



# International Convention for the Protection of All Persons from Enforced Disappearance

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## Committee on Enforced Disappearances

### Follow-up report on individual communications\*

#### A. Introduction

1. The present report was prepared pursuant to rule 79 of the rules of procedure of the Committee on Enforced Disappearances, which states that the Special Rapporteur or working group tasked with ascertaining the measures taken by States parties to give effect to the Committee's Views shall regularly report to the Committee on follow-up activities.

2. The present report sets out the information received by the Committee on Views No. 1/2013 (*Yrusta v. Argentina*), adopted at its tenth session, and the decisions adopted in that respect in plenary, in accordance with the following assessment criteria:

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#### *Assessment criteria*

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##### Action satisfactory

A Measures taken largely satisfactory

##### Action partially satisfactory

B1 Substantive action taken, but additional information required

B2 Initial action taken, but additional action and information required

##### Action not satisfactory

C1 Reply received but actions taken do not implement the Views/recommendations

C2 Reply received but not relevant to the Views/recommendations

##### No cooperation with the Committee

D1 No reply received to one or more recommendations or parts of recommendations

D2 No reply received following reminder(s)

##### Measures taken are contrary to the recommendations of the Committee

E The reply indicates that the measures taken go against the Views/recommendations of the Committee

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\* Adopted by the Committee at its thirteenth session (4-15 September 2017).



**B. Communication No. 1/2013, *Yrusta v. Argentina***

Date of adoption of Views:	11 March 2016
Initial deadline for submission of the State party's follow-up report:	21 September 2016
Replies by the State party:	22 September, 24 October and 15 December 2016: extension requests
Special Rapporteur's decision:	Two extensions were granted. With the second extension (27 October 2016), the State party was informed that, if the follow-up report was not received by the required date, the Committee would proceed, on the basis of the information at its disposal, with the assessment of the action taken to implement the Committee's recommendations. This decision was reiterated in response to the request for additional extension of 15 December 2016.
Comments by the authors:	18 December 2016: the authors reiterate that no action has been taken to give effect to the Committee's Views and provide information on the actions taken by the victim's relatives to follow up on the Committee's recommendations and secure their implementation.
Action taken:	<p>25 April 2017: follow-up letter of the Special Rapporteur sent to the State party, on behalf of the Committee, recalling that, in accordance with paragraph 14 of the Committee's Views, the State party was requested to report "within six months of the date of transmission of these Views, on the action that it has taken to implement all previous recommendations".</p> <p>The Committee noted that:</p> <ul style="list-style-type: none"> <li>• More than a year after transmission of the Views concerned, the State party had still not sent the required follow-up information;</li> <li>• According to the information available in the context of the follow-up process to the implementation of the Views, the State party has allegedly taken no measures to give effect to the Views and, as a result, the rights of the authors of the communication are being persistently and increasingly violated.</li> </ul> <p>In the light of the foregoing, the Committee informed the State party of its decision to register the, thus far, unsatisfactory implementation of its recommendations in its report to the General Assembly, and to re-examine the follow-up to the Views concerned at its next session.</p>
Authors' additional comments:	<p>13 June 2017:</p> <p>The authors request information on the status of the follow-up process. They report that the Committee's Views have still not been implemented.</p>

They report that they held a meeting with the National Secretariat for Human Rights in Buenos Aires following the Committee's decision (no date was mentioned). On that occasion, the authorities committed to moving forward with the implementation of the decision. In particular, they committed to taking action to advance the investigation and ensure its reassignment to the federal court, which was competent in matters of enforced disappearance. They also undertook to take measures to offer reparation to the victims. However, no action has been taken to that effect.

The authors also report that they have been in constant contact with the international litigation department of the National Secretariat for Human Rights, but that no progress has been achieved owing to the reluctance of the provincial government.

17 July 2017:

The authors indicate that they have not received any response from the State party, which has still not published the decision, nor launched a diligent and adequate investigation into the events, and has not complied with the Committee's recommendation to grant the authors reparation and prompt, fair and adequate compensation, in accordance with article 24 (4) and (5) of the Convention.

Reply of the State party:

8 September 2017:

The State party comments on the action taken in respect of each of the Committee's recommendations.

(a) Recognize the authors' status as victims, thereby allowing them to play an effective part in the investigations into the death and enforced disappearance of their brother:

The State party argues that the Yrusta sisters allegedly do not have legal standing to act as plaintiffs in the criminal proceedings in which the cause of the death of Roberto Agustín Yrusta is being investigated owing to the fact that, under article 93 of the Code of Criminal Procedure of the Province of Santa Fe, only persons alleging to be the victims of a publicly prosecutable offence or their compulsory heirs may participate in the proceedings as plaintiffs. Therefore, on 24 June 2015, the Criminal Court of Appeal of the first judicial district of Santa Fe rejected the action of unconstitutionality and upheld the decision of the investigating judge denying the Yrusta sisters' application to stand as plaintiffs.

The authors allegedly do not have legal standing to act as plaintiffs in the investigation being conducted at the federal level either.

However, in their capacity as victims, the authors

have the option to participate in the investigations under the conditions provided for in article 80 of the Code of Criminal Procedure of the Province of Santa Fe. They are in fact doing so through their representative, as a number of measures aimed at gathering evidence have been carried out at the request of the authors' legal counsel.

(b) Ensure that the investigation into the case of Mr. Yrusta is not confined to the causes of his death but instead also entails a thorough and impartial investigation of his disappearance at the time of his transfer from Córdoba to Santa Fe:

The State party notes that two investigations into the case of Mr. Yrusta are under way: the investigation into his death, being carried out by the ordinary courts of the province of Santa Fe, and the investigation into his enforced disappearance, being conducted by the federal courts, following the transfer of the case ordered by the Supreme Court of Santa Fe on 18 October 2016. The State party describes the investigative measures that have been taken throughout the process and notes that, according to the Supreme Court of Santa Fe, the offence of enforced disappearance had allegedly ceased prior to the time of Mr. Yrusta's death, since he had already resumed contact with his family members, who knew of his whereabouts. The federal court requested the cooperation of the Office of the Special Prosecutor for Institutional Violence in the Attorney General's Office, which is tasked with bringing criminal proceedings and overseeing the investigation and prosecution of offences involving the use of institutional violence, the principal victims of which are persons in situations of vulnerability.

(c) Prosecute, judge and punish the persons responsible for the violations that have been committed:

The relevant criminal cases are under way. The State party further asserts that on 18 March 2014, the Governance Secretariat of the Supreme Court of Santa Fe ordered an administrative investigation into the functional conduct of the first judge and the prosecutor in charge of the investigation into Mr. Yrusta's death. In a decision of September 2016, Chamber IV of the Criminal Court of Appeal of Santa Fe concluded that irregularities had been committed by both the judge and the prosecutor in the course of the investigation. On 16 May 2017, the judge and the prosecutor under investigation were given notice to make any exculpatory statements they considered relevant in relation to the charges against them. The pretrial proceedings are under way.

(d) Provide the authors with rehabilitation and prompt, fair and adequate compensation, in accordance with article 24 (4) and (5) of the

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## Convention:

A dialogue has been opened with the authors with a view to agreeing the terms of adequate reparation.

(e) Adopt all necessary measures to enforce the guarantees of non-repetition stipulated in article 4 (5) (d) of the Convention, including compiling and maintaining registers that meet the requirements of the Convention and to ensure that the relevant information is accessible to all persons with a legitimate interest therein, as set out in articles 17 and 18 of the Convention:

The State party notes that there are two registers of cases of institutional violence at the federal level:

- The unit to record, systematize and follow up on information regarding acts of torture and other forms of institutional violence, which operates under the executive branch and reports to the National Directorate of Policies to Combat Institutional Violence;
- The register maintained under the Programme to Combat Institutional Violence of the Chief Public Defender's Office, a functionally autonomous independent body.

(f) Make public the present Views and disseminate their content widely, in particular, though not solely, among members of the security forces and prison personnel who are in charge of persons deprived of their liberty:

The State party reports that efforts are being made with the provincial authorities with a view to complying with this recommendation.

## Authors' comments:

17 September 2017:

The authors are of the view that the interpretation made of article 93 of the Code of Criminal Procedure of Santa Fe is arbitrary and that limiting participation to compulsory heirs is not in line with the harmonized interpretation of the law. The terminology is not relevant in relation to the active participation of the victim's family members in establishing the truth. In addition, they report that Mr. Yrusta's mother, his sole heir, is under the care of her sisters and has been in poor health for some time. This fact was reported to the authorities of the State party but was not taken into consideration. They believe that the law gives family members the authority to be recognized as plaintiffs. Therefore, when compulsory heirs participate as plaintiffs in criminal proceedings, they do so in their own right and not as successors to a right held by the victim. In the case at hand, the inheritance provisions that were applied as the basis for denying the authors the right to act as plaintiffs establish an order of preference for the transfer of rights and obligations derived from the deceased's estate. The legal authority granted

under the Code of Criminal Procedure to act as plaintiffs in cases involving publicly prosecutable offences is unrelated to inheritance issues. Accordingly, the authors consider that they should be allowed to act as plaintiffs to exercise their right to the truth, even though they do not have inheritance rights.

The authors argue that the status of victim under the Santa Fe system of criminal procedure is limited and restrictive. The victim cannot take steps to gather evidence or initiate proceedings. They point out that none of the measures aimed at gathering evidence that they requested was taken. The victims were not able to check the testimonies that were received in the course of the investigation since they do not have any information on the conduct of the investigation. In light of the foregoing, the authors reiterate their request to be allowed to act as plaintiffs in the investigations that are under way into their brother's case.

Decision of the plenary:

[B2]: Initial action taken, but additional action and information required.

The Special Rapporteur will send a letter to the State party on behalf of the Committee, noting the progress made in implementing the Committee's Views and requesting additional information on steps taken to implement them.

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