



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 102nd meeting

Held at the Palais des Nations, Geneva, on Tuesday, 16 September 2014, at 3 p.m.

Chairperson: Mr. Decaux

Contents

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

Initial report of Paraguay

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The meeting was called to order at 3 p.m.

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

Initial report of Paraguay (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. **Mr. Núñez** (Paraguay), introducing the initial report of Paraguay (CED/C/PRY/1), said that the promotion and protection of human rights was a fundamental premise of Paraguayan State policy. As part of the State's efforts to build institutional capacity, a new system for monitoring recommendations had been introduced. The system provided access to validated and up-to-date information on the country's level of compliance with the international human rights recommendations made to it, as well as an overview of the challenges facing the country in the area of human rights.
3. The Paraguayan Constitution provided for protection against enforced disappearance and the non-applicability of statutory limitations to that crime. Congress had adopted Act No. 4614/12 amending articles 236 and 309 of Act No. 1160/97 on the Criminal Code, to align the legal definition of enforced disappearance with the Convention and with the Inter-American Convention on Forced Disappearance of Persons. Furthermore, Paraguay had reaffirmed its commitment not to apply statutory limitations to the crime of enforced disappearance by ratifying the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. To assist the State in fulfilling its obligation to investigate enforced disappearances, the Public Prosecution Service had taken measures to strengthen and improve the efficiency of its Special Unit for Human Rights Offences.
4. The process of drafting the bill to implement the Rome Statute of the International Criminal Court was now complete. The bill provided that the maximum possible penalty under Paraguayan criminal law should be prescribed for enforced disappearance. That penalty was also applicable to any person who refused to reveal the whereabouts of a victim of enforced disappearance, regardless of whether they were an agent of the State, an individual, or a member of a political organization.
5. Guarantees of due process were enshrined in the Paraguayan Constitution and were available to all. There were also mechanisms for informing detainees of the reason for their arrest, for providing legal assistance from the beginning of a trial and for informing the relevant consulates in the event of foreign nationals being detained. Those guarantees had not been suspended under the state of emergency. Moreover, Act No. 4288/2011 establishing the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment had been adopted in 2011 in an effort to guarantee non-repetition and to prevent illegal or arbitrary detention. The national mechanism was an autonomous and independent body recognized at the international level.
6. A national team to investigate, search for and identify persons detained and disappeared or extrajudicially executed during the dictatorship in Paraguay from 1954 to 1989 had been formed in 2011. In 2006, the Truth and Justice Commission had overseen efforts to locate, excavate and exhume the remains of persons who had disappeared during the dictatorship. The skeletal remains of 27 persons had been found and transported to the forensic laboratory of the Public Prosecution Service. The Government of Paraguay considered the identification of those skeletal remains to be a major priority and had allocated public funds to help expedite the process. The Government was also availing itself of the technical assistance and support provided by a renowned Argentine forensic anthropology team.

7. The Paraguayan Constitution provided that Congress or the Executive could declare a state of emergency in part or all of the national territory for a maximum of 60 days. However, declaring a state of emergency did not impede the functioning of the different branches of Government or suspend the Paraguayan Constitution or, more specifically, suspend the guarantees of habeas corpus and *amparo*.

8. While much progress had been achieved, there were still a number of obstacles and restrictions preventing the Government of Paraguay from effectively implementing the Convention. The Government remained committed to overcoming those challenges.

9. **Mr. Garcé García y Santos** asked when the new Ombudsman would be chosen, given that the mandate of the outgoing Ombudsman had ended six years previously; what activities the Ombudsman's Office had carried out in connection with enforced disappearance; and whether the Ombudsman's Office had adequate resources to function effectively, as the Committee had received reports to the contrary.

10. Noting that the State party was considering the possibility of recognizing the Committee's competence to receive and consider communications under articles 31 and 32, he asked what that process entailed and what was preventing the State party from taking that step. He also wished to know which rights had been suspended under the state of emergency declared in 2011 and the reasons behind the decision to amend Act No. 337/1998, on national defence and internal security, to empower the Executive to take exceptional security measures, such as mobilizing the military. The Committee would be interested to know whether the witness and victim protection programme covered all the persons mentioned in article 12, paragraph 1, of the Convention; whether the programme functioned effectively in practice; whether it covered persons deprived of their liberty; and whether it had adequate resources, as the Committee had received reports to the contrary.

11. He asked how the Anti-Abduction Unit of the National Police operated; if it was empowered to launch investigations on its own initiative; what human and financial resources it possessed; and whether it could investigate enforced disappearance. He would also like to know whether the Special Unit for Human Rights Offences of the Public Prosecution Service was competent to investigate enforced disappearances that had occurred during the dictatorship. He requested additional information on those enforced disappearances and on the progress made in the investigations launched. The Committee would especially like to receive information on the case of Dr. Agustín Goiburú Giménez. The Committee would also like to know more about the enforced disappearances that had occurred after 1989, including the case of Marcelino Gómez Paredes and Cristian Ariel Núñez, child soldiers who had disappeared while in the Army.

12. He invited the delegation to confirm whether the crime of enforced disappearance could be considered a military crime if it was committed by a soldier on active service; to comment on allegations that the Paraguayan authorities were not fully complying with a request for information from the Argentine judicial authorities in the context of an investigation into enforced disappearances that had allegedly occurred in Paraguay between 1954 and 1989; and to comment on allegations that the Paraguayan authorities were not performing the genetic examinations on children requested by their Argentine counterparts.

13. **Mr. López Ortega** said that, while the Committee welcomed the fact that the first paragraph of article 236 of the Criminal Code criminalized enforced disappearance in terms similar to those used in the Convention, it should be recalled that being placed outside the protection of the law was a consequence of enforced disappearance and should not be interpreted as a constituent element of the crime itself. He asked whether the State party had considered devising a strategy to prevent the courts from giving an erroneous interpretation to the notion of being placed outside the protection of the law. He requested clarification on the meaning of the second paragraph of article 236 and asked why it had

been included under that article. Noting that the crime of enforced disappearance could carry a prison sentence of between 5 and 30 years, he asked how the courts determined the duration of the sentence to be handed down in each case. He also wished to know why the State party had not incorporated the mitigating and aggravating circumstances provided for in article 7 of the Convention into its domestic legislation and whether it intended to do so.

14. Noting that due obedience could not be invoked as a defence in cases involving serious human rights violations such as enforced disappearance, he asked whether the State party had considered incorporating a provision precluding the possibility of invoking such a defence into its domestic legislation. Similarly, he wished to know whether the State party had considered strengthening the guarantee that subordinates were not required to follow the orders of their superior when doing so would violate human rights, by indicating that to follow such orders was expressly prohibited by law. He requested additional information on the “established mechanism of recourse to a higher authority” mentioned in paragraph 18 of the State party report. He enquired as to the penalties imposed on a superior who knew that one of their subordinates had committed the crime of enforced disappearance and had not acted to prevent it or had simply turned a blind eye to their activities. He requested clarification on whether statutory limitations applied to the crime of enforced disappearance, as the information provided by the State party on that subject seemed contradictory. He asked whether the State party had considered defining enforced disappearance as a continuous offence in its domestic legislation.

15. Turning to legal procedures and the guarantee of an effective investigation, he asked whether victims of enforced disappearance had the right to participate in the investigation; whether police officers and soldiers suspected of involvement in an enforced disappearance were automatically suspended from their duties; and whether other members of the branch of the Armed Forces or the police force to which the suspect belonged were automatically removed from the investigation. Lastly, given that the law criminalizing enforced disappearance had only been adopted in 2012, he wished to know whether enforced disappearances that had occurred before that were investigated and brought before the courts.

16. **Mr. Corcuera Cabezut** expressed concern that, in defining enforced disappearance, Paraguayan law did not refer to the placing of a person outside the protection of the law, as set out in article 2 of the Convention. He wondered whether anyone had ever been charged on the basis of that definition. Had current investigations into enforced disappearances resulted in the identification of any perpetrators?

17. **Mr. Huhle** asked whether the statistics on persons who had disappeared during the dictatorship, collected by the Truth and Justice Commission, had been verified and whether there had been any further investigations into those cases. In addition, he would like to know which bodies were responsible for collecting data on enforced disappearance after 1989, investigating cases and distinguishing enforced disappearance from other related situations such as missing persons. Were statistics available on cases of enforced disappearance reported since the ratification of the Convention by the State party? Could the State party shed any light on the case of Federico Tatter, a Paraguayan citizen who had disappeared in Argentina and whose case was under investigation there too? Close cooperation was needed between the State party and Argentina, as there were numerous cases of enforced disappearance that involved both countries.

18. **Mr. Yakushiji** asked whether the State party had jurisdiction over crimes involving Paraguayan citizens but committed outside its territory, in accordance with article 9 of the Convention; and whether the principle of *ne bis in idem* applied when a perpetrator was prosecuted in their own country and then entered the State party.

The meeting was suspended at 3.50 p.m. and resumed at 4.40 p.m.

19. **Ms. da Silva Boschert** (Paraguay) said that during the period 2008–2013 two candidate lists for the posts of Ombudsman and Deputy Ombudsman had been presented to the upper house of parliament but had subsequently been annulled owing to the delays in making those appointments. Although a list had been submitted in July 2014, and despite the fact that current legislation required the Ombudsman to be appointed within 30 days of submission, no appointment had yet been made and the State party could not say when that might happen. The State party would keep the Committee informed.

20. Consideration of the possibility of recognizing the Committee's competence to receive communications was being led by the Government's Human Rights Network. The purpose of the exercise was to raise awareness of articles 31 and 32 among the relevant institutions, consult with them and inform them of their subsequent responsibilities and competences in that regard before any decision was made.

21. **Mr. Núñez** (Paraguay) said that no rights had been suspended during the state of emergency in 2011 and there had been no reported incidents of violations of constitutional rights during that period.

22. **Ms. da Silva Boschert** (Paraguay) said that the laws on national defence and internal security and on terrorism had been revised to ensure the State party's preparedness to respond to security threats, strengthen its legal entitlements to respond to such threats, and protect public authorities in the discharge of their functions in that area. Further information regarding those provisions would be provided at the following meeting.

23. **Ms. Rolón** (Paraguay) said that the Assistance and Protection Programme for Witnesses and Victims in Criminal Proceedings recognized victims as subjects of the proceedings and not only as witnesses, which ensured respect for the human rights of all participants in the proceedings. A bill to reform the Act establishing the programme was currently before Congress. Its main focus was on organized crime and ensuring technical assistance and the effective operation of the programme. The Attorney-General's Office had drawn up guidelines for situations not covered by the programme. In addition, an inter-institutional technical committee would be set up to guarantee sufficient resources and provide assistance to those responsible for running the programme.

24. The Anti-Abduction Unit of the National Police was the department responsible for conducting investigations into allegations of enforced disappearance, under the supervision of the prosecutor responsible for any given case. Further information on the Unit's budget and structure would be provided to the Committee in due course.

25. A recent amendment to the Criminal Code had made it easier for the Public Prosecution Service to effectively conduct investigations. Its Special Unit for Human Rights Offences was currently investigating 50 human rights violations and was examining reports prepared by the Truth and Justice Department of the Ombudsman's Office regarding persons forcibly disappeared during the dictatorship between 1954–1989, with a view to determining which cases had been or were being investigated and thereby prevent duplication of work. The Special Unit investigated cases of enforced disappearances which had not previously been filed. In June 2014, a resolution had established the position of deputy prosecutor to the Special Unit for Human Rights Offences, whose functions included developing strategic guidelines to address human rights violations in accordance with the Attorney-General's policy, and cooperating with the Human Rights Directorate to reinforce criminal investigations into human rights violations.

26. **Ms. da Silva Boschert** (Paraguay), said that in November 2009 the State party had recognized its responsibility in the case of Paredes and Núñez before the Inter-American Commission on Human Rights. An amicable settlement had been reached and the perpetrator had been sentenced to a fine. It was important to point out, however, that the trial in question had been conducted before the entry into force of the current Criminal

Code. Furthermore, reparation was provided to the families of persons who had disappeared while serving in the Army under the dictatorship.

27. **Mr. Ramírez** (Paraguay) reiterated the public apology the Paraguayan Government had made in 2008 to the families of people who had suffered under the State terrorism practised during the 1954–1989 dictatorship.

28. He said that the investigation into the enforced disappearance of Dr. Agustín Goiburú was part of broader investigations into enforced disappearances that had taken place in the context of *Operación Condor*, and that the search for his remains was currently ongoing with the assistance of an Argentine forensic anthropology team. The former Paraguayan consul in the Argentine city of Posadas, Mr. Ortiz Téllez, had recently been convicted for involvement in the enforced disappearance of Dr. Goiburú and sentenced to house arrest, being too old for imprisonment under Paraguayan law. Investigations into the disappearance of Captain Federico Tatter were still ongoing in Germany and in Paraguay. Family members of both Dr. Goiburú and Captain Tatter were beneficiaries under Act No. 838 of 1996, which provided compensation to victims of human rights violations during the 1954–1989 dictatorship.

29. **Ms. Rolón** (Paraguay) said that a request for information about human rights violations committed during the 1954–1989 dictatorship, made by the Argentine judicial authorities in August 2013, had been received by the Public Prosecution Service at the end of November 2013. An extension had been requested in February 2014 and the reply had been delivered on 12 September 2014. The director of the Documentation Centre and Archive for the Defence of Human Rights, known as the “Archive of Terror” had provided the Argentine judicial authorities with a microfilm containing a copy of the entire Archive.

30. **Mr. Núñez** (Paraguay) said that enforced disappearance could in no way be considered a military offence even if committed by a military official on active service in the performance of military duties because military justice could only be applied to military officials who committed an offence during the performance of their official duties, and those duties did not include detention. Anyone committing the offence of enforced disappearance, whatever their status, was equally punishable by law.

31. The concept of being “outside the protection of the law” as it applied to enforced disappearance was being discussed at a theoretical level, but it had not yet arisen in a real case and so had yet to be interpreted and applied by the judiciary.

32. **Mr. Ramírez** (Paraguay) said that the Truth and Justice Commission had sought to define the typical elements of enforced disappearance in a way that reflected how State terrorism had actually been practised in Paraguay during the 1954–1989 dictatorship. The work of the Truth and Justice Commission, which had resulted in the definitions used in the Criminal Code, had focused on ensuring that offences such as those committed under the dictatorship could never happen again.

33. **Mr. Núñez** (Paraguay) said that article 65 of the Criminal Code was applied when determining the length of a sentence. When sentencing, judges took account of the culpability of the guilty party and considered aggravating and mitigating circumstances as defined under article 65. A national commission was currently considering amendments to the Criminal Code and the delegation would inform that commission of the outcome of the dialogue with the Committee in order to fix appropriate penalties for the offence of enforced disappearance.

34. The principle of “due obedience” did not exist in the Paraguayan legal system. No one was obliged to obey an order which violated fundamental human rights, and a superior officer who failed to report a human rights violation of which they were aware was punishable as an accessory after the fact.

35. The Paraguayan Constitution clearly stated that there was no statute of limitations on the offence of enforced disappearance; in addition, under Paraguayan law a continuing offence could be prosecuted under laws passed after the offence had begun. Under the Code of Criminal Procedure victims could associate themselves with the public prosecution and participate in legal proceedings as complainants. Ways to improve victim participation in legal proceedings were being considered as part of the current legal review process.

36. **Mr. Ramírez** (Paraguay) said that the Constituent Assembly had not intended the constitutional reference to politically motivated murder to apply to enforced disappearance but to extrajudicial execution. Enforced disappearance was separately defined as an offence irrespective of the motives for which it was carried out; nothing, however, prevented it being described as a politically motivated offence.

37. **Mr. Núñez** (Paraguay) said that officials of the Public Prosecution Service who were under investigation were suspended from their duties. The Public Prosecutor could request the Attorney-General's Office to apply measures other than pretrial detention in order to ensure that a suspect could not obstruct the course of an investigation.

38. **Mr. Ramírez** (Paraguay) said that although legal proceedings were chiefly aimed at investigating and punishing the offences committed under the former dictatorship, the fact that the process involved collecting evidence and preserving chains of evidence, for example at the sites of mass graves, meant that they also had a role in maintaining historical memory.

39. **Mr. Garcé García y Santos** asked if Mr. Ortiz Téllez had been the only person convicted in the enforced disappearance of Dr. Goiburú and how long he had been serving his sentence, and whether any measures had been taken to dismiss officials involved in the disappearance of the child soldiers Paredes and Núñez. Could the delegation inform the Government of the Committee's concerns about the mandate of the Ombudsman and recognition of the Committee's own jurisdiction?

40. **Mr. López Ortega** asked exactly how many people were involved in the 50 cases under investigation by the Special Unit for Human Rights Offences. Would the offence defined under article 236, paragraph 2, of the Criminal Code, if committed by a member of the military, be tried by a military or a civil court? What criteria were applied to determine whether a superior officer involved in committing an offence was a participant rather than an accessory? What prerogatives were enjoyed by victims exercising their right to participate in legal proceedings as complainants? He sought further information about the measures in place to ensure that officials under investigation could not interfere in the judicial process.

41. **Mr. Ramírez** (Paraguay) said that Mr. Ortiz Téllez had died in July 2014 while still under house arrest. Many of the senior figures of the 1954–1989 dictatorship were also dead so judicial proceedings were necessarily aimed at lower ranking officials.

42. In a case involving four police officers tried for an extrajudicial execution carried out in 1976, the Supreme Court of Justice had confirmed that the defence of obeying orders was inadmissible under Paraguayan law.

The meeting rose at 5.55 p.m.