

COMMITTEE ON ENFORCED DISAPPEARANCES

Fourth session

Geneva, 8 – 19 April 2013

**REPORT OF THE COMMITTEE ON ENFORCED DISAPPEARANCES
ON ITS FOURTH SESSION**

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the International Convention for the Protection of All Persons from Enforced Disappearance

1. As at 19 April 2013, the closing date of the fourth session of the Committee on Enforced Disappearances (CED), there were 37 States parties to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and 91 signatory States. The Convention was adopted on 20 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/177. The Convention was opened for signature on 6 February 2007. In accordance with its article 39(1), the Convention entered into force on 23 December 2010.

2. A list of States parties to the Convention, as at 19 April 2013, as well as the deadline by which they have to submit their reports to the Committee, is included in annex I of this report.

B. Opening of the fourth session

3. The fourth session of the Committee on Enforced Disappearances was opened by the Chief of Americas, Europe and Central Asia Branch, Gianni Magazzeni, who, on behalf of the High Commissioner for Human Rights, congratulated the Committee for the successful results of its utmost important work in the past year. In his statement, Mr. Magazzeni highlighted some concrete examples of efforts of the Office of the High Commissioner for Human Rights to support the promotion of universal ratification of the Convention, as well as its implementation. Mr. Magazzeni encouraged further discussions on the process of treaty bodies strengthening stating that the Committee had been exemplary, from its very beginning, in its positive involvement in this process by endorsing without hesitation the Dublin II outcome and the High Commissioner's report on this issue. Mr. Magazzeni also emphasized that in the survey related to the Committees' satisfaction with the Secretariat support, the respondents rated it either satisfactory or very satisfactory. He closed his statement wishing the best concerning the first interactive dialogues with States and added that they would represent a significant step in the actual implementation of the Convention.

4. In his opening statement, the Chairperson, Mr. Decaux, started by reminding that enforced disappearances were not consigned to the past and emphasized that no continent was exempted from this tragedy. He mentioned two recent cases issued by the European Court of Human Rights referring to the Convention on Enforced Disappearances. He stressed how the promotion of the

ratification of the Convention and its effective implementation should be a priority for the United Nations and for the international community as a whole. He stressed that the compliance with article 29, paragraph 1, of the Convention by States parties to submit reports within two years from the ratification of the Convention should not depend upon the good will of the States but upon their positive obligation to do so. Lastly, Mr. Decaux expressed the need to develop proactive methods of work in order to put into force the Committee's competences, including the exam of reports in the absence of States, should it be necessary.

C. Observance of a minute of silence in remembrance of the victims of enforced disappearance

5. At the end of his statement, the Chairperson invited all those present to observe a minute of silence in remembrance of the victims of enforced disappearance.

D. Adoption of the agenda and organization of work

6. The Committee adopted the agenda for the fourth session (CED/C/4/1).

E. Membership of the Committee

7. The Committee on Enforced Disappearances was established in accordance with article 26, paragraph 1, of the Convention. The first 10 members of the Committee were elected by the Conference of States parties on 31 May 2011 and their mandates took effect on 1 July 2011.

8. A list of members of the Committee, indicating the duration of their terms of office, is contained in annex II of the present report. All members attended the session.

II. ACTION TAKEN DURING THE FOURTH SESSION

A. Working methods

9. During its fourth session, the Committee discussed the following issues related to its working methods:

- a. Methodology and process for the adoption of lists of issues and consideration of reports;
- b. Methods of work related to ratification and reporting strategy;
- c. Methods of work related to the collaboration between CED and WGEID, in particular on urgent actions;
- d. Methods of work related to the engagement with civil society actors.

B. Communications, information and requests received by the Committee

10. During the reporting period, the Committee transmitted five urgent actions under article 30 of the Convention, related to alleged enforced disappearances occurred in Mexico. In accordance with article 30, paragraph 3, of the Convention and article 64 of its rules of procedure, the Committee transmitted the information submitted by the State party to the authors of the requests for urgent actions. In virtue of article 30, paragraph 4, of the Convention, the Committee will continue its efforts to work with Mexico as, according to the information available to it as of 19 April 2013, the fate of the five persons sought remained unresolved.

C. Decisions

11. The Committee decided on:

- a. A draft document regarding “The relationship of the Committee on Enforced Disappearances with civil society actors”, which will be posted on the Committee’s website for comments by all stakeholders, with a view to adopt it at the fifth session;
- b. The dissemination of its working methods through its webpage;
- c. The appointment of a rapporteur to prepare, with the support of the Secretariat, a first draft of a document on the relationship of the Committee on Enforced Disappearances with National Human Rights Institutions;
- d. The methodology to conduct constructive dialogues with States parties in the context of the reporting process;
- e. To hold a thematic discussion on “enforced disappearances and military justice” at its fifth session;
- f. The follow-up to five urgent actions received according to article 30 of the Convention;

- g. The Concluding Observations on the reports submitted by Uruguay and France under article 29, paragraph 1, of the Convention;
- h. The appointment of the country rapporteurs that will draft the lists of issues related to the reports of Argentina, Spain and Germany and will lead the constructive dialogues with the mentioned State parties;
- i. The consideration at its fifth session of the reports of Spain and Argentina submitted in compliance with article 29, paragraph 1, of the Convention;
- j. The examination at its sixth session of the report of Germany submitted in compliance with article 29, paragraph 1, of the Convention;
- k. The adoption of its annual report to the sixty-eighth session of the General Assembly;
- l. The provisional agenda for the fifth session;
- m. To remind States parties by formal letter of their obligation to timely submit their reports under article 29, paragraph 1, of the Convention;
- n. The adoption of its fourth session informal report.

D. Future Session

12. In accordance with the calendar of conferences adopted by the General Assembly, the Committee confirmed the dates of its fifth session, to be held from 4 to 15 November 2013 in Geneva.

III. CONSIDERATION OF REPORTS

A. Uruguay

13. On 9 and 10 April the Committee considered the report of Uruguay in public session and, before that, met with civil society to receive information in this regard. Uruguay was represented by a delegation headed by His Excellency Ricardo González Arenas, Director-General for Political Affairs at the Ministry for Foreign Affairs; and composed by several representatives of the State party. During the dialogue, the Committee members congratulated Uruguay for having been the first State party to submit its report under the Convention.

The main issues discussed during the constructive dialogue were:

- hierarchy of the Convention in domestic law and direct applicability of its provisions;

- consultations with civil society in preparation of State report;
- budget and autonomy of the National Human Rights Institution;
- investigation and sanction of acts committed by non-State actors in accordance with article 3 of the Convention;
- large margin between maximum and minimum penalties for the offence of enforced disappearance and low minimum penalty;
- aggravating circumstances for the crime of enforced disappearance;
- qualification of enforced disappearance as homicide by the Supreme Court;
- status of limitations of the crime of enforced disappearance;
- investigation of cases of enforced disappearances, including the possibility of establishing a special investigative unit at the prosecutor's office;
- measures taken to guarantee that persons accused of committing enforced disappearances cannot obstruct investigations;
- inclusion of enforced disappearances in extradition and cooperation agreements;
- legislation and practices related to the principle of non-refoulement;
- habeas corpus: direct applicability of the constitutional provision and regulations;
- access to information concerning enforced disappearances;
- registers of persons deprived of liberty;
- training of State officials and education on the provisions of the Convention;
- definition of victim;
- protection of victims, including women and children, and possibility of participating actively in investigations;
- legal situation of disappeared persons: declaration of absence;
- DNA data: consent of interested persons, sharing and protection of information;
- reparations: compliance with Inter-American Court for Human Rights Judgment;
- criminalization of wrongful removal of children and other related crimes in accordance with art. 25 of the Convention;
- possibility to review and, where appropriate, to annul, adoptions that originated in an enforced disappearance;
- Issues related to the Judiciary's internal independence and the transfer of a Judge who was investigating enforced disappearances from a Criminal to a Civil Court.

B. France

14. On 11 and 12 April the Committee considered the report of France in public session and, before that, the Committee met with the National Human

Rights Institution and with civil society to receive information in this regard. France was represented by a delegation headed by His Excellency Mr. Nicolas Niemtchinow, Ambassador, Permanent Representative of France to the United Nations Office and other international organizations in Geneva; and composed by several representatives of the State party.

The main issues discussed during the constructive dialogue were:

- constitutive elements of the definition of enforced disappearance;
- consultations with civil society in preparation of State report;
- investigation and sanction of acts committed by non-State actors in accordance with article 3 of the Convention;
- information on the time the French draft law is foreseen to enter into force according to the domestic legislation;
- hierarchy of the Convention in domestic law and direct applicability of its provisions;
- liability regime of command responsibility and complicity;
- civil and military liability regimes;
- mitigating and aggravating circumstances for the offence of enforced disappearance;
- margin between maximum and minimum penalties for the offence of enforced disappearance and low minimum penalty;
- status of limitations of the crime of enforced disappearance;
- absence of Habeas Corpus in the French legislation;
- definition of victim and of “victime par ricochet”;
- status of victims in the legal process;
- non-extradition of French citizens;
- legislation and practices related to the principle of non-refoulement;
- asylum priority procedure;
- legal provisions and effective procedures guaranteed in the “waiting zone” and in the “ad hoc” zones;
- investigation of cases of enforced disappearances;
- enforced disappearances which may occur during French military interventions;
- exercise of legal remedies in national Courts;
- liability regime of legal persons;
- legal assistance regime;
- privileges and immunities regime;
- access to information concerning enforced disappearances;
- punishment for acts of terrorism in accordance with article 3 of the Convention;
- criminalization of wrongful removal of children and other related crimes in accordance with article 25 of the Convention;

- possibility to review and, where appropriate, to annul, adoptions that originated in an enforced disappearance.

15. The Committee adopted the concluding observations on Uruguay and France on 19 April 2013.

16. The Concluding Observations on Uruguay can be found under the reference CED/C/URY/CO/1.

17. The concluding Observations on France can be found under the reference CED/C/FRA/CO/1.

IV. THEMATIC DISCUSSION

A. Thematic discussion on the principle of non-refoulement, expulsion, extradition under article 16 of the Convention

18. The Committee decided to postpone, due to the workload, to a future session the continuation of the thematic discussion on the principle of non-refoulement, expulsion, and extradition under article 16 of the Convention.

V. RELATIONS WITH STAKEHOLDERS

A. Meeting with States

19. On the first day of its session, the Committee held a public meeting with member States of the United Nations, which was attended by nineteen States parties, sixteen signatory States, and three States which have neither signed nor ratified the Convention. The Chairperson updated the States on the work of the Committee and encouraged the timely submission of reports by States parties. The list of the participants is included in annex IV.

B. Meeting with specialized agencies, regional organizations and national human rights institutions

20. On 8 April 2013, the Committee met in a public session with regional and intergovernmental organizations. The list of the participants is included in annex IV.

21. On 17 April 2013, the Committee met with the Geneva representative of the International Coordinating Committee of National Human Rights Institutions to discuss cooperation. The members expressed their appreciation for the work of NHRI, as a bridge between States parties and civil society.

22. On 18 April 2013, the Committee met with the co-facilitators of the intergovernmental treaty body strengthening process at the United Nations General Assembly, H.E. Gréta Gunnarsdóttir, Permanent Representative of Iceland, and H.E. Desra Percaya, Permanent Representative of Indonesia. Ms. Nicole Ameline, Chairperson of CEDAW, also participated in the meeting. The Committee appreciated the meeting with the co-facilitators during which it could present its achievements during the first two years of activity. It also expressed some concerns, namely the lack of staff and resources devoted to the system, the need to respect the independency of Committees' members and the necessity for them to receive information from civil society actors, in particular from families of victims of enforced disappearances. The Committee members also seized the opportunity of the presence of Ms. Ameline to start discussion on the future collaboration between the two treaty bodies.

C. Meeting with non-governmental organizations and associations of victims

23. On 8 April 2013, the Committee held a public meeting with Non-governmental organizations (NGOs). On this occasion, the Committee welcomed the support of NGOs and stressed the importance of close cooperation in raising awareness about the Convention and in assisting victims of enforced disappearances. During the dialogue, the representatives of NGOs raised questions about the upcoming examination of States parties' reports. The list of the participants is included in the annex IV.

ANNEXES

Annex I

States parties to the Convention at the time of the fourth session and deadline for reporting

	State Party	Ratification	Entry into force	Deadline for reporting under Art. 39(1)	Reports submitted
1	Albania*	8 Nov. 2007	23 Dec. 2010	23 Dec. 2012	
2	Argentina*	14 Dec. 2007	23 Dec. 2010	23 Dec. 2012	21 Dec. 2012
3	Mexico	18 Mar. 2008	23 Dec. 2010	23 Dec. 2012	
4	Honduras	1 Apr. 2008	23 Dec. 2010	23 Dec. 2012	
5	France*	23 Sept. 2008	23 Dec. 2010	23 Dec. 2012	21 Dec. 2012
6	Senegal	11 Dec. 2008	23 Dec. 2010	23 Dec. 2012	
7	Bolivia	17 Dec. 2008	23 Dec. 2010	23 Dec. 2012	
8	Cuba	2 Feb. 2009	23 Dec. 2010	23 Dec. 2012	
9	Kazakhstan	27 Feb. 2009	23 Dec. 2010	23 Dec. 2012	
10	Uruguay*	4 Mar. 2009	23 Dec. 2010	23 Dec. 2012	4 Sept. 2012
11	Mali*	1 Jul. 2009	23 Dec. 2010	23 Dec. 2012	
12	Japan*	23 Jul. 2009	23 Dec. 2010	23 Dec. 2012	
13	Nigeria	27 Jul. 2009	23 Dec. 2010	23 Dec. 2012	
14	Spain*	24 Sep. 2009	23 Dec. 2010	23 Dec. 2012	26 Dec. 2012
15	Germany*	24 Sep. 2009	23 Dec. 2010	23 Dec. 2012	25 March 2013
16	Ecuador*	20 Oct. 2009	23 Dec. 2010	23 Dec. 2012	
17	Burkina Faso	3 Dec. 2009	23 Dec. 2010	23 Dec. 2012	
18	Chile*	8 Dec. 2009	23 Dec. 2010	23 Dec. 2012	
19	Paraguay	3 Aug. 2010	23 Dec. 2010	23 Dec. 2012	
20	Iraq	23 Nov. 2010	23 Dec. 2010	23 Dec. 2012	
21	Brazil	29 Nov. 2010	29 Dec. 2010	29 Dec. 2012	
22	Gabon	19 Jan. 2011	19 Feb. 2011	19 Feb. 2013	
23	Armenia	24 Jan. 2011	24 Feb. 2011	24 Feb. 2013	
24	Netherlands*	23 Mar. 2011	23 Apr. 2011	23 Apr. 2013	
25	Zambia	4 Apr. 2011	4 May 2011	4 May 2013	
26	Serbia*	18 May 2011	18 Jun. 2011	18 Jun. 2013	
27	Belgium*	2 Jun. 2011	2 Jul. 2011	2 Jul. 2013	
28	Panama	24 Jun. 2011	24 Jul. 2011	24 Jul. 2013	
29	Tunisia	29 Jun. 2011	29 Jul. 2011	29 Jul. 2013	
30	Montenegro*	20 Sept. 2011	20 Oct. 2011	20 Oct. 2013	
31	Costa Rica	16 Feb. 2012	16 Mar. 2012	16 Mar. 2014	
32	Bosnia and Herzegovina*	30 Mar. 2012	30 Apr. 2012	30 Apr. 2014	
33	Austria*	7 Jun. 2012	7 Jul. 2012	7 Jul. 2014	
34	Colombia	11 Jul. 2012	11 Aug. 2012	11 Aug. 2014	
35	Peru	26 Sept. 2012	26 Oct. 2012	26 Oct. 2014	
36	Mauritania	3 Oct. 2012	3 Nov. 2012	3 Nov. 2014	
37	Samoa	27 Nov. 2012	27 Dec. 2012	27 Dec. 2014	

States marked with an asterisk (*) have made declarations recognizing the competence of the Committee under articles 31 and/or 32 of the Convention. The full text of declarations and reservations made by States Parties can be found at the following link:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

Annex II

Membership of the Committee on Enforced Disappearances

Name	Nationality	Term expires
Mr. Mohammed AL-OBAIDI	Iraq	30 June 2013
Mr. Mamadou Badio CAMARA	Senegal	30 June 2015
Mr. Emmanuel DECAUX	France	30 June 2015
Mr. Alvaro GARCÉ GARCÍA Y SANTOS	Uruguay	30 June 2015
Mr. Luciano HAZAN	Argentina	30 June 2013
Mr. Rainer HUHLE	Germany	30 June 2015
Ms. Suela JANINA	Albania	30 June 2015
Mr. Juan José LÓPEZ ORTEGA	Spain	30 June 2013
Mr. Enoch MULEMBE	Zambia	30 June 2013
Mr. Kimio YAKUSHIJI	Japan	30 June 2013

Annex III

Adopted agenda of the fourth session of the Committee on Enforced Disappearances

1. Opening of the session, in accordance with article 26, paragraph 7, of the International Convention for the Protection of All Persons from Enforced Disappearance.
2. Minute of silence in remembrance of victims of enforced disappearances.
3. Adoption of the agenda.
4. Meeting with States parties.
5. Meeting with UN bodies, specialized agencies, Intergovernmental organizations and National Human Rights Institutions
6. Meeting with non-governmental organizations and other stakeholders
7. Matters related to the methods of work of the Committee:
 - a. Preparation of dialogue with States parties;
 - b. Ratification strategy, development of model laws and other matters.
8. Consideration of reports of State Parties to the Convention.
9. Communications, information and requests received by the Committee.
10. Thematic discussion on:

Principle of non-refoulement, expulsion, extradition under article 16 of the Convention.
11. Programme of work of the fifth session.
12. Annual Report of the Committee to the General Assembly at its sixty-eighth session.

Annex IV

List of participants

Meeting with States

Argentina
Austria
Belgium
Brazil
Bulgaria
Colombia
Cuba
Ecuador
Egypt
Germany
Greece
Hungary
Japan
Mexico
Russian Federation
Spain
Togo
Tunisia
Uruguay

Meeting with other UN bodies, specialized agencies, Intergovernmental organizations

International Committee of the Red Cross
Council of Europe

Meeting with National Human Rights Institutions

International Coordinating Committee for National Human Rights Institutions (ICC)

Meeting with NGOs

Asociación Española para el Derecho Internacional de los Derechos Humanos (AEDIDH)
Observatorio Internacional del Derecho Humano a la Paz (OIDHP)
Asociación para la Recuperación de la Memoria Histórica en Cataluña
Geneva for Human Rights
Track Impunity Always (TRIAL)
International Commission of Jurists (ICJ)

Annex V

Items to be included in the provisional agenda of the Fifth session of the Committee

1. Opening of the fifth session.
 2. Minute of silence in remembrance of victims of enforced disappearances.
 3. Adoption of the agenda.
 4. Communications, requests, including requests for urgent actions, and other information received by the Committee.
 5. Matters related to the methods of work of the Committee:
 - a. Methods of work related to articles 32, 33 and 34 of the Convention;
 - b. Interaction with relevant stakeholders;
 - c. Ratification strategy and other matters.
 6. Consideration of reports of States parties to the Convention:
 - a. Argentina
 - b. Spain
 7. Consideration of the list of issues related to the report of Germany
 8. Thematic discussion on “enforced disappearance and military justice”.
 9. Meeting with United Nations Member States.
 10. Meeting with United Nations agencies and mechanisms, and intergovernmental organizations.
 11. Yearly meeting with the Working Group on Enforced or Involuntary Disappearances.
 12. Meeting with National Human Rights Institutions.
 13. Meeting with non-governmental organizations and other stakeholders, including associations of families of victims.
 14. Treaty-body strengthening update.
 15. Provisional agenda for the sixth session.
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