



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

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## Committee on Enforced Disappearances Seventh session

### Summary record of the 103rd meeting

Held at the Palais des Nations, Geneva, on Wednesday, 17 September 2014, at 10 a.m.

*Chairperson:* Mr. Mr. Decaux

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

**Consideration of reports of States parties to the Convention (continued)**

*Initial report of Paraguay (continued) (CED/C/PRY/1; CED/C/PRY/Q/1; HRI/CORE/PRY/2010)*

1. *At the invitation of the Chairperson, the delegation of Paraguay took places at the Committee table.*
2. **Ms. Rolón** (Paraguay) said that Paraguayan criminal law had been revised at the end of the 1990s in order to strengthen guarantees. The Public Prosecution Service and the Attorney-General's Office could represent society in public criminal suits and legal proceedings were brought in cases of serious offences against society, such as crimes against humanity. Victims were not denied their right to a fair trial. The Truth and Justice Commission had named 336 victims of enforced disappearance during the 1954–1989 dictatorship, comprising 296 men and 40 women. There had been 220 cases in Paraguay, 102 in Argentina and 7 in Brazil. Some 33 of the victims were foreign women who had mostly disappeared during Operation Condor. The Directorate-General for Truth, Justice and Reparation had handed over to the Public Prosecution Service the files relating to cases of human rights violations, such as acts of torture, extrajudicial execution and enforced disappearance, involving a total of 530 victims. Thanks to victim information provided by the Truth and Justice Commission, the Human Rights Directorate of the Public Prosecution Service had adopted decisions in all of the cases. The cases of enforced disappearance were the subject of individual and collective complaints. Of the 118 cases that had not yet been resolved, 50 were under consideration, in addition to the 20 cases reported earlier by victims' relatives.
3. **Ms. da Silva Boschert** (Paraguay) said that the delegation would provide information on Act No. 5165 regarding defence and internal security at a later date. Under the Act, which had been adopted in May 2014, the ordinary criminal courts had exclusive jurisdiction over offences relating to enforced disappearance, genocide, war crimes and other serious human rights violations. Offences committed by military personnel were no longer dealt with by the military courts but, rather, by the ordinary courts. Military personnel who were given orders that might lead to human rights violations could complain directly to their superior's commanding officer or to the Human Rights Unit of the Ministry of National Defence. Police officers could file similar complaints with the Human Rights Unit of the Ministry of the Interior.
4. Mr. Garcé García y Santos's comments regarding the Ombudsman's Office would be conveyed to the legislative bodies for consideration. The person convicted of the enforced disappearance of Marcelino Gómez Paredes and Cristian Ariel Núñez, two child soldiers who had disappeared while performing their military service, had been sentenced to a fine but had continued to serve in the Paraguayan army. An ad hoc truth and justice commission, comprising representatives of the Government and civil society, had conducted enquiries and presented a report to the victims' relatives and representatives of the relevant ministries, military authorities and civil society.
5. **Mr. Guzman** (Paraguay) said that the System for Monitoring Recommendations (Sistema de Monitoreo de las Recomendaciones – SIMORE), whose pilot phase had begun in May 2014, was a platform directly accessible to the public that provided progress reports on the implementation of recommendations issued by human rights mechanisms in the United Nations system and the Organization of American States. Only public servants could upload information to the platform, but the public could access all of the content. All the institutions had been involved in developing the tool, which enhanced Government transparency and accountability.

6. **Mr. Núñez** (Paraguay) said that the Government had made the protection of human rights a cross-cutting policy and took all possible measures to implement the recommendations of international human rights bodies. No complaints of enforced disappearance had been filed in many years. Fortunately, since the end of the dictatorship in 1989, the Government had never enacted an amnesty law (*Ley de Punto Final*), which would have enshrined impunity for crimes against humanity, such as kidnapping, torture and enforced disappearance. The Government had cooperated with all investigations. The Supreme Court's documentation and archives centre was open to the public and national or foreign judicial bodies researching human rights violations.

7. **Mr. López Ortega** asked whether there were any provisions in Paraguayan law specifically guaranteeing non-refoulement and on what legal basis that guarantee was applied by the courts. He invited the delegation to provide specific examples of the enforcement of the principle of non-refoulement and to indicate whether Paraguay intended to introduce the principle in its domestic law.

8. He asked in what manner and how promptly detainees' relatives and lawyers were notified of the deprivation of liberty, place of detention and any subsequent transfers and whether that information must be registered.

9. He asked how many habeas corpus petitions had been filed in recent years. He further asked whether there were standard, regularly updated digital registers of persons deprived of their liberty in all police detention facilities, prisons, holding centres for foreigners and psychiatric hospitals. He wished to know what authority was responsible for ensuring that such registers were kept and what penalties public servants incurred for failing to do so. He invited the delegation to explain why there was no register of persons taken into police custody for identification purposes. Lastly, he asked whether military and national police officers received specific training on enforced disappearance.

10. **Mr. Garcé García y Santos** requested further information on the resources and staffing of the national preventive mechanism. He asked whether domestic law contained a broad definition of "victim" in keeping with the definition under article 24 of the Convention. He invited the delegation to provide updated data on the compensation awarded to victims of enforced disappearance between 1954 and 1989, specifying whether all the victims could claim compensation, how long the process was, whether any compensation claims were still pending and whether compensation orders were actually implemented. He asked why the relatives of a disappeared person must obtain a declaration of absence and presumed death in order to claim compensation. Could the delegation comment on reports that insufficient resources were allocated to searching for and identifying disappeared persons, and especially establishing a DNA database? How many disappeared persons had been identified by the authorities to date? He requested additional information on the legal situation of disappeared persons and of their relatives with regard to estate and inheritance matters. He also asked whether there was a procedure in place to invalidate all adoptions resulting from enforced disappearance.

11. **Mr. Huhle** requested further information on the 50 cases and the 20 earlier cases of enforced disappearance mentioned by Ms. Rolón. Noting that the 27 bodies exhumed since 2006 had yet to be identified, he recalled the obligation of States to take all appropriate measures to search for disappeared persons and locate, respect and return their remains. Given the small number of bodies found, he asked whether the search for disappeared persons was ongoing and whether the relevant entities had the requisite authority and resources to fulfil their mission.

12. **Mr. Corcuera Cabezut**, recalling the State party's obligation to continue the investigation until the fate of the disappeared person had been clarified, asked how many of the victims of the 50 cases of enforced disappearance mentioned by Ms. Rolón had been

identified. He also asked how many persons had been prosecuted for serious human rights violations committed under the dictatorship and what penalties had been imposed on them. Noting that Act No. 838/96 dealt with payment of compensation to victims of human rights violations during the 1954–1989 dictatorship, he wished to know whether Paraguayan law contained provisions on the compensation of persons who had disappeared after 1989. Pointing out that the Act appeared to be limited to financial matters, he invited the delegation to describe any laws on other key issues, such as victim rehabilitation and guarantees of non-repetition.

13. **Mr. Yakushi** asked how the right of all persons deprived of their liberty to communicate with their lawyer was upheld in both law and practice and whether the existing administrative procedures truly guaranteed the right to bring proceedings before the courts as enshrined in article 17, paragraph 2 (f), of the Convention. He enquired about the measures taken, where applicable, to enforce those guarantees, such as in cases where the police or the armed forces denied that the detention had taken place.

*The meeting was suspended at 10.50 a.m. and resumed at 11.25 a.m.*

14. **Mr. Núñez** (Paraguay) said that Paraguay had never received any refoulement requests but that, if it did, the provisions of the Convention would apply given that there was no guarantee of non-refoulement under domestic law. Pursuant to the Constitution, the Convention was directly applicable in the national legal order and prevailed over domestic law. Regarding guarantees for detainees, he said that families were always notified of their loved one's detention by whatever means were available. Within six hours of commencement of detention, the police informed the Public Prosecution Service, which then notified the family. All detainees were entitled to communicate with their family by whatever means were available. The Constitution and the law provided for remedies, including preventive habeas corpus, corrective habeas corpus and general habeas corpus.

15. **Mr. Martínez** (Paraguay) said that a detainee's family and lawyer were notified, typically by telephone, if the detainee was transferred from one prison to another.

16. **Mr. Núñez** (Paraguay) said that his delegation had requested data from the Supreme Court on habeas corpus petitions over the previous two years and would provide the Committee with a reply within 48 hours.

17. **Mr. Martínez** (Paraguay) said that, thanks to a recent survey of detention centres, the register of persons deprived of their liberty had been updated and digitized and was available to public defenders and the police. Every detention centre's legal service, which was responsible for maintaining the register, had been assigned a lawyer.

18. **Mr. Núñez** (Paraguay) said that persons held only for purposes of identification were not entered in the same register as persons suspected of an offence.

19. **Mr. Ramírez** (Paraguay) said that the national preventive mechanism had been allocated a specific budget in 2014, that an office had been opened for it in the capital and that its members cooperated with other human rights bodies.

20. **Ms. Rolón** (Paraguay) said that, under the law, victims were defined as the persons directly affected, their spouse or unmarried partner, their relatives up to four degrees of consanguinity, their legal representative or their heir; and, in the case of corporations, the personnel, when the offence was committed against the corporation by its administration or management. Most of the investigations into disappearances between 1954 and 1989 were based on archival information. The delegation would provide the Committee with additional information within 48 hours.

21. **Ms. da Silva Boschert** (Paraguay) said that, since 1992, over 8,000 victims of human rights violations committed between 1954 and 1989 had been compensated, but that available data did not show how many had been victims of enforced disappearance.
22. **Mr. Martínez** (Paraguay) said that a public competition was planned to recruit public servants to search for disappeared persons and that substantial resources had been allocated to that end and to setting up a DNA database.
23. **Mr. Ramírez** (Paraguay), regarding identification of the bodies of the 27 people presumed disappeared, said that the results did not fully reflect the efforts and resources deployed, especially in collaboration with civil society and Argentina.
24. There was a judicial procedure to invalidate adoption certificates that had been issued in violation of national and international law. The delegation would request additional information from the relevant body and transmit it to the Committee.
25. **Ms. Rolón** (Paraguay) said that the State had fallen behind on compensation payments because the Ministry of Finance had not yet released the necessary funds.
26. **Mr. Ramírez** (Paraguay) said that the authorities and the Latin American Federation of Associations of Relatives of Disappeared Detainees had drafted a bill to introduce into the Civil Code a declaration of absence by reason of enforced disappearance, making it possible to execute the estate of disappeared persons while leaving open the possibility for them to exercise their rights should they return. Minimum administrative compensation was available to victims, but they could also bring civil proceedings to claim damages.
27. **Ms. Rolón** (Paraguay) said that the Public Prosecution Service had set up a training centre where public servants received instruction in topics such as the investigation of enforced disappearances. The Public Prosecution Service would soon also establish a human rights office. The Human Rights Directorate had drawn up a list of the international human rights instruments to which Paraguay was a party along with the laws incorporated them into national legislation. On 6 and 7 October 2014, the Directorate-General for Truth, Justice and Reparation would be holding an international seminar on crimes against humanity, organized jointly with the Supreme Court, the Attorney-General's Office and the Ombudsman's Office.
28. **Mr. Ramírez** (Paraguay) said that the individuals tried and convicted for enforced disappearance included Nicolás Lucilo Benítez, Camilo Almada Morel, Juan Aniceto Martínez, Pastor Milcíades Coronel, Agustín Belotto Vouga, Alberto Buenaventura Cantero and General Ramón Duarte Vera.
29. **Mr. Núñez** (Paraguay) said that, under the Constitution, all persons deprived of their liberty had the right to challenge the lawfulness of their detention through the remedy of habeas corpus, which guaranteed the right of detainees to be brought before a judge within a given period of time. If they were not, the courts were obliged to institute proceedings.
30. **Mr. López Ortega** requested further information on cases of children wrongfully removed or illegally adopted.
31. **Mr. Garcé García y Santos** asked whether it was true that children had been wrongfully removed as part of the campaign to suppress certain indigenous peoples between 1969 and 1980. He also asked whether the acts covered in article 25, paragraph 1, of the Convention were explicitly punishable under Paraguayan criminal law. He wished to know when the funds for the establishment of the DNA database would be made available, roughly how much the minimum administrative compensation was in United States dollars and how many of the 27 bodies of disappeared persons that had been exhumed had been returned to the families.

32. **Mr. Corcuera Cabezut** asked how many people had been tried and convicted and were currently serving a sentence for serious human rights violations committed during and since the dictatorship. He wished to know whether Paraguayan law protected the right of victims of both the dictatorship and human rights violations to receive comprehensive reparation, and not only financial compensation.

33. **Mr. Ramírez** (Paraguay), replying to a question from **Mr. Huhle**, said that the 27 exhumed bodies had not yet been identified because that entailed comparing samples against the DNA database, which was still under construction.

34. **Ms. da Silva Boschert** (Paraguay) said that, since the case of Marcelino Gómez Paredes and Cristian Ariel Núñez, compulsory military service could no longer be performed before the age of majority.

35. **Mr. Ramírez** (Paraguay) said that the indigenous peoples, particularly the Aché, had been the victims under the dictatorship of what the Truth and Justice Commission had described as acts of genocide, such as the wrongful removal of children for the purpose of selling them in the capital. Replying to another question, he said that the State did not provide comprehensive reparation to victims of enforced disappearance or their families for the harm they had suffered. In 2008, the Truth and Justice Commission had recommended the establishment of a national human rights secretariat for that exact purpose, but Parliament had not yet acted on the recommendation.

36. **Mr. López Ortega** said he was very heartened by the fact that, unlike a large number of States parties to the Convention, Paraguay had incorporated into its legislation a definition of the offence of enforced disappearance fully in line with the provisions of the Convention. He wished to highlight the delegation's openness to the Committee's suggestions and recommendations during the dialogue.

37. **Mr. Garcé García y Santos** asked the delegation to convey to the Government the Committee's request that Paraguay should explicitly recognize its competence under articles 31 and 32 of the Convention. He noted that the System for Monitoring Recommendations was a useful tool that would undoubtedly facilitate future collaboration with the Committee.

38. **Mr. Núñez** (Paraguay) said that, since the advent of democracy in Paraguay, the State had been determined to encourage and facilitate all investigations into human rights violations committed during and since the dictatorship. The Government intended to request the National Parliamentary Commission on Criminal Law and Prison Reform to ensure that criminal law covered all aspects of the Convention.

39. **The Chairperson** thanked the delegation of Paraguay for its cooperation and said that the Committee had completed its consideration of the initial report of Paraguay.

*The meeting rose at 12.45 p.m.*