



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Fifth session

Summary record of the 78th meeting*

Held at the Palais des Nations, Geneva, on Friday, 15 November 2013, at 3 p.m.

Chairperson: Mr. Decaux

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* No summary record was prepared for the 77th meeting.

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The meeting was called to order at 3.05 p.m.

Other matters

Informal report on the fifth session

1. **Mr. Garcé García y Santos** (Rapporteur), introducing the informal report of the Committee on the work of its fifth session, said that, in his opening statement, Mr. Salama (Director of the Human Rights Treaties Division) had congratulated Mr. Corcuera Cabezut on his election to the Committee and Mr. Al-Obaidi, Mr. Hazan, Mr. López Ortega and Mr. Yakushiiji on their re-election on 28 May 2013. He had emphasized the problem of reprisals against human rights defenders and had urged the Committee to pay attention to that issue. The Committee had re-elected Mr. Decaux as Chairperson and had elected Ms. Janina, Mr. Al-Obaidi and Mr. Camara as Vice-Chairpersons. A minute of silence had been observed in remembrance of the victims of enforced disappearance. Once the agenda had been adopted, the Committee had dealt with a number of organizational matters.
2. The second section of the report covered action taken with respect to working methods. The Committee had discussed article 35 and its application. Functions had been distributed among the members of the Committee. The Committee had drafted the paper on its interaction with national human rights institutions and had finalized and adopted the paper on the relationship of the Committee with civil society actors. Since its fourth session, the Committee had received eight new requests for urgent action under article 30 of the Convention, of which four had been registered and duly transmitted to the States parties.
3. In terms of decisions, the Committee had issued a statement concerning the implementation of article 35. It had drafted concluding observations on the reports submitted by Argentina and Spain and had considered lists of issues in connection with the reports submitted by Germany and the Netherlands. Moreover, it had appointed country rapporteurs for Belgium, Paraguay and Armenia. The Committee had decided that, at its sixth session, it would hold an open thematic discussion on military justice and enforced disappearance. It had also decided to send a note in December reminding States parties of their obligation to submit reports under article 29 of the Convention. Lastly, it had decided that the sixth session would be held from 17 to 28 March 2014 in Geneva.
4. The Committee had considered the reports of Argentina and Spain. During the dialogue with Argentina, the Committee had emphasized the important role played by that country in the drafting and adoption of the Convention on Enforced Disappearance. The issues discussed had included the Convention's rank in domestic law; consultations with civil society in preparing the report; the statute of limitations on the crime of enforced disappearance; the definition of victim and of enforced disappearance under domestic law; victim and witness protection; reparations; punishment; and the criminalization of the wrongful removal of children and other related acts.
5. The dialogue with Spain had included discussion of the direct applicability of the Convention; consultation with civil society in the preparation of the report; the 2008 National Human Rights Plan; the responsibility of superiors; military justice; witness protection measures; the compatibility of the 1977 Amnesty Act with the Convention and other international human rights conventions; judicial cooperation with other States parties; incommunicado detention; habeas corpus; the national preventive mechanism against torture; and registers of persons deprived of liberty.
6. The Committee had adopted concluding observations for both Argentina and Spain, in addition to lists of issues for Germany and the Netherlands.

7. The Committee had held a thematic discussion on military justice and enforced disappearance and would address that issue in an open debate during the forthcoming session. In addition, it had held a public meeting with United Nations Member States attended by representatives of 18 States parties. A meeting had been held with the Working Group on Enforced or Involuntary Disappearances at which information had been exchanged on the respective activities of both bodies and on possible areas for cooperation. Moreover, meetings had been held with other United Nations human rights mechanisms and intergovernmental organizations. The Committee had held a closed meeting with the International Committee of the Red Cross (ICRC) on aspects of forensic science. The Committee had held a meeting with a member of the International Coordinating Committee (ICC) of National Human Rights Institutions and received a video recording in which the Chairperson of the ICC had conveyed a message concerning cooperation between national human rights institutions and the Committee.

8. In respect of meetings with non-governmental organizations (NGOs) and victims' associations, the Committee had held a public meeting with NGOs. With regard to the process of implementation of the Convention, after consultation the Committee had adopted at a public meeting a paper on the relationship of the Committee with civil society actors, to be published on the Committee's website.

Provisional agenda for the sixth session

9. **Mr. Garcé García y Santos** (Rapporteur) introduced the programme of work for the sixth session, which would be held from 17 to 28 March 2014.

Closure of the session

10. **The Chairperson** said that the fifth session had been full and the Committee had made progress with regard to implementation of the Convention. The Committee had reached cruising speed and was able to perform all of its functions.

11. Much of the session had been devoted to the national reports submitted under article 29 of the Convention by Argentina and Spain, in respect of which concluding observations had been adopted. Lists of issues had been adopted in connection with the reports of Germany and the Netherlands, which would be examined at the sixth session in 2014. The Committee would continue to pursue the procedure established under article 29 with full transparency. He urged States parties that had not yet submitted reports to do so. A strategy for universal ratification was meaningful only if States parties set an example by meeting their basic obligations, starting with the timely submission of their reports, namely, within two years of the entry into force of the Convention.

12. The Committee had continued to work closely with other stakeholders, in public sessions and at side-events organized by NGOs, in particular the round-table discussion held by Geneva for Human Rights and the meeting with the International Coalition against Enforced Disappearances (ICAED). The theme of that meeting and the upsetting evidence given by victims of enforced disappearance had been a challenge for all members of the Committee and had underscored the importance of universal ratification and effective application of the Convention. The Committee was greatly concerned with threats of intimidation and the risk of reprisals against human rights defenders and, in particular, against the victims, families and witnesses of enforced disappearances; it had appointed a rapporteur on reprisals, who would work with the new focal point on reprisals in the Office of the United Nations High Commissioner for Human Rights (OHCHR).

13. The Committee had strengthened its commitment to civil society with the adoption of the paper on the relationship with civil society actors, which supplemented the rules of procedure. The document provided a clear road map to fruitful cooperation. A promising

first meeting had been held with a representative of ICC and the Committee had designated a focal point tasked with drafting a similar document on relations with national human rights institutions, taking into account their specificities and the Committee's mandate. The Committee's forthcoming session in March 2014 would come shortly after that of ICC, which would make rapid progress possible on that front.

14. The Committee had maintained contact with other actors in the human rights system, starting with the Working Group on Enforced or Involuntary Disappearances. Some members of the Committee had been invited to participate in the Working Group's meeting on economic and social rights and the Working Group in turn had attended the Committee's closed meeting with ICRC. Sharing information was good practice and good manners and would help both bodies to clarify their respective roles, which were complementary. The procedures for which the Committee was responsible applied only to States parties to the Convention, whereas the Working Group's humanitarian mandate covered all Member States. The common concern of both bodies was to ensure there were no gaps in protection, no unacceptable delays and no duplication of efforts.

15. The Committee had had its first formal meeting with the Working Group on Arbitrary Detention, which had requested input from the Committee in connection with its recent mandate on habeas corpus. The meeting had been frank and rewarding, in particular concerning cooperation on military justice. The Committee commended the recent initiative of the Special Rapporteur on the independence of judges and lawyers concerning the governing principles adopted by the Sub-Commission on the Promotion and Protection of Human Rights in 2005. The Committee had held a first working session on that issue and would organize a public thematic debate on the issue of military justice and enforced disappearance at its sixth session. The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence would also meet with the Committee during the forthcoming session.

16. The Committee continued to work between sessions. It had renewed a number of functions to ensure the proper functioning of procedures under articles 30 and 31 and had designated a rapporteur on the follow-up to concluding observations.

17. The Committee did not intend to adopt general comments yet. However, it did intend to adopt a statement of principle in respect of its competence *ratione temporis*, in particular with regard to the implementation of article 29 relating to national reports. The Convention drew a clear distinction between the obligations of States under the Convention, as set out in article 29, and their obligations in respect of the Committee, which as article 35, paragraph 2, indicated, related only to enforced disappearances which commenced after the entry into force of the Convention for the State concerned. Those provisions must be read in the light of article 37, which stated that "nothing in the Convention shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in the law of a State party or international law in force for that State". There was a clear distinction between enforced disappearances that took place prior to the entry into force of the Convention for the State party, on the one hand and, on the other hand, the legal systems deriving from positive law in a given State. Information about the past could and must shed light on the challenges of the present. However, the Committee did not intend to make statements on anything other than present obligations of States. Articles 24 and 25 were written in the present tense and were essential to the Convention, which was victim-oriented. While the Committee would not broach past situations, it had to bear in mind that past actions had consequences in the present. It was to be hoped that a declaration of principle would avoid misunderstandings, by ensuring that the Committee's interpretation of the Convention was consistent and based on recent practice, and that it provided legal security for all concerned.

18. The first awareness-raising seminar organized jointly by the International Organization of la Francophonie (OIF) and OHCHR, would be held in the coming days in Tunis. It was to be hoped that other such seminars could be held in other regions and subregions and that the Committee could make the Convention known throughout the world. In that regard, an instruction booklet to facilitate universal ratification and full incorporation of the Convention into domestic legislation, with models of good practice such as the ICRC model law on missing persons, would be a practical and very useful tool. Moreover, the Committee must participate fully in the debates on strengthening the treaty body system.

19. While tragic events such as the disappearance of migrants at sea and in the desert, and the disappearance of persons in the wake of the devastation wreaked by the recent typhoon in the Philippines were beyond the specific mandate of the Committee, the entire United Nations system was required to find responses to those and other such disasters. In that context, the collective commitment of the treaty bodies in favour of the post-2015 development agenda should be affirmed, in the hope that human rights would be a major component of that agenda.

20. After the customary exchange of courtesies, **the Chairperson** declared the fifth session of the Committee on Enforced Disappearances closed.

The meeting rose at 3.30 p.m.