



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 297th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 1 October 2019, at 3 p.m.

Chair: Mr. Ayat

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The meeting was called to order at 3.10 p.m.

Consideration of reports of States parties to the Convention

Initial report of the Plurinational State of Bolivia (CED/C/BOL/1; CED/C/BOL/Q/1 and CED/C/BOL/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of the Plurinational State of Bolivia took places at the Committee table.*
2. **The Chair** said that, at the invitation of the Committee, other members of the delegation would be speaking via video link from La Paz. The State party should nonetheless be aware that the Committee much preferred dialogues in which delegations appeared in person before the Committee.
3. **Mr. Flores Monterrey** (Plurinational State of Bolivia) said that Bolivia had taken a step-by-step approach in its efforts to eliminate enforced disappearance. The crime of enforced disappearance was specifically prohibited in the country's Constitution, and the international human rights instruments that it had ratified, including the Convention, were an integral part of the domestic legal system.
4. **Mr. Mendoza Avilés** (Plurinational State of Bolivia), speaking via video link from La Paz, said that it was an honour for him to introduce his country's initial report (CED/C/BOL/1). The report was the result of contributions made by the relevant public institutions and had been drafted within the framework of an inter-agency mechanism for coordinating the preparation of reports on the country's human rights record. Bolivia had submitted initial or periodic reports to eight United Nations treaty bodies since the start of 2018 and was continuing to work to fulfil its reporting obligations. A wide array of individual and collective rights were enshrined in the Constitution, which had entered into force in 2009 following its adoption by an assembly representing all sectors of the Bolivian population. International human rights instruments ratified by the country were the supreme law of the land when the rights they protected were more extensive than those set forth in the country's Constitution or its other bodies of law.
5. All the crimes of enforced disappearance that had been committed in Bolivia between 4 November 1964 and 10 October 1982 had been politically or ideologically motivated. Since 1982, however, when Bolivian democracy had been restored, there had not been a single case of enforced disappearance in the country. The Government had nonetheless taken steps to establish mechanisms that would make it possible to shed light on past cases of enforced disappearance and prevent such crimes from ever being repeated. There was no statute of limitations for crimes against humanity.
6. Bolivia had ratified the Inter-American Convention on Forced Disappearance of Persons in 1996 and acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity in 2000. In 2002, it had ratified the Rome Statute of the International Criminal Court. Those instruments formed part of the domestic legal framework. The offence of enforced disappearance, which had been defined in line with article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, had been incorporated into the Criminal Code by Act No. 3326 of 18 January 2006.
7. The steps taken by the State party in respect of enforced disappearance had begun not in 2007, when it had signed the Convention, but much earlier, in 1982, when democracy had been restored. In that year, for example, a decree providing for the establishment of a national commission to investigate the fate of disappeared Bolivian nationals had been issued, and although that commission had been dissolved before it had been able to conclude its investigations, two other special commissions had been created later. One, established in 1995, had been tasked with finding the remains of the guerrilla commander Ernesto "Che" Guevara, while the other, set up in 1997, had been given a mandate to oversee searches for the body of the disappeared political leader Marcelo Quiroga Santa Cruz.
8. The courts had convicted a number of persons on charges of enforced disappearance or other human rights violations. Work begun in 1999, for example, had led to guilty

verdicts for 14 defendants, including 3 paramilitary fighters, involved in the enforced disappearance of Quiroga Santa Cruz. The remains of Che Guevara and 30 other guerrillas who had been disappeared in Vallegrande had been found between 1997 and 2001. In 2008, the skeletal remains of 17 persons had been exhumed from the mausoleum of the Asociación de Familiares de Detenidos, Desaparecidos y Mártires por la Liberación Nacional de Bolivia, and the remains of 5 of those persons had been identified and returned to their family members. Steps had also been taken to return the remains of other disappeared persons to their family members between 2011 and 2013.

9. Efforts to ensure that disappeared persons were not forgotten had included the inauguration of squares, a school and a promenade in major cities around the country, including La Paz, Oruro and Santa Cruz. The Technical Certification Commission had been established to complete the work of the defunct National Commission on Compensation for Victims of Political Violence. The two commissions had considered more than 1,700 cases, 7 of which had involved the crime of enforced disappearance.

10. Measures had been taken to ensure that victims could exercise their right to know the truth about the circumstances surrounding an enforced disappearance and the fate of the disappeared person. The Truth Commission, for example, was a fully operational and autonomous institution with its own resources. It had been established in 2016 to investigate the serious human rights violations committed between 1964 and 1982 and facilitate the institution of criminal or other proceedings in those cases, contribute to the construction of historical memory, help prevent impunity and make policy recommendations. By December 2019, it was to have produced a report on the historical conditions under which the Bolivian people had been subjected to grave violations of their human rights and another report describing the Commission's plan and methods of work, listing the rights violations it had investigated, drawing conclusions and making recommendations in that connection. In addition, the declassification of formerly classified military and other information was enabling the people of Bolivia to exercise their rights under article 24 of the Convention.

11. **Mr. Ravenna** (Country Rapporteur) said that he wished to encourage the Government to formally recognize the competence of the Committee to receive and consider communications pursuant to articles 31 and 32 of the Convention. In view of the fact that various sources had provided contradictory information on the number of cases of enforced disappearance and on the status of investigations into those cases, he would appreciate clarification on those particulars. In paragraph 14 of the replies to the list of issues, the Government stated that enforced disappearance was prohibited, even in a state of emergency, under article 15 of the Constitution, which established the fundamental right to life. However, as the specific law setting out the definition of enforced disappearance had been repealed, no other explicit provision was currently in place that prohibited enforced disappearance even in a state of emergency.

12. **Mr. López Ortega** (Country Rapporteur) said that, while the Government had stated that any crimes of enforced disappearance that had occurred in the State party had been politically motivated and had taken place under the dictatorships that had held power between 1964 and 1982, the definition of enforced disappearance set forth in the Convention was not limited to periods of a specified duration or to specific motivations or types of perpetrators. Rather, enforced disappearance was considered to be the deprivation of liberty followed by concealment of the whereabouts of the disappeared person by agents of the State or by persons acting in collusion with the State. In the light of that definition, it was not difficult to imagine that, even under a democratic government, an excessive use of police force or an improper transfer between prisons combined with a failure to inform the prisoner's family of his or her exact whereabouts, for example, could constitute crimes of enforced disappearance. It was therefore important to bear in mind that enforced disappearance was also a very real and current threat to which everyone must be alert.

13. While the definition of enforced disappearance contained in article 292 bis of the Criminal Code reflected the definition established in the Inter-American Convention on Forced Disappearance of Persons, it was not fully in line with the one set out in the International Convention for the Protection of All Persons from Enforced Disappearance. Defining placement outside the protection of the law as the act of impeding a person who

has been deprived of his or her freedom from having “recourse to the applicable legal remedies and procedural guarantees” had posed problems in some States parties to the Inter-American Convention because it had been interpreted as a subjective element rather than as a result of the foregoing elements set out in the definition. Hence, he wished to know whether, when courts and prosecutors applied article 292 bis of the Criminal Code, placement outside the protection of the law was understood not as a fourth element of the crime, but rather as a consequence of the preceding elements. He would also like to know whether the Government envisaged amending national legislation to align it with the definition of enforced disappearance set forth in the Rome Statute of the International Criminal Court, thereby ensuring that the crime would be considered to be a crime against humanity.

14. The minimum sentence provided for in Bolivian law of 5 years’ imprisonment for perpetrators of enforced disappearance acting in collusion with State agents was, if he understood correctly, applicable only to private individuals, whereas the State agent concerned would receive a longer sentence. That minimum sentence for private individuals was a matter of concern to the Committee given the connection between organized crime (engaged in by private individuals) and crimes of enforced disappearance involving persons in extremely vulnerable situations, such as victims of trafficking, migrants and refugees. Such a light sentence could be viewed as not being commensurate with the extreme seriousness of the offence or, therefore, in conformity with the Convention. He therefore wondered whether the Government would consider incorporating the mitigating and aggravating circumstances for the crime of enforced disappearance listed in article 7 (2) of the Convention.

15. He would be interested to learn whether investigations into crimes committed between 1964 and 1982 were based on current laws or the laws in force at the time of the commencement of those crimes. Given that Bolivian law apparently did not include the concept of continuous crimes, he wondered how the terms of limitation for such offences were calculated. He would also be keen to learn whether specific legislation was in place that provided for pardons or amnesties for perpetrators of the crime of enforced disappearance and which legal provisions covered the criminal responsibility of a superior civil authority who ordered the commission of a crime of enforced disappearance. In addition, the law did not appear to rule out the defence of having obeyed the orders of a superior. With reference to article 9 (1) of the Convention, would the delegation please comment on the absence of legislation providing for the national courts to exercise jurisdiction over cases of enforced disappearance committed abroad when the alleged offenders or the disappeared persons were Bolivian nationals? He would be interested to learn what legal provisions were in place that expressly prohibited the military courts from hearing cases of enforced disappearance in which the alleged perpetrators were members of the armed forces.

16. He was concerned about the lack of clarity regarding the number of cases of enforced disappearance and the investigations being conducted and about the failure to resolve those cases. The Committee had been informed that the responsible parties were encountering difficulties in conducting effective investigations owing to insufficient coordination between investigating bodies, a shortage of resources and restrictions on the corresponding authorities’ access to military archives. In view of that situation, he wished to know whether legislation was in place to ensure that alleged offenders and the branches of the armed forces to which they belonged were prevented from interfering in investigations. He wondered what impediments were preventing the judicial system from carrying out effective investigations and what the Government planned to do to redress that situation. Information would also be appreciated on the reasons why there was no special unit in the Public Prosecution Service to deal with serious human rights violations such as enforced disappearance. He would welcome further information on the Programme for the Protection of Victims, Witnesses, Complainants and Members of the Public Prosecution Service and particularly on its budgetary allocations and organizational structure, as alternative reports had stated that some complainants of human rights violations had been targets of reprisals.

17. **Mr. Ravenna** (Country Rapporteur) said that he would like detailed information on the assessment criteria and procedures used to determine whether a person would be at risk of being subjected to enforced disappearance if he or she were to be expelled or returned to another country. He was concerned by reports regarding the confidential nature and the lack of independent monitoring of the decision-making processes of the National Commission for Refugees, as it therefore appeared that Migration Act No. 370 might be at odds with the principle of non-refoulement established in article 16 of the Convention.

18. **Ms. Villa Quintana** (Country Rapporteur) said it was her understanding that, while the Constitution prohibited incommunicado detention, the right of detainees to communicate with their lawyer and other persons could be restricted for up to 24 hours while a criminal investigation was ongoing. She wished to know whether, during that 24-hour interval, detainees who requested to meet with a lawyer could still do so.

19. The Committee had been informed that the police frequently transferred prisoners who were members of criminal gangs, often collectively and at random, from one prison to another. She would like to know whether those prisoners' families and lawyers were informed of such transfers immediately and as a matter of course and whether those transfers were overseen by representatives of a State institution, such as the Ombudsman's Office. The delegation might also indicate whether there was a mechanism in place for receiving complaints concerning non-compliance by prison authorities with the obligations set out in article 17 of the Convention.

20. As, under the Code of Criminal Procedure, police officers were required to enter the place, date and time of arrests in a permanent record, she wished to know whether such records included all the details mentioned in article 17 (3) of the Convention. She would also like to hear more about the different registers used to record the details of persons deprived of their liberty in places other than prisons, such as mental health institutions and police stations, and about the authorities responsible for keeping those registers up to date. According to the State party's report, the Directorate General of Prisons recorded the details of all persons deprived of their liberty throughout the country using a system powered by Microsoft Excel. Did the State party consider that system to be reliable? She wondered whether it had given any thought to introducing an interoperable system whereby information on the situation of persons deprived of their liberty could be shared by the police, the Public Prosecution Service and the courts.

21. She would also appreciate more information on the laws governing the obligation to register all cases of deprivation of liberty and on the penalties imposed on public officials who failed to comply with that obligation or recorded incomplete or inaccurate information. She would be grateful for clarification as to whether any member of the public or person with a legitimate interest could obtain information on the situation of persons deprived of their liberty without a judicial order. While she welcomed the establishment of the Service for the Prevention of Torture, whose mandate included monitoring the situation of persons deprived of their liberty, she would like to know whether any other State institution was authorized to visit places of detention.

22. She would be interested to hear the delegation's views concerning the extent to which the definition of a victim contained in Act No. 2640 was in line with article 24 (1) of the Convention and to learn how victims were defined outside the context of the dictatorships in power between 1964 and 1982.

23. She wished to know whether the 7 victims of enforced disappearance mentioned by the delegation in its opening statement had received compensation specifically as a result of any of the 63 requests for the certification of acts of enforced disappearance submitted under Act No. 2640 to the now defunct National Commission on Compensation for Victims of Political Violence or whether they had received it along with the other 1,707 beneficiaries of State reparation for crimes committed during the dictatorship. The Committee had been informed that, although a total of over 6,000 certification requests had been submitted, almost 70 per cent of them had been rejected. If those data were accurate, she would like to know why so many requests had been rejected, thereby denying victims access to reparation. Might the high rejection rate not be attributable to the exclusions set out in article 10 of Act 2640? She would also like to know how much compensation had

been paid to victims to date and whether there was a separate budget line in the national budget for that purpose.

24. It would also be helpful to know whether the issuance of a declaration of presumed death in respect of disappeared persons and the updating of their records in the civil registry effectively put an end to all efforts to search for, locate and identify them or to recover their remains. If that was not the case, she would appreciate more information on any follow-up mechanisms in place to ensure the continuation of such efforts.

25. She would be interested to learn whether the genetic databank that had been proposed as a means of helping to identify victims of enforced disappearance between 1964 and 1982 had been set up and, if so, when it had become operational, how many genetic samples it contained and how many sets of mortal remains had been identified and returned to the persons' families as a result. The delegation might also wish to indicate what kind of support had been given to victims' families and provide additional information on the institution responsible for searching for disappeared persons and how it went about its work. The Committee would also welcome further information on any laws that dealt with the offences related to children set out in article 25 of the Convention and on any cases in which children disappeared during the dictatorship had been returned to their birth parents or in which their adoption had been annulled.

The meeting was suspended at 4.45 p.m. and resumed at 5.05 p.m.

26. **Mr. Rossell Arteaga** (Plurinational State of Bolivia) said that the Bolivian legal framework had evolved over time and that the country now had a Constitution that was guarantee-based and that protected human rights and upheld the legal force of international conventions. The possibility of making the declarations provided for under articles 31 and 32 of the Convention was currently being examined. Pursuant to Act No. 1430 of 11 February 1993, the country was subject to the jurisdiction of the Inter-American Court of Human Rights, which had issued judgments in several cases of enforced disappearance that had occurred in Bolivia, such as the case of *Trujillo-Oroza v. Bolivia*. Compliance with those judgments was currently being supervised. The large number of cases referred to by Mr. Ravenna did not all concern enforced disappearance. Official data on cases of enforced disappearance would be obtained from the Truth Commission once it had arrived at its final conclusions. A total of 48 sets of mortal remains had been identified between 1997 and 2013. Although there was no specific law that expressly prohibited enforced disappearance during a state of emergency, article 15 of the Constitution did contain such a prohibition. Therefore, the constitutional protection mechanisms applicable in the event of a violation of a fundamental right would immediately be activated in cases of enforced disappearance occurring in those circumstances.

27. The Government acknowledged that, while the crime of enforced disappearance might be instantaneous when consummated, the violation of the legally protected right not to be subjected to a disappearance might well be continuous. Article 30 of the Code of Criminal Procedure provided that the term of a statute of limitations commenced at midnight on the day on which the offence had been committed or its consummation had ceased. Bolivian criminal legislation therefore recognized both the short- and long-term nature of the crime of enforced disappearance, in line with article 2 of the Convention. There was no statute of limitations for a crime of enforced disappearance when it constituted a crime against humanity.

28. With respect to the Committee's question as to whether the State party intended to characterize enforced disappearance as a crime against humanity in accordance with the criteria set out in the Rome Statute of the International Criminal Court, he wished to note that, since enforced disappearance was already established as a separate and specific crime under Bolivian law, there was no need to adopt further regulatory provisions to ensure the effectiveness of the related provisions. However, in accordance with the Rome Statute, enforced disappearance could be considered to constitute a crime against humanity when it was committed as part of a widespread or systematic attack directed against any civilian population pursuant to or in furtherance of a State or organizational policy. Accordingly, any crime could be considered to constitute a crime against humanity if those criteria were met. Along the same lines, a decision handed down by the Supreme Court had stated that,

although the crime of torture, enforced disappearance or rape, when committed in isolation, did not constitute a crime against humanity per se, those crimes had the potential to be classified as crimes against humanity if additional criteria were met.

29. The Government recognized the need to ensure that the penalties imposed on perpetrators of enforced disappearance were commensurate with the seriousness of the crime, taking into account whether the perpetrators were private persons or public officials. The Criminal Code prescribed a penalty of from 5 to 15 years' imprisonment for that offence, a penalty of from 15 to 20 years' imprisonment if the victim suffered serious physical or psychological harm as a result of the act and a penalty of 30 years' imprisonment if the act resulted in the death of the victim. If the perpetrator of the act was a public official, the penalty was increased. The Criminal Code also set out the parameters for imposing minimum and maximum penalties, which could be applied in respect of all crimes and all perpetrators of crimes in accordance with the principle of proportionality.

30. The fact that the law did not currently incorporate the mitigating and aggravating circumstances envisaged in article 7 of the Convention would be addressed in forthcoming legislative amendments. Furthermore, the Criminal Justice System Code adopted in 2017 stipulated that, under certain circumstances, enforced disappearance should be treated as a crime against human dignity and freedom and should carry a minimum prison term of 25 years. The procedural regulations necessary to implement the new Code were set out in another recently adopted law, and further legislative amendments were in the pipeline that should resolve the legal lacunae identified by the Committee.

31. Regarding the Committee's question as to whether current laws or laws in force during the years of dictatorship were applied to cases dealing with enforced disappearances that had commenced during that period, he wished to inform the Committee that final, enforceable judgments had been handed down in four cases that dated back to that period and that had been initiated prior to the signature of the Convention and the recognition of the offence of enforced disappearance in national law. The persons convicted in those cases had been judged and sentenced under current laws, which excluded all offences involving violations of human rights from the scope of amnesties, and had thus received prison sentences of 30 years without the possibility of a pardon.

32. There was no law that expressly stipulated that offences of enforced disappearance could not be time-barred. However, the Supreme Court had handed down a ruling in 2017 in which it had confirmed that, pursuant to article 29 of the Rome Statute, there should be no statute of limitations for crimes against humanity even if the offences in question did not constitute a violation of the domestic law of the country in which they were committed. In certain contexts, and subject to certain conditions, serious offences under ordinary law could be classified as crimes against humanity and, as such, could not be time-barred. Accordingly, when classified as a crime against humanity, offences of enforced disappearance were excluded from any statute of limitations as well as from any amnesty.

33. Superior officers who ordered, sanctioned or in any other way permitted unlawful acts to be committed were held criminally responsible under military jurisdiction. However, as established in a 2012 ruling of the Plurinational Constitutional Court, the military courts were not competent to rule on cases involving violations of fundamental rights, which were therefore tried before the ordinary courts. The Government was conscious of the need to address that discrepancy.

34. During criminal proceedings, prosecutors and judges were granted access to information held in the military archives pursuant to a 2010 Supreme Court ruling and had done so on two occasions to date. Once a final judgment had been issued in a case, duly authorized family members were also permitted to access relevant information in accordance with another Supreme Court ruling, issued in 2009, subject to the oversight of the Ministry of Defence. The Government was fully committed to shedding light on the events that had occurred during the military dictatorships, and the declassification process would continue, as envisaged in the Truth Commission Act (No. 879) of 2016. In its ongoing investigations into those events, the Public Prosecution Service gave priority to sensitive and complex cases, including those that involved enforced disappearance. Such

cases were assigned to senior, specialized prosecutors who reported directly to the Attorney General's Office and worked closely with the Truth Commission.

35. **Mr. Ravenna** said that he would appreciate assurances that the Truth Commission had sufficient administrative and political independence to carry out its work effectively. Since many requests for the certification of acts of enforced disappearance had apparently been declared inadmissible either by the National Commission on Compensation for Victims of Political Violence or by the Technical Certification Commission, he was concerned that the eligibility criteria might be overly restrictive and that the numerous exclusions established in Act No. 2640 might have effectively negated many victims' right to reparation. He would like to know, in that connection, whether the delegation could share any of the Truth Commission's findings with the Committee prior to the publication of its final report at the end of 2019. The delegation had so far referred primarily to the financial aspects of reparation, and he therefore wondered whether its compensation policies were predicated on the principle of comprehensive reparation and the right to truth, justice and guarantees of non-repetition or were designed more with financial considerations in mind.

36. **Ms. Villa Quintana** said that she would like to know when the State party expected to disburse the remaining 80 per cent of the funds earmarked for compensation that had apparently not yet been paid out to victims and what proportions of the funds had been sourced from the national budget and international cooperation assistance, respectively. With regard to access to justice, she wished to know what steps the State party was taking to guarantee the right to a defence, the right of access to a doctor and forensic medical services and, in the cases of persons in detention, the right to know the reasons for their arrest and the right to contact a person of trust.

37. **Mr. López Ortega** said that more information was needed about the procedures used to assess the likelihood of a person who was facing expulsion or extradition being subjected to enforced disappearance in the country of return, the law that established those procedures and the authority that was responsible for carrying them out. Details of the avenues of recourse available to persons wishing to appeal against an expulsion order would also be useful, as would clarification concerning whether removal or expulsion proceedings were automatically suspended while appeals were under way.

38. He shared Ms. Villa Quintana's concern about the right of detainees to contact a lawyer, a family member and, where appropriate, consular authorities and about the right of legal counsels and family members to obtain information about detainees' whereabouts and the charges against them. In addition to the information that she had requested, he would like to know which authorities were responsible for ensuring that those rights were upheld and what penalties might be imposed on public officials who failed in their duty to disclose information to family members. He also wished to underscore the importance of providing comprehensive reparation, as established in article 24 (5) and (6) of the Convention, and therefore invited the delegation to clarify whether domestic laws established an obligation to provide psychological and medical assistance, social welfare services and other forms of support, in addition to financial compensation.

39. He would like to know more about any training programmes provided for judges, prosecutors, forensic medical officers, general physicians, psychiatrists, prison officers and other public servants, including persons working in centres for young people in conflict with the law; it was vital for such training to cover human rights and the identification of signs of torture or ill-treatment. He also wished to know what resources were available to the Truth Commission and what provisions had been made for the future, once its final report had been published. Would the Commission continue to operate as the central body responsible for upholding guarantees of truth, justice and non-repetition?

40. He had noted that the Committee against Torture had identified various deficiencies in the national mechanism for the prevention of torture, and he therefore would like to know whether adjustments had since been made to bring the mechanism into line with the requirements set out under the Optional Protocol to the Convention against Torture. Lastly, he wished to emphasize that disappeared persons should not under any circumstances be recorded as "presumed dead" in the civil registry. A presumption of death on the part of the

State was an affront to the victim. Instead, where necessary for legal reasons, States should issue a declaration of absence without presumption of death.

41. **Mr. De Frouville** said that he would like to know to what extent non-governmental organizations and other stakeholders, including members of disappeared persons' families, had been involved in the report's preparation. He would welcome clarification regarding the direct applicability of the Rome Statute and the scope of amnesties and wished to know whether he was correct to assume, on the basis of the State party's earlier explanations, that a judge could convict a person found to have been responsible for acts of enforced disappearance of a crime against humanity based solely on the Rome Statute, despite the absence of any provision to that effect in the Criminal Code. He had also understood that an offence of enforced disappearance could be included within the scope of an amnesty if it was not deemed to constitute a crime against humanity: in other words, if it did not form part of a widespread or systematic attack directed against a civilian population. Confirmation would also be appreciated that, as the law stood at present, the legal responsibility of superior officers was a matter that did not fall under the jurisdiction of the ordinary courts and that the pertinent law there needed to be amended.

The meeting rose at 6 p.m.