



# International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General  
14 April 2016  
English  
Original: Spanish  
English, French and Spanish only

## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by Colombia under article 29, paragraph 1, of the Convention\*

#### I. General information

1. Please indicate whether the State party is considering making the declarations provided for in articles 31 and 32 of the Convention relating to the Committee's competence to receive and consider individual and inter-State communications.
2. Please provide information about existing mechanisms for dealing with the requests for urgent action transmitted by the Committee to the State party pursuant to article 30 of the Convention and for taking the interim and protective measures requested by the Committee in this connection.
3. Where possible, please provide examples of case law in which the provisions of the Convention have been invoked or applied.
4. In the light of the fact that the Disappeared Persons Investigative Commission is led by the Ombudsman's Office, please provide information on the efforts made by that Office to help the Commission to fulfil its mandate. Please also provide information on the measures taken to ensure that the Ombudsman's Office has the resources it needs to perform its duties successfully. Please also indicate whether any risk reports on enforced disappearance have been issued by the Early Warning System, and, if so, please provide information about how the competent national authorities followed up on those reports.

#### II. Definition and criminalization of enforced disappearance (arts. 1-7)

5. Please provide updated statistical information, disaggregated by sex, age (minor or adult) and whether the victim was Afro-Colombian or indigenous, on the total number of disappeared persons in the State party, specifying the number of cases in which there was some form of State participation, within the meaning of the definition of enforced disappearance contained in article 2 of the Convention. Concerning the National Register of Disappeared Persons, please (arts. 1, 3, 12 and 24):

\* Adopted by the Committee at its tenth session (7-18 March 2016).



(a) Clarify whether the National Register of Disappeared Persons consolidates information on all disappeared persons, including on the cases investigated by special prosecution units or by the Attorney General's Office and the cases reported as part of the special criminal proceedings for justice and peace referred to in paragraphs 210 and 211 of the State party's report (CED/C/COL/1);

(b) Bearing in mind article 8 of Decree No. 4218 of 2005, provide information about the measures taken to ensure in practice that relevant information about all alleged cases of disappearance is added to the National Register of Disappeared Persons promptly once the information becomes known, and that the Register is continuously updated;

(c) Provide information about the measures taken with a view to comparing and consolidating the information contained in the National Register with the information on disappeared persons held by other State institutions, such as the various units of the Attorney General's Office or the Central Register of Victims;

(d) Provide information about the measures taken by the Technical Panel for Case Resolution and the results achieved (paragraph 92 of the State party's report). In particular, please explain what methodology is used for case resolution, how cases of persons who have been found — either alive or dead — are dealt with and whether there are any means of differentiating between cases of enforced disappearance *sensu stricto* and cases of disappearance in which not all the elements set out in article 2 of the Convention are present.

6. With regard to paragraph 18 of the State party's report, please indicate whether there have been any legislative initiatives to bring the definition of enforced disappearance set out in article 165 of the Criminal Code into line with the one set out in the Convention with reference to the perpetrators of the crime. Bearing in mind paragraph 23 of the State party's report, please also clarify whether the phrase "removing [the person] from the protection of the law" that is included in the definition of enforced disappearance set out in article 165 of the Criminal Code should be understood as an intentional element (*animus*) that would have to be present in order for the act to constitute criminal conduct, or whether, on the contrary, it should be understood as a consequence (arts. 2, 4 and 6).

7. In the light of reports of kidnappings of civilians by illegal armed groups that were formed following the demobilization of paramilitary organizations, as well as by organized armed groups, please provide further information on the efforts made to investigate the acts defined in article 2 of the Convention when committed by these or any other groups of persons acting without the authorization, support or acquiescence of State officials, and bring those responsible to justice. In doing so, please include statistical information. Please also comment on the reports that, in some cases, illegal armed groups that emerged following the demobilization of paramilitary organizations have acted in collusion with or with the acquiescence of State officials (arts. 1, 3 and 12).

8. Please indicate whether any legislative initiatives have been taken with a view to explicitly classifying enforced disappearance as a crime against humanity, in accordance with the Convention. If so, please provide information on the proposed definition and the consequences for the commission of this crime, including the penalties. With reference to paragraph 68 of the State party's report, please provide information on the current status of Bill No. 18 of 2012 to amend Act No. 599 of 2000 and do away with the statute of limitations for the offences of genocide, crimes against humanity and other inhumane acts (arts. 5 and 8).

9. While taking note of articles 25 and 28 to 30 of the Criminal Code, the Committee would appreciate information about whether steps have been taken to expressly incorporate into national law the criminal responsibility of superiors as set out in article 6, paragraph 1 (b), of the Convention (art. 6).

### **III. Judicial procedure and cooperation in criminal matters (arts. 8-15)**

10. While noting the information provided in tables 2 and 9 of the State party's report, the Committee would like to receive updated statistics on the number of complaints of enforced disappearance received since the Convention entered into force for the State party and on the number of investigations conducted, specifying which entity is responsible for such investigations, the stage at which the proceedings currently stand, and their results, with particular reference to the criminal and administrative penalties imposed on those responsible. Please also specify the number of cases in which State officials were involved and how many of the alleged perpetrators who were under investigation and/or convicted were State officials; whether any of the investigations were initiated *ex officio* by the competent authorities; and how many investigations involved drawing up a search plan. Similarly, please indicate whether the statistics collected include the cases referred to as "false positives" by the security forces. Please also provide statistical information indicating the extent to which the Forced Displacement and Disappearance Unit is successful in investigating cases of enforced disappearance and clarify whether the Unit uses any specific methodologies to investigate such cases (art. 12).

11. Please provide information on the number of cases of enforced disappearance received by the Disappeared Persons Investigative Commission and on the actions taken by the Commission in those cases, including with regard to requests for the initiation of support in and pursuit of criminal investigations, as well as with regard to the drafting of or follow-up on search plans in connection with these investigations, and their results. Please also clarify whether criminal investigations have been initiated and searches launched in connection with all cases of enforced disappearance recorded in the National Register of Disappeared Persons or other State-administered databases of disappeared persons (arts. 12 and 24).

12. Please provide information on the measures taken, including those taken by the Disappeared Persons Investigative Commission, to ensure 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 to ensure that they have the necessary economic, technical and human resources. Please also provide updated statistical information on the effectiveness of the National Plan on the Search for Disappeared Persons and the Urgent Search Mechanism, particularly with regard to locating victims of enforced disappearance who are still alive. Furthermore, please provide information about the measures taken to ensure coordination between the aforementioned mechanisms and the special unit for the search of persons presumed disappeared in the context and by reason of the armed conflict, which was established during the Havana Talks between the Government of the State party and the Revolutionary Armed Forces of Colombia — People's Army (FARC-EP) (arts. 12 and 24).

13. Taking into account the information provided in paragraphs 94 and 214 of the State party's report, the Committee would appreciate receiving updated information on the total number of bodies of deceased victims of enforced disappearance that have been located, identified and returned. Please also provide information on the results achieved thus far through the project known as searching for unidentified persons in cemeteries referred to in paragraphs 216 to 218 of the State party's report. Furthermore, please provide information about the efforts made by the State party to return identified remains to families that are unaware of the disappearance and death of their loved ones. With regard to paragraph 222 of the State party's report, please indicate the current status of the implementing decree for Act No. 1408 of 2010, and, if it has already been adopted, please provide information on its contents (arts. 12 and 24).

14. Please provide information about the extent to which the various special transitional justice mechanisms used in the past or planned for the future comply with the norms of the Convention, particularly in respect of the proportionality between penalties and the severity of the offence and the obligation to investigate forced disappearances in an exhaustive and impartial manner. In this regard, please include statistical information on persons prosecuted and convicted (arts. 12 and 24).

15. Regarding paragraphs 103 to 109 of the State party's report, please briefly describe the procedures for using the protection systems offered through the protection and assistance programme for witnesses, victims and participants in the criminal process run by the Attorney General's Office, the National Protection Unit of the Ministry of the Interior and the Victim and Witness Protection Programme set up under the Justice and Peace Act, and indicate the number of persons connected with cases of enforced disappearance who benefit from protection measures under each of these systems. In this regard, please include information on: the average length of time taken to assess the risks and initiate the protection measures; how the participation of persons in need of protection in the risk assessment and in the process of determining which protection measures should be taken is facilitated; the measures taken to ensure that the protection systems have the resources needed to carry out their mandates effectively; and statistics on their effectiveness (arts. 12 and 24).

16. Regarding paragraphs 121 and 122 of the State party's report, please provide statistical information on the practical application of the regulations providing for the possibility of removing from office, placing in pretrial detention or temporarily suspending public officials when there are reasonable grounds for believing that they are responsible for an enforced disappearance or taking the same measures against persons who obstruct an urgent search or intimidate witnesses or family members of the victim. Please also indicate whether there are any mechanisms in place to exclude a law-enforcement or security force, whether civilian or military, from the investigation into an enforced disappearance when one or more of its members are accused of committing the offence or of having been involved in the commission of the offence (art. 12).

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

17. With regard to article 303, paragraph 2, of the Code of Criminal Procedure, please provide information on measures taken to ensure in practice that a person chosen by the detainee is immediately informed of the deprivation of liberty and indicate as from what point the person deprived of liberty may communicate directly with family members or with any other person of his or her choice. With respect to article 303, paragraph 4, which refers to the right of the person deprived of liberty to appoint and meet with a trusted lawyer "as soon as possible", please indicate how the access of the person deprived of liberty to legal counsel from the time of arrest is ensured in practice. Please also indicate whether the right of persons deprived of their liberty to communicate with their family, counsel or any other person of their choice and to receive visits from them might be subject to any conditions or exceptions. Bearing in mind the title of Circular No. 0004 of 2009, "The right of foreign detainees to communicate or not communicate with their diplomatic or consular representatives", please also indicate under which circumstances a foreign detainee would be unable to exercise that right (arts. 10 and 17).

18. Please clarify whether, in addition to the registers referred to in paragraphs 153 to 157 of the State party's report, there are any other registers in which detentions are recorded, and, if so, please provide detailed information about their contents and indicate who has access to them. Please provide information on measures taken to ensure in practice that all registers of persons deprived of liberty include all the elements listed in article 17,

paragraph 3, of the Convention and are updated immediately, including information about monitoring measures. Please also provide information on the current status of the draft decree to establish the single register of arrested and detained persons referred to in paragraph 155 of the State party's report. In this regard, please also clarify whether all deprivations of liberty without exception will be recorded in this register and explain in detail what information will be included about each person deprived of liberty. Please also provide information on the penalties established by law for failure to register a deprivation of liberty or for registering incorrect information in cases where the official responsible for registering the deprivation of liberty knew or should have known that the information was incorrect (arts. 17 and 22).

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

19. Please provide detailed information on the reparation provided for in legislation for victims of enforced disappearance who are not covered by Act No. 1448 of 2011. With regard to paragraph 223 of the State party's report, please provide information on the number of victims of enforced disappearance who have received reparation through criminal proceedings or through the judicial review system since the Convention's entry into force for the State party. In this regard, please clarify whether access to reparation is dependent on the adoption of a judgement in criminal proceedings (art. 24).

20. Please provide updated information on the number of victims of enforced disappearance who have benefited from the forms of reparation provided for in Act No. 1448 of 2011. With regard to paragraph 234 of the State party's report, please describe briefly the strategy of special support for victims of enforced disappearance developed by the psychosocial group of the Unit for Support and Full Reparation for Victims of Violence and provide information on the number of victims of enforced disappearance who have benefited from that strategy (art. 24).

21. With regard to paragraph 249 of the State party's report, please provide information about the action that must be taken by the relatives of disappeared persons who have received a declaration of absence by reason of enforced disappearance pursuant to Act No. 1531 of 2012 in order to access the protection measures provided for in Act No. 986 of 2005. Please also clarify whether the various benefits established by the Act with respect to disappeared persons and their relatives continue to apply for as long as the person remains disappeared, or whether there are any limitations on receiving those benefits. Please also provide statistical information, starting from the date of the Convention's entry into force for the State party, on the number of requests for a declaration of absence by reason of enforced disappearance that have been processed and issued (art. 24).

22. Please provide information about the measures taken to ensure that the right to form and participate freely in organizations and associations, as set out in article 24, paragraph 7, of the Convention, is fully respected in practice. Please also indicate whether there have been any cases of persecution, intimidation or other events that have prevented the free exercise of these rights and, if so, how many and what type, and what action the State party has taken to guarantee those rights (art. 24).

23. Please indicate whether the State party plans to adopt any measures with a view to bringing its criminal legislation into line with article 25, paragraph 1 (a), of the Convention. Please also indicate whether any complaints concerning the wrongful removal of children in the terms described in that paragraph of the Convention have been made and, if so, please provide information on such cases and on the measures taken to locate those children and prosecute and punish those responsible, and the results thereof (art. 25).

24. Please explain whether any legal procedures have been established to review and, if necessary, annul any adoption, placement or guardianship that originated in an enforced disappearance. If no such procedures have been established yet, please indicate whether an initiative has been taken to bring the national legislation into conformity with article 25, paragraph 4, of the Convention (art. 25).

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