



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 Honduras under article 29 (1) of the Convention*

1. The Committee considered the report submitted by Honduras under article 29 (1) of the Convention (CED/C/HND/1) at its 239th and 240th meetings (see CED/C/SR.239 and 240), held on 22 and 23 May 2018. At its 252nd meeting, held on 31 May 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Honduras under article 29 (1) of the Convention, which was drafted in accordance with the reporting guidelines, and would like to express its appreciation for the open and constructive dialogue with the high-level delegation from the State party on the measures taken to implement the Convention.

3. The Committee would also like to thank the State party for its written replies (CED/C/HND/Q/1/Add.1) to the list of issues (CED/C/HND/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

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

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

(a) The Public Policy and National Plan of Action on Human Rights for 2013–2022;

(b) The Act on the Protection of Human Rights Defenders, Social Communicators and Justice Officials, 2015, and the implementation of the National Protection System.

6. The Committee welcomes the signing of an agreement to open a country office of the United Nations High Commissioner for Human Rights, and the opening of the office in 2016.

* Adopted by the Committee at its fourteenth session (22 May–1 June 2018).



7. The Committee notes that, under article 16 of the Constitution, ratified international treaties form part of national law.

8. 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.

C. Principal subjects of concern and recommendations

9. The Committee finds that, at the time of adoption of the present concluding observations, the legislation in force, its implementation and the performance of certain authorities are not in full compliance with the State party's obligations under the Convention. The Committee encourages the State party to implement its recommendations, which are made in a constructive spirit with the aim of ensuring that the existing legal framework and the manner in which it is implemented by State authorities are fully consistent with the rights and obligations set forth in the Convention.

General information

Individual and inter-State communications

10. The Committee notes with regret the State party's position that recognition of the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention is unnecessary (arts. 31 and 32).

11. The Committee encourages the State party to recognize the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention with a view to strengthening the framework for protection against enforced disappearances that is provided for in the Convention.

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

Prohibition of enforced disappearance

12. The Committee takes note of the figures on cases of enforced disappearance in Honduras that relate to different time periods and were compiled by different State agencies. It finds, however, that there are gaps and inconsistencies in these figures and that they have not been analysed in such a way as to discern the causes and dynamics of enforced disappearance and patterns of behaviour, whereas such analyses are essential for the development of an effective public policy to prevent the commission of this offence (art. 1).

13. The Committee urges the State party to establish a consolidated register of all cases of enforced disappearance committed in Honduras or against Honduran nationals abroad. The register should reflect the total number of disappeared persons, the number who have subsequently been found, whether alive or dead, and the number who are still missing.

Definition of enforced disappearance, appropriate penalties and aggravating and mitigating circumstances

14. The Committee notes that the definition of enforced disappearance in the current Criminal Code and in the new Criminal Code that has been adopted but is not yet in force is not fully consistent with the Convention. In addition, the Committee is concerned to note that criminal legislation does not reflect the mitigating and aggravating circumstances provided for in article 7 (2) (a) of the Convention, and that enforced disappearance is not among the offences that are subject to the most severe penalties. The Committee is also concerned to note that, under article 28 of the Code of Criminal Procedure, the Public Prosecution Service may decline to bring criminal proceedings if the suspect cooperates effectively with the investigation (arts. 2, 5, 6, 7 and 12).

15. **The Committee recommends that the State party take all necessary measures to ensure that:**

(a) **The definition of enforced disappearance is fully consistent with article 2 of the Convention and includes the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, as well as the refusal to provide information on the fate and not only on the whereabouts of the disappeared person;**

(b) **Enforced disappearance is defined both as a separate offence (art. 2) and as a crime against humanity (art. 5);**

(c) **All the mitigating and aggravating circumstances referred to in article 7 (2) of the Convention are included;**

(d) **The most severe penalty allowed under criminal law is applicable to the offence of enforced disappearance, given its extreme seriousness;**

(e) **The law criminalizes all the actions referred to in article 6 (1) (a) of the Convention and does not include provisions that permit the authorities to decline to bring criminal proceedings in any case of enforced disappearance.**

Criminal responsibility of superiors and due obedience

16. The Committee notes that criminal legislation does not adequately specify the criminal responsibility of superiors in accordance with article 6 (1) (b) of the Convention and does not expressly provide that due obedience may not be invoked to justify enforced disappearance (art. 6).

17. **The Committee recommends that the State party take the necessary measures to ensure that criminal legislation:**

(a) **Holds responsible any superior who:**

(i) **Knew, or consciously disregarded information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;**

(ii) **Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance;**

(iii) **Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;**

(b) **Expressly prohibits the invocation of the orders or instructions of a superior to justify an offence of enforced disappearance.**

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

Continuous nature of the offence of enforced disappearance

18. The Committee is concerned to note that criminal legislation does not expressly define enforced disappearance as a continuous offence and does not clearly establish the moment from which the term of limitation begins to run (art. 8).

19. **The Committee, taking into account the continuous nature of enforced disappearance, recommends that the State party take the necessary measures to ensure that:**

(a) **The term of limitation for the offence of enforced disappearance is of long duration and proportionate to the extreme seriousness of the offence;**

(b) **The term of limitation for criminal proceedings commences from the moment when the enforced disappearance ceases.**

Jurisdiction over offences of enforced disappearance

20. The Committee notes that criminal legislation does not guarantee the exercise of the State party's jurisdiction over the offence of enforced disappearance when it is committed abroad in the circumstances referred to in article 9 (1) (b) and (c) of the Convention. The Committee expresses concern at reports that the Public Prosecution Service and the Office of the National Commissioner for Human Rights have refused to consider complaints of possible cases of enforced disappearance of Honduran migrants abroad, on the grounds that the acts were not committed within their jurisdiction, and did not refer such complaints to the jurisdiction of other countries (arts. 9, 12, 14 and 15).

21. **The Committee recommends that the State party take the necessary measures to fully guarantee that the Honduran courts can exercise jurisdiction over all offences of enforced disappearance, including those committed against Honduran nationals abroad.**

Independent and impartial investigation

22. The Committee notes that, under the Military Police Act, special missions of the military police are assigned judges and prosecutors who have passed screening tests administered by the National Directorate of Investigation and Intelligence and that the assignments are made by the National Defence and Security Council (art. 8). These judges and prosecutors are reportedly the only ones empowered to initiate and hear criminal proceedings against the military police personnel with whom they collaborate, when the latter are accused of committing offences (art. 13). The Committee is concerned that this institutional arrangement jeopardizes the necessary guarantees of independence and impartiality in investigations of military police personnel who are accused of offences of enforced disappearance (art. 11).

23. **The Committee recommends that the State party ensure that offences of enforced disappearance allegedly committed by members of the security forces are investigated and prosecuted by competent, independent and impartial prosecutors and judges who have no institutional ties to the entity to which the individual under investigation belongs.**

Reports and investigations of cases of enforced disappearance

24. The Committee takes note of the information provided by the State party concerning the number of investigations into cases of enforced disappearance. However, it regrets that it did not receive updated official information on the number of complaints filed, the findings of the investigations and the sentences imposed. The Committee is concerned about the lack of progress in the investigations into the many reported cases of enforced disappearance in the State party, in particular those that occurred in the 1980s and 1990s, and about the consequent impunity for these acts, which is reflected by the virtual lack of convictions for this offence. The Committee is also concerned at the obstacles that impede the effective investigation of cases of enforced disappearance, including: (a) the characterization of such acts as offences other than enforced disappearance; (b) the fact that domestic legislation does not explicitly provide for the suspension of any State agent suspected of having been involved in the commission of an offence of enforced disappearance; and (c) the restrictions imposed on the ability of the Public Prosecution Service and enforcement judges to visit correctional facilities, particularly after armed forces personnel were assigned the task of guarding persons deprived of liberty, and on the ability of the national preventive mechanism (the National Committee for the Prevention of Torture) to visit such facilities. The Committee is also concerned at reports that the relatives of disappeared persons are not kept informed of or allowed to participate in the investigations (arts. 1, 2, 12, 17 and 24).

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

(b) **Expedite the investigations of enforced disappearance that are currently under way and ensure that all offences of enforced disappearance, including those committed in the 1980s and 1990s, are promptly investigated and that alleged perpetrators are prosecuted and, if found guilty, punished in accordance with the extreme seriousness of their acts, while ensuring that no act of enforced disappearance is left unpunished;**

(c) **Encourage and facilitate the participation of all persons with a legitimate interest, such as the family, close friends and legal representatives of disappeared persons, in investigations and at all stages of the proceedings, as part of due process, and ensure that they are regularly informed about the progress and results of the investigations;**

(d) **Ensure that the competent authorities and institutions have access to any place of deprivation of liberty where there are grounds to believe that a person subjected to enforced disappearance may be present;**

(e) **Ensure that any State agent, whether civilian or military, who is suspected of having committed an offence of enforced disappearance is not in a position to influence the progress of the investigations.**

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

26. The Committee takes note of the State party's efforts with regard to the protection of human rights defenders, including the adoption of a specific law on the subject and the National Protection System. However, the Committee is gravely concerned at reports that there continue to be cases in which disappeared persons' relatives and human rights defenders are victims of harassment, threats, surveillance and killings (arts. 12 and 24).

27. **The Committee urges the State party to step up its efforts to prevent and punish acts of intimidation and/or ill-treatment against any of the persons referred to in article 12 (1) of the Convention and to ensure the prompt and effective implementation of the protection measures provided for by law with a view to effectively protecting such persons.**

Disappearances of migrants and regional cooperation

28. Bearing in mind the 2016 concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/CHL/CO/1, paras. 31–33), the Committee is concerned at reports that many Honduran migrants have gone missing abroad and that several clandestine graves have been discovered in Mexico, where Honduran victims were found, including victims who may have been subjected to enforced disappearance. The Committee notes the existence of a forensic database on missing migrants and of a tracing bureau for missing migrants, as well as the measures taken by the State party to investigate cases in which migrants have disappeared and to trace, assist and protect them, including cooperation with the countries on the migration route to the United States of America. The Committee is nonetheless concerned to note that many of these measures and initiatives have been driven by international organizations and civil society, instead of being led by State institutions. In this regard, the Committee is concerned to note that the State party has neither a database of disappeared migrants nor a search protocol, and that this has resulted in a situation where relatives of disappeared migrants are obliged to carry out the necessary formalities through multiple institutions, which do not maintain ongoing or coordinated communication with each other (arts. 1, 2, 3, 9, 12, 15 and 24).

29. **The State party, in cooperation with countries of origin and destination, and with input from victims and civil society, should:**

(a) **Intensify its efforts to prevent and investigate disappearances of migrants, prosecute those responsible under criminal law and provide adequate protection for complainants, experts, witnesses and defence counsel;**

(b) **Ensure that immediate searches are conducted for disappeared migrants and that any human remains that are found are identified and returned in a dignified manner;**

(c) **Establish an up-to-date database of disappeared migrants;**

(d) **Ensure that ante-mortem data are collected and entered into the forensic database of missing migrants;**

(e) **Ensure that the family members and close friends of disappeared persons, irrespective of where they reside, have the opportunity to obtain information and take part in the investigations and the search for the persons concerned;**

(f) **Strengthen cooperation with the authorities of other States in the region to ensure that searches for disappeared migrants are conducted and that those allegedly responsible are investigated.**

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

Fundamental legal safeguards

30. The Committee takes note of the information provided by the State party indicating that, from the moment a person is deprived of liberty, the legal provisions on prompt notification and access to counsel, a physician, a family member or any other person of his or her choice are applicable. However, the Committee is concerned at reports that persons in police custody have difficulty obtaining an independent medical examination; that persons deprived of their liberty are not necessarily informed of their right to counsel from the moment of arrest; and that detainees' due process rights, including access to counsel and the right to communicate with their families, are not always respected. The Committee is also concerned at reports of obstacles and delays in the processing of applications for habeas corpus in cases involving allegations of enforced disappearance (art. 17).

31. **The Committee recommends that the State party take the necessary measures to ensure that all persons deprived of their liberty enjoy all the safeguards provided for in the Convention, in particular in article 17 (2).**

Registers of persons deprived of liberty

32. The Committee takes note of the information concerning the existence of a number of registers of persons deprived of liberty. It nonetheless notes with concern that these registers do not contain all the information referred to in article 17 (3) of the Convention. The Committee expresses concern about reports that registers contain incomplete and/or incorrect information on persons deprived of their liberty and about the lack of sanctions in that regard. The Committee notes with concern that the remedy of habeas data can be initiated only by the person whose personal or family data are noted in the relevant files or public or private records and that this restricts access to information by the persons referred to in article 18 (1) of the Convention (arts. 17, 18, 20 and 22).

33. **The Committee recommends that the State party take all necessary measures to ensure that:**

(a) **Any person with a legitimate interest has prompt and easy access to the information referred to in article 18 (1) of the Convention, including during the period of custody;**

(b) **All cases of deprivation of liberty, without exception, are entered in official registers and/or up-to-date records, including, at a minimum, the information required under article 17 (3) of the Convention;**

(c) **Registers or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officials responsible are duly sanctioned.**

Training on the Convention

34. The Committee takes note of the information on the measures taken to provide human rights training to some State agents. The Committee notes, however, that such training does not include specific training on enforced disappearance (art. 23).

35. **The Committee recommends that the State party continue its efforts to provide human rights training for State officials and, in particular, that it ensure that all law enforcement and security personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1) thereof.**

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

Definition of “victim” and right to obtain reparation and prompt, fair and adequate compensation

36. The Committee is concerned to note that the definition of “victim” set out in article 17 of the Code of Criminal Procedure does not cover all the persons referred to in article 24 (1) of the Convention. It also notes with concern that domestic law does not provide for a system of full reparation under the responsibility of the State that includes all the measures of reparation provided for in article 24 (5) of the Convention. Moreover, the Committee is concerned at the lack of progress in informing victims of enforced disappearance, in particular those whose cases date back to the 1980s and 1990s, of their right to know the truth and to obtain justice, reparation and guarantees of non-repetition (art. 24).

37. **The Committee recommends that the State party take the necessary measures to:**

(a) **Establish, in domestic law, a definition of “victim” that is consistent with article 24 (1) of the Convention, in order to ensure that any individual who has suffered harm as the direct result of an enforced disappearance can exercise the rights set forth in this article;**

(b) **Establish a comprehensive system of reparation that takes into account the personal situation of the victims, such as their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability, and is fully in line with the provisions of article 24 (4) and (5) of the Convention, is under the responsibility of the State and is applicable even if no criminal proceedings have been initiated;**

(c) **Ensure that all victims of enforced disappearance, including those whose cases date back to the 1980s and 1990s, can exercise their right to know the truth.**

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

38. The Committee is concerned to note that, in order to regularize the situation of the family members of a disappeared person, civil law requires that the disappeared person be presumed to have died, even if his or her fate has not been clarified (art. 24).

39. **The Committee recommends that the State party adopt the legislative measures necessary to ensure that the legal situation of disappeared persons whose fate or**

whereabouts have not been clarified and that of their relatives is regularized in accordance with article 24 (6) of the Convention, in fields such as social welfare, family law and property rights, without the need to declare that the disappeared person is presumed dead. In this connection, the Committee encourages the State party to provide, by law, for the issuance of declarations of absence by reason of enforced disappearance.

Search for disappeared persons and return of remains

40. The Committee notes the existence of a forensic database of missing migrants and the information provided by the delegation of the State party with regard to the identification of remains. However, it is concerned at the lack of a system to allow for immediate and urgent action to search for a disappeared person in cases where there is reason to believe that he or she may be alive and at reports that the search for disappeared persons is not always initiated immediately (art. 24).

41. **The Committee recommends that the State party intensify its efforts to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains. In particular, it should:**

(a) **Guarantee in practice that when a person's disappearance is reported the search is initiated automatically, without delay, in order to increase the chances of finding the person alive;**

(b) **Ensure that the search is conducted by the competent authorities with the involvement of the relatives of the person concerned;**

(c) **Establish a database of ante-mortem/post-mortem information for all disappeared persons and ensure that it is updated with the relevant information in all cases of disappearance, without exception;**

(d) **Guarantee effective coordination, cooperation and cross-referencing between the agencies responsible for searching for disappeared persons and for identifying their remains in the event of death, and ensure that they have the necessary financial, technical and human resources;**

(e) **Ensure that investigations continue until the fate of the disappeared person has been clarified, in accordance with article 24 (6) of the Convention.**

Legislation concerning the wrongful removal of children

42. The Committee takes note of the delegation's statement that there are no child victims of enforced disappearance in the State party. However, the Committee is concerned at reports indicating the contrary. It notes that there are no specific programmes to help adults who believe that they are the children of disappeared parents to have their true identity re-established, nor are there procedures to ensure that families have the right to search for child and adolescent victims of enforced disappearance (art. 25).

43. **The Committee urges the State party to intensify its efforts to search for and identify children and adolescents who may have been victims of wrongful removal, enforced disappearance and/or falsification of identity, including the creation of a DNA database that includes genetic samples for all cases that have been reported through either administrative or judicial channels. The Committee recommends that the State party establish specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship that originated in an enforced disappearance.**

D. Dissemination and follow-up

44. 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.

45. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender 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 reprisals 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 to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

46. The State party is encouraged to widely disseminate 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.

47. In accordance with the Committee's rules of procedure, the State party should provide, by 1 June 2019 at the latest, relevant information on its implementation of the Committee's recommendations contained in paragraphs 13 (registers), 25 (investigation) and 27 (protection of victims and defenders) of the present concluding observations.

48. Under article 29 (4) of the Convention, the Committee requests the State party to provide, by 1 June 2021, specific, updated information on the implementation of all its recommendations, as well as any other new information on the fulfilment of the obligations set out in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2, para. 39). The Committee encourages the State party, when preparing this information, to continue consulting civil society, including organizations of relatives of victims.
