



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
20 October 2022
English
Original: Spanish

Committee on Enforced Disappearances

Concluding observations on the additional information submitted by Uruguay under article 29 (4) of the Convention*

A. Introduction

1. The Committee appreciates the additional information provided in a timely manner by Uruguay under article 29 (4) of the Convention,¹ as requested by the Committee in its 2013 concluding observations.² It is also grateful for the additional information submitted in writing in response to the list of questions communicated to the State party on 5 May 2022³ and for the open, productive and constructive dialogue held with the State party's delegation at the Committee's 409th meeting, on 15 September 2022,⁴ regarding the measures taken to fulfil the State party's obligations under the Convention in the following areas: (a) harmonization of legislation; (b) search and investigation; and (c) full reparation. The Committee also thanks the State party for the additional information provided in writing after the dialogue.

2. At its 420th meeting, held on 23 September 2022, the Committee adopted the concluding observations that follow.

B. Positive aspects

3. The Committee welcomed the measures taken by the State party following the issuance of its previous concluding observations, including:

(a) The enactment of Act No. 19.859 of December 2019, an interpretative law stating that the right to receive free and lifelong comprehensive health care under the National Comprehensive Health System applies to a number of people who were victims of human rights violations between 1968 and 1985, as well as their children and grandchildren;

(b) The enactment of Act No. 19.822 of September 2019 entrusting the National Human Rights Institution and Office of the Ombudsman with the mission of searching for persons detained and disappeared between 1968 and 1985;

(c) The enactment of Act No. 19.641 of July 2018 on the declaration and establishment of sites to commemorate recent history;

(d) The enactment of Act No. 19.550 of October 2017, under which the Attorney General's Office is authorized to transform a national prosecutor's office into an office of the special prosecutor for crimes against humanity, and Decision No. 75/2018 of February 2018,

* Adopted by the Committee at its twenty-third session (12–23 September 2022).

¹ CED/C/URY/AI/1.

² CED/C/URY/CO/1, para. 42.

³ See https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCED%2fRLI%2fURY%2f49553&Lang=es.

⁴ CED/C/SR.409.



by which Criminal Prosecution Office No. 25 in Montevideo became an office of the special prosecutor for crimes against humanity;

(e) The establishment of an inter-agency network for the preparation of reports and follow-up on the implementation of human rights recommendations and observations and the designation of the recommendations monitoring system (SIMORE) as a means of publicly recording actions taken by the State to implement the recommendations and observations made by the universal system for the protection of human rights, through the adoption of Executive Decree No. 358/2016 of November 2016;

(f) Accreditation, by the Global Alliance of National Human Rights Institutions, of the National Human Rights Institution and Office of the Ombudsman with A status in May 2016;

(g) The creation, under Act. No. 19.355 of December 2015, of a specialized team for serious human rights violations within the Ministry of the Interior;

(h) The establishment of the Working Group on Truth and Justice under Executive Decree No. 131/2015 of May 2015.

4. 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 recent visit to Uruguay of the Working Group on Enforced or Involuntary Disappearances, whose preliminary observations it noted with interest, and it encourages the State party to continue cooperating with that mechanism according to its mandate.

C. Effect given to the Committee's recommendations and new developments in the State party

1. General information

5. The Committee appreciates and welcomes the steps taken by the State party in the areas of justice, truth and reparation since the issuance of the previous concluding observations. However, it is of the view that the regulatory framework in force, as well as its application, are not yet fully in line with the Convention. The Committee urges the State party to give consideration to its recommendations, which were made in a constructive and cooperative spirit, with a view to continuing to strengthen the current legislation and ensuring that it, as well as all acts emanating from the State party's authorities, are in conformity with the rights and obligations referred to in the Convention. In this context, the Committee also recommends that the State party develop a national policy on enforced disappearance and that the strategies adopted under that policy take into consideration both the lessons learned from the past and the challenges of the present day in searching for disappeared persons, in investigating and punishing those responsible for the enforced disappearances perpetrated between 1968 and 1985 and in upholding the right of all victims to full reparation.

2. Harmonization of legislation

Definition of enforced disappearance as a separate offence

6. The Committee reiterates its satisfaction with the establishment of enforced disappearance as a separate offence in article 21.1 of Act No. 18.026, with a definition that is in line with article 2 of the Convention. However, it regrets that the State party has not implemented its previous recommendation on this provision,⁵ particularly in relation to the need for the minimum penalty for the offence to take due account of its extreme seriousness (art. 7).

7. **The Committee recommends that the State party adopt the necessary legislative measures with a view to ensuring that the minimum penalty for the offence of enforced**

⁵ CED/C/URY/CO/1, para. 12.

disappearance is in line with article 7 of the Convention and takes due account of its extreme seriousness.

Bill on house arrest for accused and convicted persons over 65 years of age

8. The Committee notes with concern the existence of a bill on house arrest that would replace custodial sentences with house arrest on humanitarian grounds for accused and convicted persons over 65 years of age, as such a bill could automatically benefit persons who have been accused of or convicted for having committed enforced disappearance in the past, as they would not necessarily be covered by the exceptions provided for in the bill (art. 7).

9. **Bearing in mind that, under Uruguayan law, there are legal mechanisms already in place that provide access to house arrest for accused and convicted persons, the Committee encourages the State party to withdraw the bill on house arrest for accused and convicted persons over 65 years of age. Should consideration of the bill continue, the Committee recommends that the State party ensure that the bill is fully in line with the Convention and other relevant international instruments and that it is not applied automatically to any person who is responsible for having participated in an act of enforced disappearance, regardless of the date on which the events took place and their legal characterization.**

Habeas corpus

10. The Committee, recalling its previous concluding observations,⁶ welcomes the fact that the remedy of habeas corpus in a prison setting is provided for in articles 351–357 of the new Code of Criminal Procedure.⁷ It also notes with satisfaction the information conveyed during the dialogue, according to which article 17 of the Constitution, which provides for the remedy of habeas corpus, is fully incorporated in the day-to-day work of the courts. However, it is concerned that there are no regulations on the exercise of habeas corpus in those cases in which deprivation of liberty occurs in the context of non-criminal proceedings. In this regard, it notes with concern that, in the absence of regulations in such cases, the State party has indicated that the decision to process an appeal will depend on the judge and his technical autonomy in the specific case⁸ (art. 17).

11. The Committee recommends that the State party adopt regulations on the exercise of habeas corpus in cases in which deprivation of liberty occurs in the context of non-criminal proceedings, thus ensuring full compliance with article 17 (2) (f) of the Convention.

Definition of victim

12. The Committee notes that article 79.1 of the Code of Criminal Procedure defines a victim as “the person injured by the offence” and that article 80 of the Code establishes who may represent the victim in the event of death or inability to exercise his or her rights. In this regard, it takes note of the position expressed by the State party during the dialogue that these provisions, together with article 13 of Act No. 18.026 on the participation of victims in proceedings, cover all victims of enforced disappearance, which is a multifaceted crime. However, the Committee considers these normative provisions to be insufficient to cover all individuals who have suffered harm as the direct result of an enforced disappearance (art. 24).

13. The Committee recommends that the State party adopt in its domestic legislation a definition of victim that is fully in line with that contained in article 24 (1) of the Convention. In the meantime, it recommends that the State party ensure that the term

⁶ Ibid., paras. 25–26.

⁷ CED/C/URY/AI/1, paras. 118–120, and responses of Uruguay to the Committee’s list of questions, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCED%2fRLI%2fURY%2f49553&Lang=es.

⁸ Responses of Uruguay to the Committee’s list of questions, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCED%2fRLI%2fURY%2f49553&Lang=es.

“victim” in the laws in force is applied in practice in accordance with the definition of victim enshrined in the Convention and that it ensure that any individual who has suffered harm as the direct result of an enforced disappearance, without exception, can exercise the rights under the Convention, in particular his or her rights to justice, truth and full reparation.

Legislation concerning the wrongful removal of children

14. The Committee again takes note of the information provided by the State party on the criminal provisions that could be applied in relation to the acts described in article 25 (1) of the Convention, such as the suppression or usurpation of civil status,⁹ as well as enforced disappearance with aggravating circumstances. However, it regrets that the State party has not included the acts described in article 25 (1) as specific offences despite the recommendation made in its previous concluding observations¹⁰ (art. 25).

15. **The Committee recommends that the State party include the acts described in article 25 (1) of the Convention as specific offences in its legislation and that it establish penalties for such actions commensurate with their extreme seriousness.**

3. Search and investigation

Investigation of past cases of enforced disappearance

16. The Committee takes note of the information provided by the State party on the efforts made to investigate the cases of enforced disappearance that reportedly took place between 1968 and 1985. However, it is concerned at the recent preliminary observations made by the Working Group on Enforced or Involuntary Disappearances, following a visit to Uruguay, regarding the pattern of impunity that has persisted with respect to these cases, as well as the slow progress of ongoing investigations and trials.¹¹ In this regard, it welcomes with interest the information provided during the dialogue on the measures that have been taken to expedite the proceedings. It also notes with satisfaction that the Office of the Special Prosecutor for Crimes against Humanity is making its accusations based on the offence of enforced disappearance. Nevertheless, the Committee is concerned that so far no one has been convicted of the offence. The Committee recalls its previous recommendation that the State party should ensure that enforced disappearances are investigated as such and that the perpetrators are punished for the offence irrespective of the time that has elapsed since the commencement of the criminal conduct¹² (arts. 8, 12 and 24).

17. **The Committee urges the State party to:**

- (a) **Adopt the necessary measures to expedite all ongoing court cases involving the investigation of cases of enforced disappearance that may have taken place between 1968 and 1985;**
- (b) **Ensure that the alleged perpetrators are brought to trial and, if found guilty, are punished in accordance with the seriousness of their actions;**
- (c) **Ensure that all cases of enforced disappearance that may have taken place prior to the entry into force of Act No. 18.026 and that had not ceased after its entry into force are substantiated on the basis of the offence of enforced disappearance;**
- (d) **Ensure that the authorities in charge of the investigation of cases of disappearance and of the search for disappeared persons continue and intensify efforts to cooperate and coordinate their activities;**
- (e) **Ensure that the institutions involved in the investigation of cases of enforced disappearance, in particular the Office of the Special Prosecutor for Crimes**

⁹ CED/C/URY/CO/1, para. 33.

¹⁰ Ibid., para. 34.

¹¹ See <https://www.ohchr.org/sites/default/files/documents/issues/wgeid/2022-07-14/Observaciones-preliminares-GDTFI-Uruguay.pdf>.

¹² CED/C/URY/CO/1, para. 14.

against Humanity, have adequate financial and technical resources and qualified staff to be able to perform their work promptly and effectively.

Search for disappeared persons

18. The Committee welcomes the information provided on the measures taken in the State party to search for persons who were subjected to enforced disappearance between 1968 and 1985. In particular, it takes note of the creation, in 2015, of the Truth and Justice Working Group, whose mandate ended in 2019, and the designation, in 2019, of the National Human Rights Institution as the institution responsible for the search for missing persons inside and outside Uruguay. However, it is concerned about the slow progress of the search process, as well as about the allegations it has received regarding obstacles that hinder the search for disappeared persons, including the loss or degradation of evidence and, as was reported by the National Human Rights Institution to the Inter-American Court of Human Rights in April 2021, the refusal of former high-ranking military officers to provide information.¹³ On the other hand, it takes note with interest of the assessment report issued pursuant to the decision on the National Human Rights Institution and Office of the Ombudsman, adopted by the Senate on 10 February 2021 (arts. 7, 12, 15 and 24).

19. **The Committee encourages the State party to refer to the Guiding Principles for the Search for Disappeared Persons¹⁴ when devising and executing comprehensive search strategies. The Committee also recommends that it redouble its efforts to search for, locate and release persons who may have been subjected to enforced disappearance between 1968 and 1985 and are still missing and, in the event of death, to identify and return their remains in a dignified manner as soon as possible. In this regard, the Committee recommends that the State party:**

- (a) Ensure the proper preservation of all the files and documents that may be relevant to the search for disappeared persons and/or the investigation of cases of alleged enforced disappearance, including through the prompt advancement of their digitization;
- (b) Guarantee effective access to and expedite the transfer of the files held by the Human Rights Secretariat for the Recent Past to the National Human Rights Institution in order to complete this process as soon as possible;
- (c) Ensure that the relevant public authorities, in particular the Ministry of Defence, search for and identify systematically, proactively and without delay any files and documents that have not yet been uncovered by the bodies responsible for searching for disappeared persons and/or investigating cases of alleged enforced disappearance and that could be relevant to such tasks;
- (d) Ensure that the highest State authorities make a public appeal to encourage all those who have information that could be of use in the search for disappeared persons to bring it forward without delay and without fear of stigmatization, and that the State party consider applying mitigating circumstances for those who have participated in the commission of enforced disappearances and who contribute information that is reliable and relevant to the clarification of cases;
- (e) Ensure that all public actors work together proactively, expeditiously and appropriately with the National Human Rights Institution and provide it with all necessary assistance, including information;
- (f) Ensure that the National Human Rights Institution and any other body that is competent for the search for disappeared persons and the identification of their remains in the event of death continue to enjoy the necessary financial and technical resources and qualified staff to be able to perform their work and, to the extent possible, that it increase those resources;

¹³ Responses of Uruguay to the Committee's list of questions, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCED%2fRLI%2fURY%2f49553&Lang=es.

¹⁴ CED/C/7.

- (g) Continue and enhance cooperation with other States parties in the region in searching for persons who were disappeared during Operation Condor and, in the event of death, in identifying them and returning their remains, in accordance with article 15 of the Convention;
- (h) Provide the necessary support, using a differentiated approach, to family members involved in searching for Uruguayans who were disappeared abroad;
- (i) Give effect to the recommendations contained in the assessment report issued pursuant to the decision on the National Human Rights Institution and Office of the Ombudsman adopted by the Senate on 10 February 2021;
- (j) Ensure that the search is continued in a thorough and diligent manner until the fate and/or whereabouts of all persons who are still missing is established.

4. Full reparation

Right to obtain reparation

20. The Committee welcomes the steps taken by the State party since the previous concluding observations regarding reparations for human rights violations that occurred between 1968 and 1985. However, it is concerned about the alleged obstacles that continue to hinder the realization of the right to full reparation for all the victims in the cases of enforced disappearance that may have occurred during this period. Specifically, it is concerned about allegations (a) that the burden of proof is on the victims to demonstrate that they have suffered “very serious” injuries; (b) that the victims are forced to choose between receiving reparations and receiving the pensions to which they are entitled as workers; (c) that the victims must waive any right of action against the State in any jurisdiction if they avail themselves of the reparation benefits under Act No. 18.596; and (d) that those who were victims of enforced disappearance but were later released or whose deprivation of liberty was regularized are not recognized as victims of enforced disappearance. In addition, the Committee is concerned at allegations that remembrance sites have been vandalized and that the principle of secularism is invoked in order to hinder the discussion, in schools and other educational institutions, of the serious human rights violations that took place between 1968 and 1985, including enforced disappearance (art. 24).

21. **The Committee recommends that the State party:**

- (a) Guarantee and facilitate access by any individual who has suffered harm as a direct result of an enforced disappearance that took place between 1968 and 1985, regardless of its duration, to full reparation that includes all the forms provided for in article 24 (5) of the Convention and that takes into account the specific needs of the victims based on, inter alia, their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability;
- (b) Allocate sufficient resources to uphold the right to full reparation of all victims of enforced disappearance;
- (c) Investigate promptly, thoroughly and effectively all acts of vandalism of remembrance sites, punishing those responsible with appropriate penalties and taking robust measures to prevent such acts from reoccurring;
- (d) Adopt an educational policy to remember the serious human rights violations that took place between 1968 and 1985, including enforced disappearances.

D. Implementation of the rights and obligations under the Convention, dissemination and follow-up

22. The Committee wishes to draw attention to the obligations taken on by States when they ratify the Convention and 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 Convention and other relevant international instruments.

23. The Committee also emphasizes the particularly cruel effect of enforced disappearance on women and children. Women victims of enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are also particularly likely to suffer 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 are subjected to enforced disappearance or because they suffer the consequences of the disappearance of family members, are especially vulnerable to violations of their human rights. The Committee therefore places particular emphasis on the need for the State party to systematically adopt a gender perspective and to take into account the specific needs of women and children as it acts on the recommendations contained in the present concluding observations and the full range of rights and obligations deriving from the Convention.

24. The State party is encouraged to disseminate widely the Convention, the additional information submitted under article 29 (4) of the Convention and the present concluding observations in order to raise awareness among governmental authorities, civil society actors and the public at large. The Committee also encourages the State party to promote the participation of civil society in the implementation of the recommendations contained in the present concluding observations.

25. Under article 29 (4) of the Convention, the Committee requests the State party to submit, by 23 September 2025, with a view to the review in 2026, specific and updated information on the adoption of a national policy on enforced disappearance that takes into account the recommendations made in these concluding observations concerning investigations, searches and reparations (see paras. 5, 17, 19 and 21). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of victims of enforced disappearance, in the preparation of this information. The Committee recalls that, under article 29 (4) of the Convention, it may subsequently request the State party to submit additional information on its application of the Convention, including information on the measures adopted to give effect to all the recommendations contained in the present concluding observations.