



International Convention for the Protection of All Persons from Enforced Disappearance

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Fifth session

Summary record of the 61st meeting

Held at the Palais des Nations, Geneva, on Tuesday, 5 November 2013, at 10 a.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties under article 29 of the Convention

(continued)

Reports of States parties due in 2012 under article 29, paragraph 1, of the Convention

(continued)

Initial report of Argentina (continued) (CED/C/ARG/1, CED/C/ARG/Q/1, CED/C/ARG/Q/1/Add.1)

1. *At the invitation of the Chairperson, the delegation of Argentina took places at the Committee table.*
2. **Mr. López Ortega** (Country Rapporteur) asked whether Argentina would be willing to refer explicitly to enforced disappearance in any amendment to its Act on International Cooperation in Criminal Matters. He wished to know whether extradition requests had in fact been rejected because of the risk of torture and ill-treatment and how the judicial authorities and the Government assessed potential risks. He asked whether extradition decisions could be appealed and, if so, whether appeals had a suspensive effect on decisions. He also sought clarification of the expulsion procedures, other than extradition, that were applied under laws relating to the treatment of foreigners.
3. He invited the delegation to provide clarification of the management of official registries of persons deprived of their liberty at the federal and provincial levels. He also requested clarification on the application of articles 17 and 18 of the Convention at the federal and provincial levels.
4. He asked what measures Argentina envisaged adopting to address the significant shortcomings noted in the application of habeas corpus; to facilitate visits by members of the Office of the Prison System Ombudsman to places of detention, particularly those where minors were detained; and to accelerate the establishment of that institution at the provincial level. He invited the delegation to provide clarification of the transfer system, the guarantees of protection against arbitrary transfers and the measures envisaged to bring an end to such practices, which constituted serious violations of detainees' rights.
5. **Mr. Huhle** (Country Rapporteur) asked for additional information on the criteria contained in domestic legislation for recognizing victim status and for compensating victims, and on the amount allocated for reparation measures. Recalling that, under the Convention, appropriate measures to enable victims to discover the truth about the circumstances of enforced disappearances were not limited to criminal proceedings, he asked what measures were planned to realize the right to the truth. Referring to article 142 ter of the Criminal Code, he asked the delegation to provide details on the regime of responsibility for the abduction and wrongful removal of children and for the adoption or placement of children that had originated in an enforced disappearance, as well as on measures taken to enable victims to recover their true identity. He requested details of the measures adopted to combat human trafficking.
6. **Mr. Garcé García y Santos** asked what regulations governed transfers of detainees and how long it took for their families, relations and lawyers, as well as the judiciary, to be informed of such transfers. He also asked how many hours or days it took for habeas corpus to be applied. He requested clarification of the functions of the executive branch representative who would be one of the 13 members of the National Committee for the Prevention of Torture under the Act dated 29 November 2012 and wondered about the implications for the application of the principles of independence enshrined in article 18 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

7. **Mr. Corcuera Cabezut** asked for clarification of the application of Reparations Acts Nos. 24043 and 24411 and Act No. 24321, establishing the category of “absent by reason of enforced disappearance”, in light of the statutes of limitations they prescribed.

8. **Mr. Yakushiji**, recalling the provisions of article 35 of the Convention, asked how Argentina dealt with cases of detainees whose deprivation of liberty had commenced before the Convention had entered into force but who had not yet been located. He wished to know whether Act No. 26200, ratifying the Rome Statute of the International Criminal Court, and Act No. 26679, amending the Criminal Code and the Code of Criminal Procedure, as well as articles 142 ter and 215 bis of the Criminal Code, addressed the enforced disappearances that continued to occur. Noting that a complaint had been lodged in Argentina against those responsible for crimes of enforced disappearance committed in Spain under the Franco regime, which invoked the provisions of article 144 ter of the Criminal Code, he sought clarification of the nature of the crimes covered by that article.

9. **Ms. Janina**, recalling the provisions of article 25 of the Convention, asked whether Argentine legislation contained specific provisions criminalizing the abduction and wrongful removal of children. She also asked whether enforced disappearance was part of the reason for the revision and abolition of adoption and placement procedures.

10. **Mr. Camara** asked whether Argentine legislation authorized secret detention and, if so, what the relevant procedures and conditions were. He enquired about the repercussions of the Supreme Court Decision, mentioned in paragraph 134 of the State party’s report, on the functioning of the National Data Centre on Detainees and Missing Persons.

11. **Mr. Al-Obaidi** asked for clarification of paragraph 164 of the State party’s report, concerning the application of article 21 of the Convention, since its content did not conform to the guidelines for the preparation of reports (CED/C/2). The guarantees and legal services provided to persons deprived of their liberty, as listed in the paragraphs of the report relating to the application of article 17 of the Convention, did not satisfy the conditions set out in article 21. He asked whether the Argentine Constitution provided for the release of the persons referred to in those articles.

The meeting was suspended at 10.40 a.m. and resumed at 11.05 a.m.

12. **Mr. Villegas Beltran** (Argentina) said that since the re-establishment of democracy, Argentina had always respected and applied the principle of non-refoulement. The Act on International Cooperation in Criminal Matters had been adopted in 1997 and, if amended, would be supplemented by provisions relating to enforced disappearances. The delegation would provide the Committee with a list of extradition requests that had been rejected because the persons concerned had faced the risk of being tortured. Argentina drew on the reports of United Nations human rights treaty bodies to make an objective evaluation of the risk of torture faced by those who were the subject of such requests. Administrative extradition decisions were necessarily based on a court decision. Leave to appeal was available up to the level of the Supreme Court and appeals had a suspensive effect on extradition proceedings, which could give rise to delays. Argentina endeavoured to avoid such delays when the person concerned was in detention. Since 2004, when the law on immigration drafted during the military dictatorship had been reviewed, the expulsion of a foreign national without the agreement of a judge had been expressly prohibited. Foreign detainees benefited from consular assistance from their countries, which could invoke domestic and international law. Additionally, Argentine consuls around the world communicated information about disappeared persons and victims of the dictatorship to the relatives of those persons.

13. The Act on International Cooperation in Criminal Matters prohibited extradition in the case of political offences; war crimes and crimes against humanity were among the offences not considered political under the Act. Nevertheless, persons who had fled abroad

to escape Argentine justice had been able to avoid extradition by claiming that they were victims of political persecution, seriously hindering the application of the law.

14. **Ms. Oberlin** (Argentina) said that secret detention did not exist in Argentina and detainees and their relatives had the right to be informed of the reasons for the detention, its duration and the date on which the detainee would appear before a judge. Public defenders received in-depth training and provided high-quality services. Most of the persons accused of crimes against humanity retained public defenders. The National Human Rights Secretariat had carried out an exhaustive analysis of the laws applied by the municipal and provincial authorities relating to administrative detention in order to help them align those laws with relevant international instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There was a register of detainees in all provincial prisons, which were encouraged by the authorities to respect those two conventions. There was also a federal registry whose website informed persons deprived of their liberty of their rights and could be used to locate detainees.

15. The Ministry of Security had also established a system for the monitoring of detentions effected by services that did not ordinarily perform that function, such as the Federal Police and the Airport Police, in collaboration with those services. A free telephone service had recently been brought into operation to allow citizens to report negligence on the part of the police or security forces and an office of the Prison System Ombudsman had been created to deal specifically with institutional violence. Officials from that office could visit places of detention and had already carried out seven such visits, which had been unhindered. In cases where rules were not respected, State officials could be made subject to administrative and criminal sanctions.

16. The National Registry of Repeat Offenders had been digitized in order eventually to create a central registry and standardize procedures across all provinces. A protocol had been adopted for particularly vulnerable detainees which included provision for physical protection measures in case of prison transfer and the detention of foreigners in separate wings in order to avoid tensions with Argentine nationals.

17. Habeas corpus existed and had been exercised in practice in Argentina for many years. Over time, the supporting legislation had been improved; habeas corpus currently had constitutional rank and was applied very effectively.

18. **Mr. Auat** (Argentina) said that the execution of sentences was monitored by judges and prosecutors responsible for enforcement. Even so, the latter could only monitor detentions of which they were aware. During the dictatorship, Argentina had gone from being a State governed by the rule of law to a police State, and once secret detentions had been introduced, all guarantees had ceased to be respected, including even the right of access to a lawyer. Because the transfer of detainees had frequently served as a pretext for arbitrary executions, transfers had tragic connotations in Argentina and were very strictly regulated. All transfers required the agreement of the judges and prosecutors responsible for the execution of sentences in the places of departure and destination. The law concerning habeas corpus provided that “the judge shall hand down an immediate decision”; there was therefore no delay to the procedure. The country’s history had left deep scars, which explained why crimes committed in Spain by the Franco regime had been brought before the Argentine courts under the principle of universal jurisdiction. The duty of remembrance and the fight against impunity were very important values for Argentines.

19. **Mr. Fresneda** (Argentina) said that he wished to pay tribute to the Association of Grandmothers of the Plaza de Mayo, which was a prominent part of the country’s heritage. The creation of the National Commission on the Enforced Disappearance of Persons, the friendly settlement agreements in cases brought before the Inter-American Commission on

Human Rights, the establishment of the National Commission for the Right to Identity and the National Genetic Data Bank, and the 50 or so memorial sites already listed in the National Memory Archive were testament to the fact that the era of impunity had come to an end. Similarly, reparation laws went beyond mere financial reparation by providing for more than 100 categories of reparation. In 1998, the definition of a victim of enforced disappearance had been widened to include the family members of all disappeared persons, who could therefore be awarded substantial reparations in accordance with civil law and the law of succession.

20. All rules on enforced disappearances inherited from the past were still fully in force. In fact, Reparations Act No. 24411, concerning the compensation payable when the body of the disappeared person had not been found, had recently been invoked in the case of an attack on an embassy and had led to compensation being paid. Argentina had a national directorate to combat human trafficking, as well as prosecutors and judges who were specialized in trafficking.

21. **Ms. Oberlin** (Argentina) said that legislation relating to the abduction of children by the authorities could also still be invoked if further cases arose. According to estimates, the biological origins of some 400 children stolen during the dictatorship had still not been determined. Argentina would strive to complete that test before all the Grandmothers of the Plaza de Mayo passed away. The Grandmothers worked with the National Human Rights Secretariat to communicate their story to stolen children and the right to identity was one of the Government's priorities. DNA samples were taken in a way that was as non-invasive as possible by the Special Judicial Assistance Group, which had been specially created for that purpose. The National Human Rights Secretariat also facilitated the annulment of any adoption that had originated in an enforced disappearance, mainly by gathering the documentation needed to establish the facts, and helped victims to lodge complaints and sue for damages through its national programme against impunity.

22. **Mr. Fresneda** (Argentina) said that the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment conformed to the Paris Principles. He was convinced that the State would not hinder visits to places of detention and recalled that the federal State ensured that each province had its own torture prevention mechanism.

23. **Mr. Huhle** (Country Rapporteur) said that in its registry of disappeared persons, the State party should ensure that a distinction was drawn between enforced disappearances and other types of disappearance. Adding that Argentina, unlike other countries, did not differentiate between collective and individual reparations, he asked what criteria were used in compensation programmes to ensure that the complex procedures for claiming reparations were not more harmful than beneficial to victims.

24. **Mr. López Ortega** (Country Rapporteur) asked whether article 142 ter was applicable to cases of the disappearance of adults and, if so, whether the non-retroactivity clause applied. It was necessary to examine the procedures in detail to ensure that the system worked correctly, to establish protocols, particularly concerning the information to be communicated to victims' relatives, and to ensure that such protocols were respected. He asked Mr. Fresneda whether officials from the Office of the Prison System Ombudsman could visit juvenile prisons and, if so, whether they encountered difficulties, and what the nature of such difficulties was. He wished to know how the principle of habeas corpus was applied in practice at night and at weekends, and to obtain specific examples of cases in which the principle of non-refoulement had been duly respected. He requested written answers to his questions.

25. **Ms. Oberlin** (Argentina) said that the principle of habeas corpus was always respected, irrespective of the day or time. The registry of abducted children did differentiate

between disappearances that might be due to chance and those attributed to law enforcement officials; one of its sections was even devoted to the search for disappeared or abducted children. Cases of disappearances linked to trafficking were also included in the registry, which provided straightforward means of access for the purpose of searching for any disappeared person.

26. **Mr. Fresneda** (Argentina) briefly summarized the compensation system for relatives of victims in cases of disappearance, emphasizing that each of the bodies involved in the process had different competences and was subject to different checks. Complainants who won their cases were awarded compensation for non-material or physical harm, the amount of which was established by law. In the registry that was being set up, a distinction would be drawn between enforced disappearances and other disappearances, in accordance with current legislation in Argentina. Additional information could be provided to the Committee in writing if required.

27. **Mr. Huhle** (Country Rapporteur) said that the Committee was obliged to focus on the current situation in Argentina and on the rules governing the judicial and administrative systems, as well as society itself, in order to prevent, combat and sanction the crime of enforced disappearance. The fight against impunity should be viewed as a tool to prevent that crime. The Committee would continue to take a close interest in the measures still to be adopted to ensure training for State officials, in the guarantees offered to detainees and in the dissemination of information about the right to truth for victims' families and other concerned persons.

28. **Mr. Villegas Beltran** (Argentina) said that Argentina had satisfied its obligations under the Convention by presenting the legislative, judicial and political measures relating to enforced disappearance that it had adopted prior to the entry into force of the Convention in the country, as well as the steps taken concerning cases that had arisen since then. The Supreme Court of Brazil had recently followed up an extradition request made by an Argentine judge against a former official of the Argentine intelligence services for crimes against humanity, including enforced disappearances. Argentina would continue to work with other countries so that the Convention became universal.

29. **Mr. Fresneda** (Argentina) said that the Committee's intervention marked the fulfilment of the dream of the Mothers of the Plaza de Mayo and of many Argentines. Documents originating from the military junta had recently come to light and the military archives had been declassified, which would facilitate the granting of reparations to all victims. Work on memory and justice was fundamental to democracy and to avoiding any repetition of the crime of enforced disappearance in the future.

30. **The Chairperson** thanked the Argentine delegation and announced that the Committee had thus concluded its consideration of the initial report of Argentina.

The meeting rose at 1.05 p.m.