



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

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## Committee on Enforced Disappearances Twentieth session

### Summary record of the 346th meeting\*

Held via videoconference on Monday, 19 April 2021, at 4 p.m. Central European Summer Time

*Chair:* Mr. Ayat

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\* No summary records were issued for the 343rd to 345th meetings.

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*The meeting was called to order at 4 p.m.*

### **Consideration of additional information submitted by States parties**

*Additional information submitted by Colombia under article 29 (4) of the Convention (CED/C/COL/AI/1)*

1. *At the invitation of the Chair, the delegation of Colombia joined the meeting.*
2. **Ms. Mejía Hernández** (Colombia) said that Colombia had strengthened its institutional capacity in order to promote and protect human rights and to implement a wide range of public policies in the area of enforced disappearance. Nevertheless, the State continued to face huge challenges in combating and dismantling organized armed groups and criminal groups while fully upholding international humanitarian law. In Colombia, the problem of illicit drugs and drug trafficking was a threat to the rule of law and to the exercise of the rights and freedoms of all Colombians. Against that background, the State had made considerable efforts to bring perpetrators of the crime of enforced disappearance to justice.
3. Colombia recognized the right of all persons not to be subjected to enforced disappearance, which had been a source of tragedy for fathers, mothers, families and society as a whole. Her Government would continue to work to guarantee victims' rights, including their rights to full reparation and non-repetition. Since signing the peace agreement with the former Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army) (FARC-EP), the Government had worked to create a comprehensive system of truth, justice, reparation and non-repetition, composed of the Commission on Truth, Coexistence and Non-Repetition, the unit for the search of persons presumed disappeared in the context and by reason of the armed conflict and the Special Jurisdiction for Peace. The institutional framework established under the peace agreement had been granted the resources and independence necessary to fulfil its mandate. The unit had an extrajudicial and humanitarian mandate that had enabled it to reduce suffering and help fulfil the rights to truth and reparation. It was supported by the Special Jurisdiction for Peace, which served as a transitional justice mechanism and was competent to deal with offences allegedly committed before 1 December 2016.
4. The State mechanisms involved in investigating, following up and providing reparation in cases of enforced disappearance included the Attorney General's Office, which was responsible for searching for disappeared persons and exhuming, identifying and handing over their remains, the National Institute of Forensic Medicine and Science, which administered the National Register of Disappeared Persons, the national police, the Disappeared Persons Investigative Commission and the Comprehensive Victim Support and Reparation Unit.
5. Article 12 of the Constitution provided specific protection against enforced disappearance, which was criminalized under article 165 of the Criminal Code. If an offence of enforced disappearance was committed by a person in a position of authority, that was considered an aggravating circumstance. Enforced disappearance was considered to be the deprivation of liberty in any form, followed by the concealment of or refusal to provide information on the fate or whereabouts of the person, thereby placing him or her outside the protection of the law. It was a serious crime that was punishable not only when State agents took part in it but also when private persons were involved. The above definition was thus consistent with articles 2 and 3 of the Convention. In its analysis of the implementing act for the Convention, the Constitutional Court had found that including private persons as possible perpetrators of enforced disappearance was consistent with the protection of fundamental rights.
6. In accordance with article 28 of the Rome Statute of the International Criminal Court, which dealt with the responsibility of commanders and other superiors, higher-ranking officers incurred criminal liability when a failure to exercise proper control over the subordinates under their authority resulted in their subordinates' committing a punishable offence. The grounds for liability contained in that provision were reflected in the case law of the Constitutional Court. Legislative Act No. 01 of 4 April 2017 defined the hierarchical responsibility of the members of the security forces while Statutory Act No. 1957 of 6 June 2019 on the administration of justice in the Special Jurisdiction for Peace defined the

hierarchical responsibility of former combatants. Act No. 1820 of 30 December 2016 expressly prohibited the granting of amnesties or pardons for acts of enforced disappearance.

7. Article 44 of the Constitution stated that the rights of children were fundamental rights and that children were therefore the object of special protection. Article 20 of the Children and Adolescents Code provided specific protection against enforced disappearance. Article 166 of the Criminal Code established aggravating circumstances for the crime of enforced disappearance when it was committed against children, adolescents, older persons, persons with disabilities or pregnant women.

8. Colombia had made considerable efforts to fulfil its obligations under article 17 of the Convention. For example, the National Prisons Institute had been using the web-based application of the prison system's integrated information system, known as SISIPEC WEB. The aim of the system was to ensure that information on the national prison population was properly recorded.

9. As at 28 February 2021, of the more than 170,000 persons deprived of their liberty, some 61,000 had been placed under house arrest and some 5,000 had been electronically tagged. Colombia had thus responded to the challenges posed by the coronavirus disease (COVID-19) pandemic in ensuring the rights of prisoners. Increased use had been made of virtual visits and hearings as a means of helping persons deprived of their liberty to keep in contact with their families and of upholding due process of law, respectively. More than 40,000 virtual hearings and visits had taken place.

10. In accordance with article 24 of the Convention, Colombian law provided for a number of judicial and administrative mechanisms that enabled the Government to conduct searches and keep records of suspected cases of enforced disappearance with a view to discovering the whereabouts of disappeared persons and securing their release or, in the event of their death, ensuring that their remains were handed over in a dignified manner. To that end, the Government had ensured intersectoral coordination in searches for children and adolescents who had disappeared by setting up working groups bringing together representatives of the national police, the Attorney General's Office, the National Institute of Forensic Medicine and Science and the Ombudsman's Office, among others.

11. The Government had developed an urgent search mechanism to respond swiftly to all reports of missing children, and had taken measures to improve the system for recording data on disappeared persons, advance search and investigation activities, ensure timely reparation for victims and strengthen coordination with the institutions making up the system of truth, justice, reparation and non-repetition. She wished to recall that the National Register of Disappeared Persons, which was an inter-institutional record containing data dating back to 1938, served as the sole official source of statistical data on disappeared persons in the national territory. It had guided search operations and had helped to identify remains by means of cross-referencing data.

12. **Mr. López Ortega** (Country Rapporteur), referring to the Committee's concluding observations on the report submitted by Colombia under article 29 (1) of the Convention ([CED/C/COL/CO/1](#)), said that he wished to know whether the State party had taken any steps towards recognizing the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, respectively. The recognition of the Committee's competence was a way of ensuring that the Convention was fully implemented in Colombia.

13. The Committee had previously expressed its concern that the non-inclusion of State agents in the definition of enforced disappearance in Colombian criminal law might have the effect of diluting the State's accountability with respect to that offence. He would therefore like to hear about any measures taken or envisaged to bring the definition of enforced disappearance in national criminal law fully into line with that set out in article 2 of the Convention so that State agents would be recognized as perpetrators of the offence. He would also welcome further details on any plans to hold high-ranking officials criminally liable for offences of enforced disappearance.

14. It would be useful to learn about any steps taken or envisaged to incorporate all the provisions of the Convention relating to the protection of children and adolescents who were

victims of enforced disappearance into domestic law. Civil society had brought several cases to the Committee's attention, notably a recent case involving a girl who had been disappeared and subjected to sexual abuse by members of the armed forces. He understood that, in that case, the perpetrators had not received custodial sentences but had merely been suspended or discharged. He wished to recall that, under article 7 of the Convention, each State party must make the offence of enforced disappearance punishable by appropriate penalties that took into account its extreme seriousness.

15. Lastly, the delegation might provide additional information on the measures taken by the State party to meet its obligations under article 17 of the Convention, in particular how it ensured that persons deprived of their liberty could communicate with their families, a lawyer or any other person of their choice immediately after arrest and how it ensured that records of persons deprived of their liberty, including persons held without their consent in psychiatric institutions, were properly maintained.

16. **Ms. Villa Quintana** (Country Rapporteur) said it bore repeating that search and investigation mechanisms played a key role in preventing enforced disappearance. Statistical information on enforced disappearance not only allowed victims to seek truth, justice and reparation but also allowed guarantees of non-repetition to be obtained. Unfortunately, despite the signing of the peace agreement, enforced disappearance was continuing to occur in Colombia, including during the COVID-19 pandemic, with several human rights defenders having been disappeared over the previous year. She would therefore be grateful to know whether the State party planned to adopt a comprehensive policy to prevent enforced disappearance and, if so, to receive details on that policy and to know whether it reflected the key guidelines on COVID-19 and enforced disappearance issued jointly by the Committee and the Working Group on Enforced or Involuntary Disappearances.

17. It was her understanding that, in addition to the National Register of Disappeared Persons, there were other, separately maintained, databases containing information on disappeared persons in the State party. It would be helpful to receive additional information on any databases that contained information on persons allegedly subjected to enforced disappearance during the armed conflict or in other contexts. She wondered how the State party went about cross-checking the information contained in those databases against that contained in the main register. It would be useful to receive clear and accurate statistical data on the total number of persons who had disappeared in the State party, disaggregated by name, sex, age, ethnicity and date and place of disappearance, during the armed conflict and since the signing of the peace agreement in 2016, including disappearances associated with migration and trafficking in persons, even if they involved former combatants.

18. She would also like to receive data, disaggregated by sex, age, ethnic origin and date of disappearance, on the number of disappeared persons presumed to have been subjected to enforced disappearance within the meaning of the definition contained in article 2 of the Convention. It would be useful to know what progress had been made by the technical committee tasked with updating, cleansing and consolidating the data contained in the National Register of Disappeared Persons, and how such data were compared and contrasted with statistics contained in other databases.

19. Regarding the searches and investigations that had been launched in connection with cases of enforced disappearance, the Committee would be grateful for clearer, updated data on the total number of cases of enforced disappearance within the meaning of articles 2 and 3 of the Convention. If possible, those data should be disaggregated by date of disappearance, date of preliminary investigation, the entity responsible for the investigation, the stage reached in the proceedings, the security measures applied to the defendants and the sentences imposed.

20. Regarding the information contained in paragraph 32 of the report containing additional information (CED/C/COL/AI/1), she wished to know whether the figure of 127,583 cases of enforced disappearance represented the total number of cases registered with the Attorney General's Office; what was meant by the term "inactive cases", under which 83,231 of those cases had been categorized; how the State party ensured that all known cases of enforced disappearance, including those that had been identified by the Commission on Truth, Coexistence and Non-repetition, the National Centre for Historical Memory and

the Disappeared Persons Investigative Commission, were investigated and tried by the courts; and what mechanisms were in place or were envisaged to ensure effective coordination between all State institutions concerned. Information on cases of extrajudicial executions would also be appreciated, in particular with regard to the number of such cases and their possible link, or real concurrence of offences, with the crime of enforced disappearance. If possible, those data should detail the court with jurisdiction over and the current status of the cases in question, the number of convictions secured and the number of victims involved. It would also be useful to know how many cases of extrajudicial executions had involved senior military leaders and the current status of the proceedings against them.

21. According to reports received by the Committee, cases of enforced disappearance were not being taken up by the Special Jurisdiction for Peace. She therefore wished to know what specific measures the Special Jurisdiction for Peace was or envisaged taking to prioritize the investigation of new major cases, or *macrocasos*, involving offences of enforced disappearance, and whether victims had participated in defining the legal rights of perpetrators in cases that fell within the Special Jurisdiction's competence. The Committee would be interested in receiving information on the results of investigations and prosecutions carried out in relation to offences of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State. In particular, she would welcome information on any investigations opened into *casas de pique* – houses where illegal armed groups reportedly tortured, killed and dismembered their victims – and their connection to cases of enforced disappearance. It would also be useful to receive information on the outcomes of searches and investigations conducted in relation to the disappearance of more than 6,200 children who had been recruited by FARC-EP and other armed groups during the period from 1989 to 2016 and who remained disappeared.

*The meeting was suspended at 4.50 p.m. and resumed at 5 p.m.*

22. **Ms. Mejía Hernández** (Colombia) said that detailed information on the consolidation of databases of disappeared persons would be provided in writing.

23. **Ms. Gnecco** (Colombia), replying to the question posed about the possibility of Colombia recognizing the Committee's competence to receive and consider individual and inter-State communications, said that her Government was of the view that the necessary national and international accountability mechanisms were already in place; that the Colombian legal framework covered the rights contained in the Convention; and that the various judicial mechanisms in place protected and guaranteed the exercise of those rights, ensured the accountability of, and imposed penalties on, perpetrators of the offence of enforced disappearance, and provided comprehensive reparation for victims. Moreover, Colombia was a party to the Inter-American Convention on Forced Disappearance of Persons; the Inter-American Court of Human Rights already had competence to receive and consider individual communications on behalf of victims of enforced disappearance. She wished to emphasize that Colombia fully respected its reporting obligations under the Convention and was open to international scrutiny of the progress that it had made and the challenges that it faced.

24. **Ms. Cruz Zuluaga** (Colombia) said that the definition of enforced disappearance contained in article 165 of the Criminal Code went beyond that contained in article 2 of the Convention by including acts committed with the authorization or acquiescence of public servants or private individuals. Indeed, the Constitutional Court had concluded, in its constitutional ruling C-620 of 2011, that the implementing act for the Convention was in line with international standards and covered all the elements contained in article 2 of the Convention. The criminal liability of superiors was already covered by articles 28 and 29 of the Criminal Code, on perpetrators and participants, respectively. It was not therefore considered necessary to establish a specific provision on that subject.

25. **Mr. Arango Alzate** (Colombia), turning to the case involving the rape of a young girl by members of the armed forces mentioned by Mr. López Ortega, said that the soldiers concerned had been handed over to the Attorney General's Office, who had subsequently charged a number of them with violent carnal penetration of a child under 14 years of age. Various sets of proceedings were under way before the ordinary courts and disciplinary measures and penalties were being pursued by the Counsel General's Office. The soldiers'

superior officers had also been charged with, and ultimately found guilty of, breaching international humanitarian law.

26. **Ms. Rodríguez** (Colombia) said that the Disappeared Persons Investigative Commission had provided unceasing support to family members of victims of enforced disappearance, virtually and in person, despite the restrictions associated with the pandemic. The Commission encouraged the Attorney General's Office to activate the Commission's urgent search mechanism whenever suspected cases of enforced disappearance were detected. The Early Warning System of the Ombudsman's Office issued alerts to State institutions as soon as information was received in respect of a possible case of enforced disappearance. Over the past two years, 27 such early warnings had been issued in different municipalities, triggering searches and other actions by the authorities. Staff of the Ombudsman's Office had received training on the principles of the Convention, which had helped improve the support provided to victims and their family members. Protocols for the provision of psychosocial support to family members of persons reported as disappeared and for the collection of preliminary information on possible locations of clandestine burial sites had also been issued. To facilitate coordination and technical cooperation between the Commission and other entities involved in the search for disappeared persons, inter-institutional meetings were held on a monthly basis and were attended by representatives of the Attorney General's Office, the Ombudsman's Office, the Ministry of Defence, the Institute of Forensic Medicine and Science and civil society, among others. Lastly, every effort was made to investigate cases involving the enforced disappearance of children. Work was carried out in conjunction with the Attorney General's Office, the Colombian Family Welfare Institute and the police, which had a special unit for preventing and investigating the enforced disappearance of children.

27. **Mr. Ramelli** (Colombia) said that the Special Jurisdiction for Peace was currently investigating seven major cases – or *macrocasos*. Three of those cases were focused on serious human rights violations, including enforced disappearance and extrajudicial killings, in specific areas of the country; the remaining four centred on thematic issues, namely, hostage-taking, extrajudicial killings, the victimization of members of the Unión Patriótica party and the recruitment and use of children in the context of the armed conflict. In short, while, to date, no major case had been opened solely to examine cases of enforced disappearance, all seven of the major cases involved investigations of instances of that crime.

28. For the first time in Colombian legal history, former members of FARC-EP had agreed, in accordance with decision No. 019 of 26 January 2021 of the Chamber for the Recognition of Truth, Responsibility and Determination of Acts and Conduct of the Special Jurisdiction for Peace, to tell the full truth and to work alongside the unit for the search of persons presumed disappeared in the context and by reason of the armed conflict in developing search plans to locate persons reported as disappeared. With regard to the major case on extrajudicial killings, priority had been given to the six geographical areas where the greatest number of extrajudicial killings had been recorded. To date, more than 350 voluntary statements had been received from members of the police and the armed forces, including from senior military commanders. Those statements were particularly important, as they shed light on offences that had not previously been investigated or prosecuted by the ordinary courts.

29. A defendant accused of committing acts of enforced disappearance followed by extrajudicial killings had informed the authorities that Las Mercedes cemetery in Dabeiba was a place where victims of enforced disappearance were potentially buried. Searches and exhumations had been conducted at the cemetery over a four-day period, resulting in the discovery of the remains of over 70 victims. Forensic work had made it possible to identify a number of victims, whose remains had subsequently been handed over to their families.

30. All perpetrators whose sentences had been remitted had been required to provide victims' families with a detailed account of the acts for which they had been convicted. To date, 33 members of different law enforcement agencies had given accounts of offences committed against victims whose remains had been found at Las Mercedes cemetery. Victims' families had been able to participate in the process by questioning the accounts provided and ensuring that, to the extent possible, all doubts surrounding the fate of the victims were resolved. The investigation carried out had been a large-scale operation aimed

at establishing whether high-ranking officials could be held responsible for acts committed by their subordinates.

31. A top-down approach was being taken to the investigation of hostage-taking and the recruitment of minors by FARC-EP. Statements in connection with potential human rights violations had first been taken from the most senior leaders of the organization. Subsequently, the former commanders of the different units had been asked to provide information on the commission of any offences of which they were aware, including all acts allegedly involving sexual violence.

32. **Mr. Jiménez** (Colombia) said that the National Institute of Forensic Medicine and Science was in the process of cross-checking the information contained in the National Register of Disappeared Persons with that held by the Colombian Information System on Accidents and Violence and the Attorney General's Office, and carrying out the necessary updates.

33. **Mr. López Ortega** said that he wished to remind the State party that, in ratifying the Convention, it had committed itself to recognizing the full competence of the Committee and to ensuring that victims of enforced disappearance received the appropriate protection and assistance. In the case of Colombia, that commitment was particularly important as acts of enforced disappearance continued to occur in its territory. The Committee would welcome information on any legislative measures taken to ensure that hierarchical superiors in the armed forces and the security services could be held responsible for acts carried out by their subordinates. It would also be grateful for information on the status of the proceedings brought against the alleged perpetrators of the disappearance and sexual assault of the child mentioned earlier in the dialogue. He wondered what steps the State party was taking to ensure that all its obligations under article 17 of the Convention were fulfilled in practice and whether steps would be taken to remedy any shortcomings in the implementation of that article. In particular, it would be interesting to know what measures were being taken to ensure that all persons deprived of their liberty were able to communicate with their families and lawyers.

34. **Ms. Villa Quintana** said that she wished to know what measures the Attorney General's Office was taking to ensure that legal proceedings were initiated in connection with all cases of enforced disappearance that came under its jurisdiction. In particular, she wondered whether it had adopted coordinated strategies to ensure victims' rights to justice and truth. It would be interesting to know what action, if any, the Attorney General's Office was taking in connection with the case mentioned by Mr. López Ortega.

35. The Committee would be grateful for information on the investigation being conducted into the 435 cases of enforced disappearance that had reportedly taken place between 1978 and 2016 in Comuna Trece in Medellín. Noting that, under article 7 of Act No. 1922 of 2018, the Ministry of Defence was authorized to participate in proceedings before the Special Jurisdiction for Peace where the defendants were, or had been, members of the armed forces, she wished to know what form such participation might take and in what context it might occur.

36. According to information received by the Committee, many military officers who were being investigated in connection with offences of enforced disappearance had been promoted, including to very senior positions within the armed forces. In the light of that fact, she wished to know what was being done to ensure that such officers did not compromise the impartiality of investigations into cases of enforced disappearance. In particular, she wondered what steps were being taken to ensure the impartiality of the 224 sets of investigative proceedings that had been assigned to the United Action Groups for Personal Liberty and whether the cases concerned were included in the 127,583 cases registered with the Attorney General's Office ([CED/C/COL/AI/1](#), para. 32).

37. The delegation might explain what measures were being taken to ensure that the authorities responsible for searching for victims of enforced disappearance had access to all documentation relevant to the cases concerned, including documents held by the armed forces. Lastly, the Committee would be interested to learn whether the 46 senior members of the security forces whose promotion had been approved by the Senate on 4 December 2020

were participating in any investigations or proceedings conducted by the Special Jurisdiction for Peace in connection with offences of enforced disappearance.

38. **Ms. Kolaković-Bojović** said that she wished to know how many child victims of enforced disappearance had been returned to their families, how the different databases of victims of enforced disappearance were interrelated and coordinated and what measures were being taken to ensure that all information in those databases was entered in the National Register of Disappeared Persons.

39. **Mr. Teraya** said that he wished to know how many children had been forcibly recruited by non-State armed groups and how many of those children were still classified as disappeared. He would be interested to hear what was being done to prevent such disappearances from occurring in the future.

40. **Ms. Mejía Hernández** (Colombia) said that the case involving the kidnapping and sexual assault of the girl mentioned by the Committee was currently before the Attorney General's Office. Although there was still room for improvement with respect to the procedures in place to implement article 17 of the Convention, institutions concerned with deprivation of liberty were making every effort to ensure that the highest possible standards were maintained and that the obligations of Colombia under international law were fulfilled.

41. **Mr. Ramelli** (Colombia), responding to the question posed on the cases of enforced disappearance in Comuna Trece in Medellín, said that the Special Jurisdiction for Peace was working with the University of Antioquia and the relevant State agencies to ensure the protection of all human remains that might belong to victims of enforced disappearance from that area. The Special Jurisdiction for Peace had also carried out a number of judicial investigations into military units and had ordered over 40 precautionary measures to protect places where the remains of victims of enforced disappearance might be located. All the work carried out by the Special Jurisdiction for Peace was checked against documentary sources and information emerging from procedures for identifying large-scale patterns of offences of enforced disappearance.

42. **Ms. Mejía Hernández** (Colombia) said that the decision to promote the members of the armed forces mentioned by the Committee had been taken by Congress in accordance with the relevant national regulations.

43. **Ms. Rodríguez** (Colombia) said that 44,790 child victims of enforced disappearance had been entered in the National Register of Disappeared Persons. Under the National Plan on the Search for Disappeared Persons, the Attorney General's Office had determined that 56 per cent of those children were still registered as disappeared, 42 per cent had been found alive and 1.8 per cent had been found deceased. The National Institute of Forensic Medicine and Science had undertaken an analysis of the remains of deceased victims, which had subsequently been handed over to families in accordance with the Protocol on Dignified Handover. The Ombudsman's Office and the Disappeared Persons Investigative Commission had been responsible for providing support to the victims' families.

44. **Mr. Strusberg** (Colombia) said that steps had been taken to establish a coordination agreement on conducting searches in the area known as La Escombrera, with a view to determining whether any victims of enforced disappearance from Comuna Trece were buried there. It should be noted, however, that the Attorney General's Office had already conducted a large-scale investigation in La Escombrera, which had failed to uncover any bodies buried in a clandestine manner. Upwards of 10,400 child victims of enforced disappearance were registered in the information system of the Attorney General's Office. Of those, some 1,530 had been disappeared in connection with the unlawful recruitment of minors. The fate and whereabouts of some 9,900 victims had not yet been established; some 240 victims had been found deceased and some 280 had been found alive.

*The meeting rose at 5.55 p.m.*