enforced or Involuntary Disappearances.

### *Annual report of the Committee to the General Assembly*

3. **Mr. Teraya** said that the Committee's annual report for consideration by the General Assembly at its seventy-fourth session outlined the work that the Committee had completed during its fifteenth and sixteenth sessions. The report provided information on its methods of work, the lists of issues that it had adopted, the interactive dialogues that it had conducted with States parties and the concluding observations that it had adopted in that connection, as well as its follow-up to concluding observations and the situation of reporting under the Convention, including the decision to adopt lists of issues in respect of States parties whose reports were long overdue. It also addressed the subject of reprisals, noting that no allegations of acts of intimidation or reprisals had been received during the reporting period. It made reference to the additional information submitted by Mexico under article 29 of the Convention, the ensuing follow-up dialogue held in November 2018 and the concluding observations adopted in that connection.

4. The report also provided up-to-date information on requests for urgent action submitted under article 30 of the Convention. As at 4 April 2019, the Committee had

received 659 requests for urgent action, of which 569 had been registered. It had proceeded to close a total of 51 cases. In 29 of those cases, the disappeared persons had been located and released while, in the other 22 cases, the disappeared persons had been found dead. The Committee had decided to discontinue a total of 13 requests for urgent action. Although no new individual communications had been received during the reporting period, there had been developments in the case of *Yrusta v. Argentina*. The report likewise detailed the Committee's efforts to arrange a visit to Mexico under article 33 of the Convention and made reference to the stakeholder consultation process that had preceded the adoption of the Guiding Principles for the Search for Disappeared Persons.

5. **The Chair** said she took it that the Committee wished to adopt its annual report for consideration by the General Assembly at its seventy-fourth session.

6. *The annual report of the Committee to the General Assembly was adopted.*

#### **Provisional agenda for the seventeenth session**

7. **Mr. Teraya** said that the Committee had adopted the provisional agenda for its seventeenth session, which would be held from 30 September to 11 October 2019.

#### **Closure of the session**

8. **The Chair** said that, despite its sixteenth session having been shorter than usual, the Committee had successfully considered the initial reports of three States parties, adopted three sets of concluding observations and adopted two lists of issues in preparation for its seventeenth session in September/October 2019. It had further strengthened its cooperation with the International Committee of the Red Cross on issues of common interest and had clarified its methods of work in relation to reviewing the situation in States parties in the absence of a report.

9. The Committee had also adopted Guiding Principles for the Search for Disappeared Persons, which reflected the outcome of exchanges between members, thematic discussions with international experts and multi-stakeholder consultations. The Committee was grateful to all contributors for their input. The Guiding Principles brought together many good practices and included measures to help overcome obstacles encountered in search processes. The Principles did not create new obligations for States parties; rather they clarified those already enshrined in the Convention. She hoped that they would serve as a useful tool for States parties when adopting laws, regulations and policies on the search for disappeared persons and that they would be disseminated widely.

10. The closure of the sixteenth session was significant in that it also marked the end of the terms of Mr. Decaux, Mr. Figallo Rivadeneyra, Ms. Galvis Patiño, Mr. Huhle and herself as members of the Committee and eight years since the Committee's establishment. Those years had been both challenging and rewarding, and Committee members could be proud of what had been achieved in that time. Despite being the newest of the human rights treaty bodies, the Committee had successfully developed its methods of work, had been among the first to adopt the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines) and the Guidelines against Intimidation or Reprisals (San José Guidelines), and had started to establish robust jurisprudence. To date, the Committee had considered the reports of 32 States parties and adopted concluding observations on each of them. The Convention did not contribute to the phenomenon of "reporting fatigue" as it required States parties to submit only one report describing the measures that they had taken to fulfil their obligations under it. The Committee had likewise issued a substantive statement on enforced disappearance and military jurisdiction and on the *ratione temporis* element in the review of reports submitted by States parties under the Convention in order to help ensure consistency and predictability during the monitoring process.

11. Although the Committee had not accumulated a backlog of communications on account of being the newest treaty body, it still had to deal with the problem of overdue reports. As part of its strategy to elicit outstanding reports, it had taken a decision to review the situation in States parties in the absence of a report in cases where the report in question was more than five years overdue. In November 2018, the Committee had, for the first

time, held a follow-up dialogue on the basis of additional information submitted by a State party, namely Mexico, under article 29 (4) of the Convention. The dialogue had proved fruitful and the Committee would consider holding similar dialogues with other States parties in the future. The urgent action procedure provided for in article 30 of the Convention was unique in the international human rights system owing to its preventive nature. Although numbers were not always telling, in the case of enforced disappearances, the urgent action procedure had proved to be a life-saving instrument.

12. The Committee had also taken its first decision on an individual communication. In the case of *Yrusta v. Argentina*, where the central issue was whether placing the victim outside the protection of the law for seven days constituted an offence of enforced disappearance, the Committee had argued that the duration of the deprivation of liberty or of the concealment of the fate or whereabouts of the victim had no bearing on its legal classification as an offence of enforced disappearance. In its decision, the Committee had firmly stated that short-term disappearances could not be justified.

13. The Committee did not stand alone in the fight against enforced disappearance. It enjoyed the support of States parties, as demonstrated by the positive outcome of the first session of the Conference of the States Parties to the Convention, at which States parties had evaluated its work and confirmed its mandate as the monitoring body of the treaty in question. The Committee likewise considered cooperation among local, national and international civil society actors engaged in combating enforced disappearance, especially associations of relatives of disappeared persons, to play an essential role in promoting the implementation of the Convention. The support extended to the Committee by civil society over the previous eight years had proved invaluable in helping it discharge its mandate effectively. The Committee continued to attach particular importance to strengthening its cooperation with the Working Group on Enforced or Involuntary Disappearances, given the complementarity of their mandates and their shared mission and goal.

14. The Committee had also expressed its strong commitment to the treaty body strengthening process and to complying with the objectives set out in General Assembly resolution 68/268. It would be represented at the thirty-first annual meeting of the Chairs of the human rights treaty bodies, scheduled to take place in New York in June 2019, and would continue to work with the other treaty bodies with a view to adopting a common position on the 2020 review of the treaty body system.

15. One of the most significant challenges facing the Committee was that of achieving the universal ratification of the Convention, which was critical to making the instrument fully operational. There were currently 59 States parties and 98 signatories to the Convention. A glance at the geographical spread of the ratifications gave a clear indication as to the regions where there was still room for improvement. A clear and sustainable awareness-raising strategy was needed in order to accelerate the pace of ratifications and to enable the Convention to reach its full potential. She trusted that OHCHR would take the necessary steps to facilitate the achievement of that objective. The Committee's work had likewise been hampered by the low number of States parties having accepted its competence to receive and consider individual communications under article 31 of the Convention. The Committee continued to call on States that had ratified the Convention to also make the relevant declaration under that article.

16. Over the previous eight years, the Committee had consolidated its mandate as the legal guardian of the Convention by strengthening its independence and building on its achievements. At that juncture, it was only fitting to recognize the legacy left by past members of the Committee and the tireless efforts of those who remained. She trusted that the incoming members would help to ensure that the Committee remained at the forefront of the fight against enforced disappearance.

17. Enforced disappearance remained one of the most egregious crimes in human history. Despite all the efforts made to combat the practice, it had unfortunately not yet been consigned to the past and continued to occur. Since its establishment, the Committee had worked with the conviction that change and results in the fight against enforced disappearance were both needed and possible. It was aware that securing a world free of enforced disappearance was a difficult mission, particularly in view of the new forms of the

practice that continued to emerge. However, even a single case of enforced disappearance was one too many and should spur common action to combat that heinous crime.

18. **Mr. Decaux** said that, while it was often posited that enforced disappearance was a complex phenomenon, it was in fact a simple, cruel and cynical denial of life, freedom, the rule of law and common humanity. Such a denial must be combated through the law. In that regard, the Convention had been envisaged by its pioneers as offering an international safeguard of habeas corpus. In the words of the late Sir Nigel Rodley, article 1 of the Convention had established a new human right, namely the right not to be subjected to enforced disappearance in any circumstance. That right had a series of legal implications that some States parties were yet to incorporate into their legislation. In order for the legal protection offered by the Convention to take full effect, enforced disappearance must be defined as an autonomous crime and should not be time-bound. In that regard, the Committee's jurisprudence had made great strides towards the recognition of the fact that all enforced disappearances constituted violations of the Convention. It was but the beginning of a long journey, however, and he wished the remaining and future members success moving forward.

19. **Ms. Galvis Patiño** said that the Convention had enshrined not only the absolute prohibition of enforced disappearance, but also the right to the truth and the right of the victim to be found. Part of the Committee's legacy had been to ensure that the latter was not overlooked. In that regard, the urgent action procedure had played an important role, in that it afforded individuals in States parties the right to launch the search for their disappeared loved ones immediately. Of equal importance were the recently adopted Guiding Principles for the Search for Disappeared Persons, which stated that the search for a disappeared person should always be conducted under the presumption that the person was alive. She had learned a great deal from the collective work of the Committee, which had been a true example of democracy and collaboration in action. In addition to the support staff and her colleagues, she wished to extend her thanks to the families of disappeared persons for sharing their stories, which had given the Committee the strength to continue working at their side to find the victims of enforced disappearance.

20. **Mr. Huhle** said that he had learned much from his colleagues over the years of his term. Although the Committee was composed of individuals, it acted as a collective. That had been particularly clear during the drafting of the Guiding Principles for the Search for Disappeared Persons, which would be of great importance for victims searching for their disappeared loved ones. Their feedback had given the rapporteurs the force to continue through the most difficult areas of their work. Equally, the urgent action procedure had afforded the Committee an insight into the first-hand experience of enforced disappearance. It was perhaps one of the most important parts of the Committee's work.

21. **Mr. Figallo Rivadeneyra** said that the Convention was a true product of the twenty-first century. It was technical, legal, humanitarian, comprehensive and practical. The Committee's work often involved looking into the past, but it was also important to look to the future and to take a preventive approach. That would involve developing policies to combat new forms of enforced disappearance, particularly in the contexts of migration, human trafficking, crime-fighting operations and conflicts. In the current climate of mounting intolerance, which risked leading to the normalization of enforced disappearance, it was an ethical imperative that the Convention should become universal. Those members leaving the Committee had given their all to its work. Much more remained to be done, however. The remaining and future members must be vigilant to ensure that the purpose of the Convention was never forgotten and that its beacon shone ever brighter.

22. **The Chair**, after the customary exchange of courtesies, declared the sixteenth session of the Committee on Enforced Disappearances closed.

*The meeting rose at 6.05 p.m.*