



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

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

1. The Committee on Enforced Disappearances considered the report submitted by Colombia under article 29 (1) of the Convention (CED/C/COL/1) at its 183rd and 184th meetings (see CED/C/SR.183 and 184), held on 6 October 2016. At its 192nd meeting, held on 12 October 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Colombia under article 29 (1) of the Convention, which was prepared in accordance with the reporting guidelines and the information contained therein. The Committee appreciates the open and constructive dialogue with the delegation from the State party on the measures taken by the latter to implement the provisions of the Convention, which has dispelled many of its concerns. The Committee also thanks the State party for its written replies (CED/C/COL/Q/1/Add.1) to the list of issues (CED/C/COL/Q/1), which were supplemented by the oral statements by the delegation 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 United Nations core human rights instruments and several 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 also welcomes the measures adopted by the State party to address issues related to the Convention, including:

(a) The inclusion of a provision in article 12 of the Constitution which expressly stipulates that “no one shall be subjected to enforced disappearance”;

(b) The adoption of Act No. 1719 of 2014, which stipulates that “no statutory limitation shall apply to criminal proceedings for genocide, crimes against humanity and war crimes”;

* Adopted by the Committee at its eleventh session (3-14 October 2016).



(c) The adoption of Act No. 1531 of 2012, which establishes a procedure to declare a person missing as a result of enforced disappearance or other forms of involuntary disappearance;

(d) The adoption of Act No. 1408 of 2010, which pays homage to victims of enforced disappearance and lays down measures for locating and identifying them, and Decree No. 303 of 2015, which regulates Act No. 1408 of 2010;

(e) The adoption of Act No. 971 of 2005, which regulates the Urgent Search Mechanism;

(f) The adoption of Act No. 589 of 2000, which sets out the legal characterization of enforced disappearance and provides for the establishment of the Disappeared Persons Investigative Commission and the Urgent Search Mechanism.

5. The Committee notes with appreciation the existence of a dynamic civil society that makes a significant contribution to monitoring the implementation of the Convention in the State party.

6. The Committee notes with satisfaction that the State party has extended an open invitation to all special procedures mandate holders of the Human Rights Council to visit the country.

7. The Committee takes note of the efforts made within the framework of the peace negotiations between the State party and the Fuerzas Armadas Revolucionarias de Colombia — Ejército del Pueblo (FARC-EP), during which a number of the rights and obligations set forth in the Convention were addressed. While taking note of the outcome of the referendum, which rejected the final agreement with FARC-EP, the Committee encourages the State party to continue its efforts to ensure the full realization of the rights of victims of enforced disappearance.

C. Principal subjects of concern and recommendations

8. The Committee recognizes the many efforts made by the State party to deal with the scourge of enforced disappearances. It nevertheless considers that, at the time of the adoption of these concluding observations, the State party still faces many obstacles and challenges in the prevention, investigation and penalization of enforced disappearances, as well as in the search for disappeared persons, given that numerous cases of enforced disappearance continue to be reported in various parts of the country. The Committee wishes to highlight the State party's acknowledgment of the major obstacles and highly complex challenges it still faces in guaranteeing the rights set forth in the Convention, as well as its express commitment to overcoming them. The Committee calls on the State party to implement its recommendations, which have been made in a constructive and cooperative spirit to assist the State party in giving effect, in law and in practice, to the latter's obligations under the Convention.

General information

Urgent action procedure

9. The Committee recognizes the State party's cooperation with it in the framework of its urgent action procedure, even though in several cases the information provided was insufficient (art. 30).

10. The Committee calls upon the State party to continue cooperating with the Committee in the framework of its urgent action procedure and to improve the State

party's mechanisms for ensuring the immediate processing and regular follow-up of all urgent actions and requests for interim protection measures transmitted by the Committee.

Individual and inter-State communications

11. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention (arts. 31 and 32).

12. **The Committee strongly encourages the State party to recognize the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, in order to reinforce the protections against enforced disappearances that are laid down in the Convention.**

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

Records of persons subjected to enforced disappearance

13. The Committee is concerned at the lack of specific statistical information on the number of persons subjected to enforced disappearance. While noting the State party's assertion about the mandatory use of the National Missing Persons Register and the steps taken to carry out data cleansing and to cross-check the information contained in the Register with that contained in other institutional databases, the Committee is concerned at reports that discrepancies still exist between the various databases relating to disappeared persons. Furthermore, it is concerned that almost 80 per cent of the cases in the Register have not been classified, and it regrets the absence of statistical information on cases classified as presumed enforced disappearances in which State agents are suspected of having been involved (arts. 1-3, 12 and 24).

14. **The Committee recommends that the State party expedite the process of cleansing and consolidating data on disappeared persons in order to generate reliable and accurate information that will result in more effective prevention, investigation and search measures. Accordingly, it invites the State party to set a time frame for completing the data cleansing process for the Register, with a view to effectively consolidating all cases of disappeared persons as soon as possible, while retaining the most comprehensive information possible. The Committee further recommends that the State party:**

(a) **Make greater efforts to ensure that, without exception, all cases of disappeared persons are consistently and exhaustively recorded in the National Missing Persons Register immediately after a disappearance is reported and that the Register is continuously updated;**

(b) **Adopt effective measures to move forward in the classification of as many cases as possible;**

(c) **Take the necessary steps to generate statistical information that indicates the extent of the problem of enforced disappearances in the strict sense of the term, that is, disappearances where State agents were allegedly involved, directly or indirectly, in committing the offence.**

The offence of enforced disappearance

15. The Committee notes that article 165 of the Criminal Code provides that conduct defined as an offence therein can be committed either by public servants or by individuals acting independently or under the orders or with the consent of a public servant. In this regard, it takes note of the State party's statement that this definition reflects the specific circumstances of disappearance in Colombia and its assertion that the definition contained in article 165 "is consistent with the essential elements of article 2 of the Convention" (see CED/C/COL/Q/1/Add.1, para. 29). The Committee considers, however, that one of the essential elements of the definition of enforced disappearance contained in article 2 of the Convention is precisely the direct or indirect involvement of State agents in the criminal conduct in question that distinguishes it from other similar conduct, as may be inferred from a joint reading of articles 2 and 3. The Committee considers that the inclusion of non-State actors in the definition of the crime of enforced disappearance dilutes the accountability of the State and that the broad definition of enforced disappearance contained in article 165 of the Criminal Code could have other types of consequences, such as a lack of clear statistics or inadequacies in searches for disappeared persons and in criminal investigations, as these require differentiated approaches and strategies (arts. 2-4).

16. The Committee recommends that the State party take all necessary measures to ensure that the definition contained in article 165 of the Criminal Code is applied in such a way as to guarantee that searches for disappeared persons and criminal investigations are carried out effectively and that the State's accountability is not diluted.

Criminal responsibility of superiors

17. The Committee takes note of articles 25 and 28-30 of the Criminal Code, as well as of the State party's assertion that the notion of the responsibility of superiors has been incorporated into the legal system through the ratification of the Rome Statute of the International Criminal Court. However, it considers that the absence of a specific criminal provision could give rise to different interpretations that would not be fully in line with the obligation contained in article 6 (1) (b) of the Convention (art. 6).

18. The Committee recommends that the State party adopt the legislative measures necessary to specifically incorporate into domestic law the criminal responsibility of superiors, in accordance with article 6 (1) (b) of the Convention.

Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8-15)**Reports and investigations of cases of enforced disappearance**

19. The Committee notes that the number of disappearances reported has decreased significantly in recent years. Nevertheless, it is concerned about allegations that enforced disappearances in the strict sense of the term, that is, with the direct or indirect involvement of State agents, continue to be committed. While taking note of the information provided by the State party on criminal proceedings involving enforced disappearances in which State agents have been accused, charged and sentenced, the Committee is concerned at the lack of significant progress in the investigation of cases of enforced disappearance and the conviction of the perpetrators (arts. 2, 12 and 24).

20. The Committee recommends that the State party:

(a) Ensure that in practice, where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, a thorough,

impartial investigation is undertaken immediately, even if there has not been a formal complaint;

(b) Expedite the investigations of enforced disappearance that are under way, including those carried out as part of the special criminal proceedings being conducted in the framework of the justice and peace process, while ensuring that no act of enforced disappearance is left unpunished;

(c) Expand its efforts to allow the relatives of disappeared persons to submit complaints; encourage and facilitate their participation in investigations and in all the procedural steps included within the framework of due process; and ensure that they are regularly informed about the progress and results of investigations;

(d) Ensure effective coordination and cooperation between all the agencies involved in investigations so that they mutually reinforce, rather than impede, each other's work; and ensure that they have the necessary financial, technical and human resources to perform their duties expeditiously and effectively;

(e) Adopt a common approach to investigations, following specific strategies based on similar crime commission patterns and regional contexts and avoiding fragmented investigations that undermine their own effectiveness;

(f) Ensure that the authorities involved in the investigation of enforced disappearances have effective and timely access to all documentation and other information relevant to the investigation that may be in the possession of State agencies, in particular documentation held by intelligence agencies and by armed and security forces.

21. The Committee notes with satisfaction that the military criminal courts are expressly barred from hearing cases of enforced disappearance (see CED/C/COL/1, para. 111). Nevertheless, the Committee is concerned about information it has received, according to which many of the so-called "false positive" cases that may be classed as extrajudicial killings — which also come under the definition of enforced disappearance in the Convention — are subject to military criminal jurisdiction, and that consequently there is no guarantee of an independent and impartial investigation or of the proper legal characterization of such cases (arts. 2, 11 and 12).

22. **The Committee recommends that the State party take the necessary measures to guarantee in practice that all cases of presumed enforced disappearance, including where the victim is found deceased, are tried, from the outset, by the ordinary courts.**

Investigations of disappearances perpetrated without the authorization, support or acquiescence of State agents

23. The Committee is concerned about disappearances that continue to be perpetrated by illegal armed groups without the authorization, support or acquiescence of State agents, despite the steps taken by the State party to prevent and punish such disappearances (art. 3).

24. **The Committee recommends that the State party continue its efforts to prevent and to investigate promptly, thoroughly and impartially all acts referred to in article 3 of the Convention, and to prosecute and punish those responsible.**

The search for disappeared persons

25. The Committee takes notes of the measures adopted by the State party to search for disappeared persons and to identify their remains in the event of death. However, it is concerned about reports of serious difficulties, in practice, in searching for disappeared persons and in identifying their remains. It is particularly concerned about allegations

regarding the minimal implementation of the National Plan on the Search for Disappeared Persons and cases in which the Urgent Search Mechanism was not engaged immediately. It also notes with concern that, owing to limited resources, the National Institute of Forensic Medicine and Science has had to concentrate most of its campaigns for collecting genetic samples in urban areas, thus exacerbating the problem of the large number of bodies that have been found but that it has not been possible to identify and return (arts. 12 and 24).

26. The Committee recommends that the State party pursue and intensify its efforts to search for, locate and release disappeared persons and, in the event of death, to locate, handle with respect and return their remains. In particular, the Committee recommends that the State party:

(a) **Ensure in practice that, when a disappearance is reported, a search is initiated automatically, without delay; that practical, effective search measures are adopted in order to increase the chances of finding the person alive; and that the search is continued until the fate of the disappeared person is established;**

(b) **Intensify its efforts to locate bodily remains; enhance the Genetic Profile Bank, in particular by conducting extensive campaigns to collect ante-mortem information and genetic samples from disappeared persons' relatives, with a special focus on rural areas; and expedite the identification and handover of the exhumed remains;**

(c) **Adopt more effective measures to ensure coordination, cooperation and data cross-checking between the agencies responsible for searching for disappeared persons and, in the event of death, for identifying their remains, and see to it that they have the necessary qualified personnel and economic and technical resources;**

(d) **Redouble its efforts to ensure that all relevant authorities receive regular, specialized training on the measures provided for in the existing regulatory framework pertaining to the search for disappeared persons and, in the event of death, on handling with respect and returning their remains, in particular, the correct implementation of the National Plan on the Search for Disappeared Persons and the Urgent Search Mechanism;**

(e) **Ensure that searches are conducted by the competent authorities with the active involvement of the relatives of the disappeared person where necessary;**

(f) **Intensify its efforts to ensure that all actions to identify and return remains duly take into account the traditions and customs of the peoples or communities to which the victims belong, in particular indigenous peoples or Afrodescendent communities.**

Protection of complainants and/or persons participating in the investigation into an enforced disappearance

27. The Committee takes note of the establishment of a national committee for the protection of human rights defenders as well as existing programmes to provide protection to victims, witnesses and other persons participating in criminal proceedings and to persons, groups and communities that are at extraordinary or extreme risk as a direct result of the exercise of their political, public, social or humanitarian activities or functions. However, the Committee is concerned about allegations of shortcomings in the implementation of these programmes, including delays in risk assessments and in the granting of protection measures, and the failure to tailor measures to the specific needs of beneficiaries. It is also concerned about allegations concerning acts of harassment, intimidation, attacks and threats against a number of relatives of disappeared persons, persons having submitted complaints

of acts of enforced disappearance, human rights defenders assisting the victims and even judicial officials (arts. 12 and 24).

28. **The Committee recommends that the State party redouble its efforts to ensure the effective protection against any ill-treatment or intimidation of all persons referred to in article 12 (1) of the Convention. In particular, it recommends that the State party increase its efforts to:**

(a) **Ensure the prompt and effective implementation of the protection measures that have been established under the various service and assistance programmes; ensure that persons who are to receive protection participate in carrying out risk assessments and in developing protection measures; and see to it that the necessary resources are provided to allow these protection measures to do what they were set up to do;**

(b) **Prevent and punish any acts of intimidation and ill-treatment of relatives of disappeared persons, persons having submitted complaints of acts of enforced disappearance, human rights defenders assisting the victims and persons participating in the investigation of an enforced disappearance.**

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

Communication by persons deprived of liberty

29. The Committee is concerned at allegations concerning arrests that were not notified promptly to the individuals designated by the arrested persons, as is required under article 303 (2) of the Code of Criminal Procedure (Act. No. 906 of 2004), in particular in cases of temporary detention. Moreover, the Committee concurs with the Committee against Torture (see CAT/C/COL/CO/5, para. 8) that the wording of article 303 (4) of the Code of Criminal Procedure could result in an overly broad interpretation, inasmuch as it states that the arrested person has a right to “designate and meet with a lawyer of his or her choice as soon as possible” (art. 17).

30. **The Committee recommends that the State party take effective measures to ensure, in practice, that all persons who are deprived of their liberty, including those in temporary detention and those who are transferred from one place of deprivation of liberty to another, are able to communicate immediately with their family, counsel or any other person of their choice.**

Registers of persons deprived of liberty

31. The Committee is concerned about allegations concerning cases of persons in temporary detention, in which the deprivation of liberty has not been registered, the registers have been altered or relevant information has not been recorded (art. 17).

32. **The Committee recommends that the State party ensure that, without exception, all deprivations of liberty, including those that are not conducted within the context of judicial proceedings, are logged in standard registers or records that include, as a minimum, the information required under article 17 (3) of the Convention; that all registers and/or records of persons deprived of their liberty are accurately and promptly completed and kept up to date; and that all registers and records of persons deprived of their liberty are regularly checked and that, in the event of irregularities, the officials responsible are investigated and punished in accordance with the seriousness of their actions.**

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

National Centre for Historical Memory

33. The Committee welcomes the establishment of the National Centre for Historical Memory (Act No. 1448 of 2011, art. 146) and, in particular, the Centre's activities in connection with enforced disappearance, as it considers that these activities contribute to the realization of the rights to the truth and to reparation for the victims of enforced disappearance (art. 24).

34. **The Committee recommends that the State party continue to take account of the programmes, reports and recommendations of the National Centre for Historical Memory in connection with enforced disappearances and continue to support the Centre's work, in particular by ensuring that it has sufficient resources to carry out its mandate effectively.**

The right to obtain reparation and prompt, fair and adequate compensation

35. The Committee welcomes the adoption of Act No. 1448 of 2011, which provides for a series of measures to ensure full reparation for the victims of the internal armed conflict, including victims of enforced disappearance. It also welcomes the enormous efforts made by the State party to implement these measures. Nevertheless, the Committee regrets that it has not received sufficient information on the reparation measures provided for in the State party's legislation for victims of enforced disappearance who are not covered by Act No. 1448 of 2011 (art. 24).

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

(a) **Ensure that national legislation provides for a comprehensive system of reparation and compensation that goes beyond the scope of Act No. 1448 of 2011, is fully in line with article 24 (4) and (5) of the Convention and other international standards on the subject and is sensitive to victims' individual characteristics, taking into account, for example, their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability;**

(b) **Continue and strengthen its efforts to ensure that all persons who have suffered harm as a direct result of an enforced disappearance perpetrated in the context of the armed conflict obtain full reparation.**

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

37. The Committee notes with satisfaction the adoption of Act No. 1531 of 2012, which establishes the procedure for declaring a person missing as a result of enforced disappearance or other forms of involuntary disappearance. However, it is concerned at reports that the relatives of disappeared persons and the authorities that are required to apply the procedure have limited knowledge of it. The Committee regrets that it has not been provided with statistical information on the number of requests for a declaration of absence by reason of enforced disappearance that have been processed and issued (art. 24).

38. **The Committee recommends that the State party take the necessary measures to ensure the timely and effective implementation of the existing legal provisions regarding the legal situation of disappeared persons whose fate has not been clarified and that of their relatives. In this regard, it recommends that the State party strengthen outreach campaigns and provide specific training on a regular basis to the relevant authorities concerning the procedure for declarations of absence by reason of**

enforced disappearance under Act No. 1531 of 2012 and its compatibility with other relevant mechanisms, such as the protection mechanisms provided for in Act No. 986 of 2005.

Protection of children from enforced disappearance

39. While acknowledging the criminal provisions on kidnapping contained in the State party's legislation, the Committee notes with concern that existing laws do not specifically penalize the acts relating to the wrongful removal of children referred to in article 25 (1) (a) of the Convention. It is also concerned that there are 2,250 minors registered in the National Missing Persons Register as presumed victims of enforced disappearance and that 47 of such children, from among those still missing, were under 4 years of age at the time of their disappearance and would therefore have been particularly vulnerable to identity substitution (art. 25).

40. **The Committee recommends that the State party adopt the necessary legislative measures to incorporate as specific offences the acts described in article 25 (1) (a) of the Convention and that it establish appropriate penalties that take into account the extreme seriousness of the offences. It also recommends that the State party intensify its efforts to search for and identify disappeared children and ensure that they are returned to their families of origin if they have been victims of identity substitution.**

D. Dissemination and follow-up

41. 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. The Committee particularly urges the State party to ensure the thorough investigation of all enforced disappearances and the full satisfaction of the rights of victims as set forth in the Convention.

42. 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 were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches continue to be used in implementing the rights and obligations arising from the Convention.

43. 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 operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of relatives of victims, in the actions taken in line with the present concluding observations.

44. In accordance with the Committee's rules of procedure, the State party should provide, by 14 October 2017, at the latest, relevant information on its implementation of the Committee's recommendations, as contained in paragraphs 14, 20 and 26.

45. Under article 29, paragraph 4, of the Convention, the Committee requests the State party to submit, no later than 14 October 2019, specific, up-to-date information on the implementation of all its recommendations, together with any other new information on the fulfilment of the obligations set forth in the Convention. The document containing this information should be prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party, when preparing this information, to continue consulting civil society, including organizations of relatives of victims.
