



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

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

I. Introduction

1. The Committee welcomes the additional information provided by Colombia under article 29 (4) of the Convention, as requested by the Committee in its 2016 concluding observations on the State party's initial report.¹ The Committee also expresses its appreciation of the constructive dialogue held with the State party's high-level delegation on the measures that the State party has taken to fulfil its obligations under the Convention in connection with the following themes: (a) harmonization of domestic law and the Convention; (b) prevention of enforced disappearance and mechanisms for search and investigation; and (c) reparation.

A. Positive aspects

2. The Committee acknowledges the efforts made by the State party to encourage the search for missing persons, including those subjected to enforced disappearance. It takes note in particular of the creation of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition, composed of the Commission for the Clarification of the Truth, Coexistence and Non-Repetition, the Special Jurisdiction for Peace and the Unit for the Search for Persons Deemed Missing in the Context of and as a Result of the Armed Conflict (the Search Unit) and mechanisms for truth, justice and reparation and for the realization of the rights of the victims of the armed conflict. It highlights the Search Unit's adoption of the National Search Plan and regional search plans and the key role played by civil society, including victims in particular, in combating enforced disappearance.

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

3. The Committee is fully aware that in the State party there are many obstacles to the prevention and investigation of enforced disappearance, the punishment of those responsible and the search for and identification of missing persons. It finds it regrettable that, despite the signing of the peace agreement, enforced disappearance is still prevalent in various parts of the country. The Committee is of the view that, in spite of the State party's efforts, the legislation in force, the application of that legislation and the way the competent authorities discharge their duties are still not fully compatible with the Convention.

* Adopted by the Committee at its twentieth session (12 April–7 May 2021).

¹ CED/C/COL/CO/1.



II. Harmonization of domestic law and the Convention

A. Definition of enforced disappearance

4. The Committee notes that the definition of enforced disappearance in article 165 of the Criminal Code is still not in line with article 2 of the Convention. The Committee, as stated in its previous recommendations,² is concerned that the conduct defined as an offence in the Criminal Code can be committed either by public servants or by individuals acting independently or under the orders or with the consent of a public servant. It also reiterates that this definition dilutes the responsibility of the State and thus has a negative effect on the implementation of the Convention (arts. 2–4).

5. **The Committee recommends that the State party revise the definition contained in article 165 of the Criminal Code to bring it fully into line with article 2 of the Convention.**

B. Criminal responsibility of superiors

6. The Committee reiterates its concern that there is no specific legal provision ensuring that superiors can be held criminally responsible in accordance with article 6 (1) (b) of the Convention.³ Even if this absence can be offset by the discretion of a judge, only a specific provision of criminal law can prevent discretionary interpretations that are not fully in line with the Convention (art. 6).

7. **The Committee urges the State party to specifically incorporate into domestic law the criminal responsibility of superiors, in accordance with article 6 (1) (b) of the Convention.**

C. Communication by and registration of persons deprived of their liberty

8. The Committee is concerned about reports that detained persons have been prevented from communicating with the persons referred to in article 17 of the Convention. It also expresses concern about reports that the records of persons deprived of their liberty are not maintained up to date (art. 17).

9. **The Committee reiterates its recommendations⁴ and urges the State party to take all necessary measures, including legislative measures, to ensure that all persons deprived of their liberty have access to a lawyer from the outset of deprivation of liberty and are able to communicate immediately with their family members or any other person of their choice, including, in the case of foreigners, with the relevant consular authorities. It also urges the State party to comply with its obligations under article 17 of the Convention with regard to maintaining registers of persons deprived of their liberty.**

D. Protection of children from enforced disappearance

10. The Committee reiterates its concern that Colombian laws do not specifically penalize the acts referred to in article 25 (1) (a) of the Convention (art. 25).⁵

11. **The Committee urges the State party to make the acts described in article 25 (1) (a) of the Convention specific criminal offences and to ensure that the penalties for those offences are commensurate with their extreme seriousness.**

² Ibid., para. 15.

³ Ibid., para. 17.

⁴ Ibid., para. 30.

⁵ Ibid., para. 40.

E. Individual and inter-State communications

12. The Committee reiterates its concern that the State party has not recognized the competence of the Committee to receive and consider individual and inter-State communications (arts. 31 and 32).⁶

13. **The Committee again 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 with a view to ensuring that the Convention is fully implemented and strengthening the framework for protection from enforced disappearance.**

III. Prevention of enforced disappearance and mechanisms for search and investigation

14. The Committee is concerned that cases of enforced disappearance continue to occur in the State party, including in the context of the coronavirus disease (COVID-19) pandemic, and that no comprehensive policy has been adopted to prevent it (arts. 1–3).

15. **The Committee considers it essential and therefore recommends that the State party adopt a comprehensive public policy for the prevention of enforced disappearance, informed by its obligations under the Convention and by the Key Guidelines on COVID-19 and Enforced Disappearances, adopted by the Committee and the Working Group on Enforced or Involuntary Disappearances.**

A. Statistical information on enforced disappearances

16. The Committee remains concerned about the lack of clear and reliable information on the number of missing persons in the State party, including those who may have been subjected to enforced disappearance. Although the National Missing Persons Register is the only official register of missing persons, different institutions still have multiple databases containing conflicting information on such persons. The Committee recognizes that progress has been made towards the cleansing of the National Register and its consolidation as the single source of information but regrets that the process is not yet complete (arts. 1–3, 12 and 24).

17. **The Committee recommends that the State party complete without delay the process of cleansing the National Missing Persons Register, consolidate the information on missing persons contained in the various State databases and produce accurate and reliable statistics on missing persons, including on those who may have been subjected to enforced disappearance. These statistics should make it possible to identify the different groups of victims, the causes and dynamics of enforced disappearance and patterns of behaviour and serve as a basis for adopting more effective prevention, investigation and search measures. The National Register should be updated systematically, ensuring the uniform, comprehensive and immediate registration of all known missing persons. At the very least, it should include:**

(a) **The total number and identity of all missing persons, with an indication of those who may have been subjected to enforced disappearance within the meaning of article 2 of the Convention;**

(b) **The sex, gender identity, age, nationality and ethnic origin of the missing person, as well as the place, date, context and circumstances of the person's disappearance, including all evidence relevant to determining whether it was an enforced disappearance;**

(c) **The status of the relevant search and investigation procedures, as well as of procedures for exhumation, identification and return of remains.**

⁶ Ibid., para. 12.

B. Investigation of cases of enforced disappearance

18. The Committee is concerned by the lack of significant progress in the investigations that the Attorney General's Office and the Special Jurisdiction for Peace have conducted into cases of enforced disappearance, including of minors or of prisoners and extrajudicial executions associated with enforced disappearance. It is also concerned about the large number of inactive prosecutions and the small number of convictions, including of military commanders and high-ranking army officers, a situation that perpetuates impunity. Likewise of concern to the Committee are reports that guidelines have been drawn up by the armed services to ensure that service members provide coordinated accounts of their actions during the conflict to the institutions of the transitional justice system and withhold information that would be useful to investigators (arts. 2, 6, 12 and 24).

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

(a) **Ensure that all cases of enforced disappearance are investigated ex officio, promptly, exhaustively, impartially, independently and with a differential approach and that the Special Jurisdiction for Peace prioritizes the launch, within its purview, of macro cases in respect of the cases of enforced disappearance committed in the context of the conflict;**

(b) **Ensure that the alleged perpetrators of enforced disappearance, including military and civilian superiors and State officials who authorize, support or acquiesce to such disappearances, are tried and, if found guilty, given appropriate penalties;**

(c) **Prevent State agents, civilian or military, from giving instructions to falsify accounts, conceal the truth and obstruct investigations;**

(d) **Guarantee that all institutions involved in the investigation of cases of enforced disappearance, including the Truth Commission and the Special Jurisdiction, have effective and timely access to all relevant documentation that may be in the possession of State agencies, in particular intelligence agencies of the armed and security forces.**

20. The Committee is concerned that military and police officers who are under investigation for enforced disappearance and other human rights violations have been promoted, thereby leading to revictimization (arts. 12 and 24).

21. **The Committee urges the State party to take legislative measures to ensure that the requirements for the promotion of military personnel and police officers include the presentation of proof that they are not being investigated or prosecuted for the crime of enforced disappearance or other human rights violations.**

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

22. The Committee notes with concern the limited progress in the investigation of disappearances perpetrated by organized illegal armed groups, in particular those related to chop houses (*casas de pique*), to the forced recruitment of children, mostly in indigenous communities and in communities of Colombians of African descent, and to cross-border disappearances (arts. 3, 12 and 25).

23. **The Committee recommends that the State party intensify its efforts to prevent and investigate promptly, thoroughly and impartially all acts of enforced disappearance, as defined in article 2 of the Convention, that are committed by organized armed groups without the authorization, support or acquiescence of State agents and to prosecute and punish those responsible.**

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

24. The Committee is still concerned about the killings, threats and reprisals faced by human rights defenders, indigenous peoples, communities of persons of African descent and victims of enforced disappearance and their relatives and representatives, including those appearing before the Special Jurisdiction for Peace, as well as about the high levels of impunity for these acts. It is also concerned about information regarding: (a) shortcomings in the implementation of protection programmes, including failures to ensure that the programmes meet the needs of the intended beneficiaries, particularly women and members of indigenous communities and communities of persons of African descent; and (b) the lack of resources of the National Protection Unit, which limits its effectiveness, particularly in rural areas (arts. 12 and 24).

25. **The Committee urges the State party to redouble its efforts to prevent the acts of violence, threats and reprisals faced by complainants, witnesses, relatives of disappeared persons and their defenders, as well as by those who take part in the investigation of cases of enforced disappearance. In particular, it recommends that the State evaluate and review the current protection model with a view to ensuring:**

- (a) **That people's lives and safety are protected;**
- (b) **That the protection measures taken by the State authorities are implemented quickly and effectively, ensuring the coordination of the authorities and the participation of the intended beneficiaries in risk assessments and in decisions on the protection measures to be taken and guaranteeing the application of a differential approach that takes into account the person's sex, gender identity, sexual orientation, age, ethnic origin, disability and vulnerability**
- (c) **That investigations are exhaustive, impartial and effective, that perpetrators are prosecuted and duly punished and that victims obtain full reparation;**
- (d) **That the institutions mandated to provide protection have the human, financial and technical resources to carry out their mandates effectively.**

E. Search for disappeared persons

26. The Committee is concerned about the poor results of the search for the large number of missing persons in the State party, including the 84,330 persons and 9,964 children, who, according to figures from the Attorney General's Office, have been subjected to enforced disappearance and the persons who have been disappeared by illegal organized armed groups without the authorization, support or acquiescence of State agents, including child victims of forced recruitment. Although the Committee notes that the Disappeared Persons Investigative Commission has a national search plan and that the Search Unit has designed a national search plan and regional search plans, it is concerned about delays in the implementation of the latter two. It is also concerned about reports indicating that the urgent search mechanism, which is becoming a bureaucratic process that does not lead to successful search results, is not activated immediately (arts. 2, 3, 12, 24 and 25).

27. **The Committee encourages the State party to systematically incorporate the methods of the guiding principles for the search for disappeared persons in the design and implementation of comprehensive search strategies and recommends that it:**

- (a) **Ensure that the search plans designed by the Search Unit are implemented expeditiously and that the entities established under the peace agreement, the Attorney General's Office and other institutions work in concert;**
- (b) **Guarantee that the institutions responsible for the search for missing persons have the human, financial and technical resources they need to fulfil their responsibilities;**
- (c) **Ensure that, when a disappearance is reported, the search is always initiated ex officio and without delay;**

(d) **Intensify its efforts to search for, locate and free missing persons and, if they are found dead, to identify the remains and return them in dignified fashion, adopting a differential approach with regard to women, children, adolescents, lesbian, gay, bisexual, transgender and intersex persons, members of particular ethnic communities and persons with disabilities;**

(e) **Ensure that missing children are returned to their families of origin and that their true identity, if it has been stolen, is re-established;**

(f) **Guarantee that the search for disappeared persons continues until they have been found and that the investigation of their disappearance is pursued until the facts are established and the perpetrators are identified;**

F. Identification and dignified return of remains

28. The Committee notes with concern that limited progress has been made towards the identification and return of the remains of disappeared persons, in particular those of the more than 24,000 unidentified persons buried in public cemeteries and the more than 4,000 bodies of victims of enforced disappearance that, of the more than 10,000 that have been exhumed, have yet to be identified. It is also concerned about reports of: (a) cases of family members of disappeared persons who reported the discovery of bodies to the Attorney General's Office, which took no action to recover the remains and identify them; (b) the insufficient genetic sampling campaigns and their relatively poor accessibility, particularly in rural areas; (c) the failure to process all samples collected and include them in the genetic profile databank; (d) problems with the handling and protection of the bodies of unidentified persons, whether in public or private cemeteries or in open fields, causing those remains to decay, disappear, become mixed up or be destroyed, problems that have been exacerbated by the pandemic (arts. 12 and 24).

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

(a) **Step up its efforts to identify remains and return them to family members in dignified fashion and in accordance with their customs;**

(b) **Guarantee that the Attorney General's Office, once it receives information about the discovery of bodies, acts immediately to protect and identify the remains of disappeared persons, even when they have been found by private citizens acting independently of the State;**

(c) **Ensure that the competent authorities protect areas where exhumation and forensic procedures are being carried out and cemeteries or other places where bodies of unidentified persons may be found;**

(d) **Ensure that campaigns to obtain ante-mortem information and genetic samples from relatives of disappeared persons are sufficient and accessible throughout the country, particularly in rural areas, and that the samples collected are promptly processed and included in the genetic profile databank;**

(e) **Guarantee that the cemeteries in which the remains of unidentified persons are kept and the National Institute of Forensic Medicine and Science have the technical, financial, human and infrastructure resources they need to properly handle and protect the remains of unidentified persons.**

G. Coordination of efforts to search for and identify missing persons and investigate disappearances

30. The Committee is concerned about the inadequate coordination and insufficient exchanges of information among the institutions responsible for the search for missing persons, investigations and the recovery and identification of such persons, including those subjected to enforced disappearance. These shortcomings are apparent in the Comprehensive System of Truth, Justice and Non-Repetition and the Attorney General's Office and in the work of these two institutions with other State institutions, in particular the Disappeared

Persons Investigative Commission, the Institute of Forensic Medicine and the Ombudsman's Office. The Committee is also concerned about reports of limited participation by victims in these processes (arts. 12 and 24).

31. **The Committee recommends that the State party ensure that:**

(a) **The institutions involved in the search for, investigation, recovery and identification of the remains of disappeared persons coordinate their activities, cooperate and cross-check data so that they can work effectively and expeditiously;**

(b) **Family members of disappeared persons can participate in the search for and identification of remains, in investigations and, as part of due process, in all other stages of the proceedings, while being kept informed of all relevant developments.**

IV. Reparation

Right to obtain reparation

32. The Committee is concerned that, of the 185,422 victims of enforced disappearance listed in the Central Register of Victims, only a few (12,490), have obtained reparation, which has been limited to monetary compensation. It is also concerned about the insufficient coordination and cross-checking of data by the Comprehensive Victim Support and Reparation Unit, the Comprehensive System of Truth, Justice and Non-Repetition, the Attorney General's Office and the National Missing Persons Register, as such shortcomings contribute to a lack of accurate and reliable information on the number of victims of enforced disappearance who would be entitled to reparation. The Committee regrets that it has not received sufficient information on the forms of reparation that have been awarded to or are provided for in domestic law for victims of enforced disappearance in contexts other than those of armed conflict, who do not fall within the scope of Act No. 1448 of 2011 (art. 24).

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

(a) **Ensure that domestic law provides for a comprehensive, State-administered system of reparation and compensation, in accordance with article 24 (4) and (5) of the Convention, for all victims of enforced disappearance, as they are defined in article 24 (1) of the Convention, and that reparation and compensation can be obtained even if no criminal proceedings have been instituted;**

(b) **Ensure that all victims of enforced disappearance, as defined in article 24 (1) of the Convention, obtain full reparation, including those outside the scope of Act No. 1448 of 2011;**

(c) **Ensure that the system for making reparation awards takes into account the personal circumstances of victims, such as their sex, gender identity, sexual orientation, age, ethnic origin, social status and disability.**

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

34. 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 are in full accordance with the Convention and other relevant international instruments.

35. 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 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 are disappeared or because they suffer the consequences of the disappearance of members of their families, 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 take into account the specific needs of women and children as it implements the recommendations contained in the present concluding observations and the full range of rights and obligations deriving from the Convention.

36. 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 all governmental authorities, all civil society actors and the public at large. The Committee also encourages the State party to promote the participation of civil society in the actions taken to implement the recommendations contained in the present concluding observations.

37. In accordance with article 29 (4) of the Convention, the Committee requests the State party to submit, by 7 May 2022, relevant information on action taken in follow-up to the recommendations made by the Committee in paragraphs 17 (on the National Missing Persons Register), 19 (on the investigation of enforced disappearances) and 27 (on the search for disappeared persons) above. The Committee also requests the State party to provide, by 7 May 2024, specific, up-to-date information on its implementation of each of the recommendations contained in the present concluding observations, as well as any other information it considers relevant to the implementation of its obligations under the Convention. 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.
