



**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 60th meeting**

Held at the Palais des Nations, Geneva, on Monday, 4 November 2013, at 3 p.m.

*Chairperson:* Mr. Decaux

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

### **Consideration of reports of States parties to the Convention**

*Initial report of Argentina (CED/C/ARG/1; CED/C/ARG/Q/1 and Add.1)*

1. *At the invitation of the Chairperson, the delegation of Argentina took places at the Committee table.*
2. **Mr. Fresneda** (Argentina), introducing the initial report of Argentina (CED/C/ARG/1), said that significant efforts had been made by his country to address the issue of enforced disappearance since 2003. Currently, 1,083 persons were being prosecuted and 445 persons had been convicted and, to date, the identities of 109 children stolen during the dictatorship had been recovered. Following the recent Supreme Court ruling on the constitutionality of the Media Act, media democratization was under way.
3. He gave an overview of his country's comprehensive legislation on enforced disappearance, as detailed in the report. He drew particular attention to the mitigating and aggravating circumstances applicable to offences of enforced disappearance, and to the principle of universal justice, which had facilitated the institution of proceedings in Argentina relating to acts committed outside the country. Persons accused of offences of enforced disappearance enjoyed the same rights as persons accused of any other offence. Argentina was a party to many bilateral and multilateral extradition treaties.
4. The reopening of cases of enforced disappearance had made it necessary to ensure the effective protection of victims and witnesses, efforts that had been redoubled following the still unresolved case of Jorge Julio López, who had been the victim of enforced disappearance in 2006. Various protection programmes had been established at the national and provincial levels. The Dr. Fernando Ulloa Assistance Centre for Victims of Human Rights Violations had been set up to provide assistance to victims of State terrorism. Support was currently being provided to 1,020 persons and assistance and referral had been arranged for 1,310 persons.
5. With regard to mechanisms to inspect places of detention, a law establishing the national preventive mechanism for the prevention of torture had been adopted in November 2012. Local mechanisms were in place in five provinces and efforts were being made to expand the model to other provinces. Since the establishment of the Ministry of Security, a mechanism was also in place to monitor the living conditions of pretrial detainees.
6. The new Act on the National Genetic Data Bank explicitly referred to the contents of article 19 of the Convention. Argentina had extensive legislation on reparations for victims of human rights violations by the State, and had also created a National Memory Archive. Various policies on the establishment of the whereabouts of disappeared persons were in place, and mechanisms had been set up, including the Latin American Initiative for the Identification of the Disappeared and a national register for missing children, which now also endeavoured to locate missing adults. The State had also established the National Commission for the Right to an Identity to locate children who had been stolen during the dictatorship.
7. **Mr. Huhle** (Country Rapporteur) said that he wished to know whether civil society organizations had been involved in the preparation of the report. He would also welcome information on the progress of the legislative process under way to ensure that the Convention had constitutional rank. Noting with satisfaction that the provisions of the Convention were invoked by the courts, he asked for more information on the situation of enforced disappearance in Argentina, including statistics on recent cases, patterns of behaviour observed in such cases, and lessons drawn for protection and reparation for victims. Was a comprehensive, cross-cutting public policy in place to prevent enforced

disappearance? He also wished to know whether particular population groups were more likely to be victims and whether social background was a determining factor in the case of young victims. It would be useful to have information on the status of the investigation and prosecution of cases.

8. He welcomed the adoption of the Convention definition of enforced disappearance in article 142 ter of the Criminal Code. He had misgivings concerning the subjective element referred to in that article, however, as the way it was formulated could make it difficult to prove, which could in turn hamper the application of the article itself. He also wondered whether article 142 ter effectively covered all the elements of enforced disappearance. Alternative reports received from civil society organizations had drawn attention to the fact that few judgements had been handed down against persons convicted of stealing children, and the sentences had been light. Were the sentences systematically enforced and had the Government taken any steps to improve the situation? He wished to know whether any provisions of the Criminal Code relating to the Convention would be amended as part of the reform of the Code, and if so which ones.

9. He asked whether military courts still had jurisdiction over any offences in Argentine law and, if that was the case, to what extent the independence and impartiality of judges were guaranteed. He also wondered whether cases such as that of Jorge Julio López had prompted the implementation of more effective witness protection policies and what impact such developments had had on the material resources available. What specific measures were in place to support victims and witnesses, who often had to relive traumatic events in the course of criminal proceedings? Lastly, he wished to know whether effective protection measures were available to complainants, and to witnesses deprived of their liberty, who were in a particularly vulnerable situation.

10. **Mr. López Ortega** (Country Rapporteur), emphasizing the need to prevent the loss of evidence in the search for disappeared persons, asked whether the investigating authorities were carrying out their duties with due diligence. He asked the delegation to tell the Committee how the State evaluated investigations into cases of enforced disappearance and the outcome of those investigations, with a special emphasis on any that had been conducted at senior levels.

11. He would also appreciate information on the public policies being developed to help the judiciary, the Public Prosecution Service and the police in effectively investigating new forms of enforced disappearance that affected young people in situations of extreme poverty. The creation of bodies specializing in such investigations was a means of enhancing effectiveness, and he wondered what strategies the Government had devised to that end, at the federal and provincial levels.

12. One of the alternative reports had demonstrated that the State party did not comply with the requirement under the Convention that persons suspected of committing an offence of enforced disappearance should not be in a position to influence the progress of an investigation. It would be useful to know whether there had been cases in which article 194 bis of the Code of Criminal Procedure had not been applied, and if so what alternative measures had been adopted to ensure the integrity of the investigations.

13. **Mr. Al-Obaidi** requested confirmation that the new definition of enforced disappearance introduced into the Criminal Code and the Code of Criminal Procedure by Act No. 26679 was in line with the Rome Statute of the International Criminal Court.

14. **Mr. Camara** pointed out that Act No. 26679 differed slightly from the Rome Statute in its definition of enforced disappearance as it did not mention that a person should be removed from the protection of the law for “a prolonged period of time”. He wished to know whether perpetrators, co-perpetrators and accomplices in an offence of enforced disappearance all faced the same penalties.

15. **Mr. Garcé García y Santos**, referring to article 12, paragraphs 1 and 2, of the Convention, on the duty to conduct investigations, asked what legal investigations had been conducted in the specific cases of Daniel Solano and Facundo Rivera Alegre and whether any public officials been brought to justice over the matter.

16. **Ms. Janina** asked whether Argentina had any legislation specifically providing for a non-derogable right not to be subject to enforced disappearance; whether there were any laws on terrorism or states of emergency that might have an effect on that right; and whether the Criminal Code reforms would bring articles on due obedience into line with article 6 of the Convention.

17. **Mr. Yakushiji** observed that the penalty established in Act No. 26200 for enforced disappearance was from 3 to 25 years of imprisonment, while the penalty for depriving a person of their liberty was, under article 142 ter of the Criminal Code, 10 to 25 years' imprisonment and general disqualification for life from public office. Which provision would prevail in cases of enforced disappearance? He also asked why Argentina had not repealed article 34, paragraph 5, of the Criminal Code, given that due obedience was not considered grounds for exemption from criminal responsibility for offences which were clearly unlawful.

18. **Mr. Corcuera Cabezut** said that the delegation had not provided information on the application of article 3 of the Convention by the State party.

*The meeting was suspended at 4.05 p.m. and resumed at 4.40 p.m.*

19. **Ms. Oberlin** (Argentina) said that the initial part of the report had essentially been drafted by the Government, with contributions from NGOs and human rights organizations. The replies to the list of issues had been drafted using input from organizations representing the rights of victims of State terrorism, and from individuals working in the offices responsible for drafting the report who had themselves been victims of human rights violations. The text granting the Convention constitutional rank in Argentine law had been passed by the Senate and was currently before the Chamber of Deputies. It should come into effect in the near future. As to the Criminal Code reform, consultations on amendments were ongoing and the Ministry of Justice was endeavouring to make the process as democratic as possible by incorporating suggestions by NGOs and the general public.

20. **Mr. Auat** (Argentina) referring to article 142 ter of the Criminal Code, explained that the subjective element of the offence was the Achilles' heel of the system, as it was so difficult to demonstrate criminal intent. Decisions hinged on the evaluation of the evidence and the weight it was given. Once the existence of the crime was clear, however, no distinction was made between senior and junior officials. If the individual had clearly been granted the powers and rank to represent the State, then they must be tried.

21. The subject of due obedience was to be considered by the reform commission as a separate element of criminal law. Although laws on due obedience did not allow impunity, they could allow lighter penalties to be handed down depending on the individual's understanding of the crime. Carrying out an order to commit torture, for example, was clearly illegal, but there were other cases that were less clear-cut. There was no gap in the Argentine legal system regarding due obedience, and the legal instruments in place were sufficient to determine whether or not an error of due obedience had occurred and to prevent impunity.

22. **Mr. Villegas Beltrán** (Argentina) said that a 2008 case involving the death of a soldier had led to a derogation from the Code of Military Justice and a paradigm shift in the applicable law in Argentina. Military officials were now subject to criminal proceedings for repeat offences, in the same way as other criminals. The derogation had come about as a result of an amicable settlement in the Inter-American Court of Human Rights, when it had

been realized that the application of the old Code of Military Justice in that case would have constituted a flagrant violation of the American Convention on Human Rights. Under the same reform of military justice, the Disciplinary Code of the Armed Forces had been established. As a result, there were now no offences in Argentina that fell under military jurisdiction.

23. **Mr. Auat** (Argentina) said that the omission of “for a prolonged period of time” in the definition of enforced disappearance contained in the country’s Criminal Code meant that Argentine legislation in fact went further than the Rome Statute. The legislators had been careful to preserve the spirit of the Rome Statute, but had made the law more effective in punishing enforced disappearance by not including too many filters and conditions that would have made impunity more likely.

24. **Mr. Fresneda** (Argentina) said that Act No. 24321 of 1994 had created a precedent in respect of impunity in Argentina as the State had, for the first time, assumed responsibility for all disappeared persons. However, even though further progress had been made with Argentina’s accession to the American Convention on Human Rights and the Rome Statute of the International Criminal Court, it was not until 2008, with the sentencing of Luciano Menéndez, that Argentina had truly been able to try those responsible for enforced disappearances in non-military courts. Many organizations were now working to bring to justice others responsible for previous enforced disappearances.

25. The process of democratizing the justice system and the laws relative to the security forces had also advanced by virtue of recent legislation, although many obstacles remained. One was the considerable autonomy enjoyed by the provinces, which sometimes prevented international and national human rights standards, particularly concerning investigations, from being implemented at the local level. The cases of Daniel Solano and Facundo Rivera Alegre in particular had been hindered by a reluctance to involve the justice system, but investigations had now taken place and some police officers had been prosecuted. Another obstacle in judicial and security circles was a resistance to democratization, as the habit of institutional violence was deeply entrenched. Progress made included the introduction of police training manuals, improved statistics and a register of all enforced disappearances in Argentina.

26. The setback represented by the case of Jorge Julio López demonstrated that Argentina still had much to learn with regard to witness protection programmes. It was committed to preventing State terrorism and clamping down on groups perpetrating enforced disappearance. Measures subsequently taken by the Ministry of Justice included a witness protection programme, a “risk map” for victims, and centres providing individual care to victims of State terrorism.

27. **Ms. Oberlin** (Argentina) said that article 142 ter was part of the Criminal Code and not a stand-alone article. It referred to the various parties who might be involved in a case of enforced disappearance. If an individual was found to have played a lesser role in an enforced disappearance, their penalty was reduced accordingly. The Criminal Code prescribed penalties for persons who had abducted children under the age of 10 during the dictatorship. The Human Rights Secretariat had applied the new provisions both to abductions and to enforced disappearances. In the case of abducted children who had not yet recovered their identity, the courts had been requested to apply article 142 ter. However, little progress had been made in that regard, as there was still a considerable amount of resistance to applying the new legal provisions. Her Government recognized that the current penalties prescribed for the abduction of children were not sufficiently severe and was seeking to remedy that situation.

28. **Mr. Villegas Beltrán** (Argentina) said that the entry into force of the new legal provisions demonstrated that the statute of limitations no longer applied. Following 20

years of impunity, international conventions on enforced disappearance were being applied gradually but the fact remained that there could be no statute of limitations for punishing that crime. Argentina was the only country in the world to have reopened cases involving crimes against humanity decades after the events had occurred. The fact that the national courts could exercise universal jurisdiction over the offence of enforced disappearance was a positive development. However, decades of impunity meant that many families were still being denied justice. A number of countries were assisting Argentina in dealing with cases of enforced disappearance and several individuals had been extradited and tried for crimes against humanity.

29. **Mr. Fresneda** (Argentina) said that a special fund had been set up by the Ministry of Justice and Human Rights to reward individuals who were able to provide information on perpetrators of crimes against humanity, and that had resulted in the capture of several perpetrators. The fund also provided incentives to encourage individuals with information on the identity of disappeared persons to come forward.

30. There was a national review mechanism in place to monitor compliance with human rights obligations in the provinces. His Government was currently considering how best to ensure that the provincial authorities fulfilled their human rights obligations, for example by raising awareness about the role of national institutions, providing the security forces with adequate training, or setting up an early warning system in the provinces. Such initiatives could help the Government of Argentina to intervene in a timely fashion and punish crimes such as torture and State-sponsored terrorism.

31. **Mr. López Ortega** said that the Committee welcomed the fact that the Government of Argentina had taken steps to enhance the legal provisions penalizing the crime of enforced disappearance in the context of the comprehensive legal reform currently under way. He asked when exactly the Convention would be given constitutional rank and whether the Government foresaw any difficulties in that regard. He asked whether enforced disappearance in times of war or armed conflict, or other crimes committed by military officers, came under the jurisdiction of the military courts; and what policy measures the Government was taking to ensure the effective democratization of the judiciary and the Armed Forces, particularly in the provinces, and to ensure that crimes such as enforced disappearance did not go unpunished.

32. **Mr. Huhle** asked whether the revised Criminal Code would provide a single legal definition of enforced disappearance that took into account all aspects of the crime, including differing degrees of participation. The decision to establish special prosecutors' offices for enforced disappearance had been a key factor in the progress made in Argentina. The Committee had therefore been concerned to hear that a recent court ruling in one state had denied the legitimacy of the special prosecutor's office. He wondered what the Government intended to do to prevent the system from being dismantled. He also wished to know how the Government of Argentina planned to increase the effectiveness of oversight over the police.

33. **Mr. Corcuera Cabezut** said that the Committee welcomed the idea of a national review mechanism and suggested that the State party also consider a peer review. Referring to the Facundo case, he asked how the Government planned to punish the perpetrators. In that connection, it was important to establish legal definitions that would allow the perpetrators of the crime of enforced disappearance to be punished, regardless of whether they were agents of the State or private individuals. In terms of penalties, the intention to punish enforced disappearance as a crime against humanity was more important than the actual length of the prison sentence.

34. **Mr. Auat** (Argentina) said that his Government continued to strive for the establishment of the rule of law in Argentina and was working to address the problems

regarding the monitoring of the police. The shift from a police state, with all its inherent institutional violence, to a democracy required the introduction of new regulations to govern the police. It was clear that, to a certain extent, the judiciary was resisting democratic change. The appointment of judges remained problematic, as it was difficult to guarantee their impartiality if they espoused the ideologies of the dictatorship. As part of the democratization process, a number of prosecutors had been tried for having been involved in crimes under the dictatorship, and the judiciary had attempted to amend the Code of Criminal Procedure and introduce special provisions for the trial of prosecutors. In response to that action, those conducting the trials had been obliged to take special steps to ensure that they could fully apply the law.

35. **Mr. Villegas Beltrán** (Argentina) said that if military officers were found to be involved in cases of enforced disappearance in times of war and armed conflict, an administrative procedure could be initiated to determine whether their actions came under military jurisdiction, though normally they would not. Instead, the military authorities tended to help with the investigation of cases of enforced disappearance involving military officers.

36. **Mr. Fresneda** (Argentina) said that the likely date of approval of the law that would give the Convention constitutional rank was contingent upon the outcome of consultations and the Congressional agenda. His Government remained convinced that the best way to prevent police officers from committing acts of abuse was not to monitor them but to afford them proper training. However, there was still a need for an oversight mechanism for the Armed Forces in general. His Government also recognized the need to devise policies that encouraged compliance with human rights obligations in the provinces. As to the Facundo case, he said that his Government was not yet in a position to comment on its outcome.

*The meeting rose at 6 p.m.*